

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Saluda County

Honorable R. Keith Kelly, Circuit Court Judge

MICHAEL DURAN WATSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000486

APPENDIX

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MICHAEL DURAN WATSON - CROSS BY MR. YOUNG

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1 **A** Yes.

2 **Q** And so the question is, do you think maybe that
3 little confrontation over at Jarvis' house had
4 something to do with them seeing that shotgun in
5 your car?

6 **MR. ANDERSON:** Your Honor, I'm going to object,
7 that would call for speculation.

8 **MR. YOUNG:** I'll withdraw the question and
9 rephrase it.

10 **BY MR. YOUNG:**

11 **Q** Did any conversation about that issue come up?

12 **A** No, sir. All they wanted me to do was come out
13 in the yard -- I mean, come out in the road.

14 **Q** So you don't know where anybody's standing, you
15 don't know where anybody is when the shot goes off?

16 **A** No, sir.

17 **Q** You have no clue?

18 **A** Well, I knew as they was walking forward,
19 but --

20 **Q** But they got this close (indicating)?

21 **A** Yes, sir.

22 **Q** Walking forward. So after you got picked up,
23 you're going up to Greenwood Detention Center and
24 Officer Cockrell's taking you up there, right?

25 **A** Yes, sir.

1 Q And you say, basically, that you went there to
2 go pick up your kid at the Terrace and someone
3 waived for you to stop and then you stopped and four
4 or five guys were rushing your car and I just threw
5 up the gun and shot. That's what you told him then,
6 though?

7 A No, sir.

8 Q Oh, you didn't tell him that?

9 A I didn't tell him that I went there to drop off
10 my kid. Earlier that day, I dropped off my kid.

11 Q So everything else is right, someone else --
12 someone waived for you to stop, four or five guys
13 rushed your car, you threw up the gun and just shot,
14 that's what you told him?

15 A No, I didn't tell him that. From what he -- I
16 guess, from what he typed or whatever he thought I
17 said, it's some similarities, but that's not my
18 exact words.

19 Q So what he said wasn't right?

20 A No, sir.

21 Q What you told him back then a day or two after
22 the incident, what he's got recorded there is not
23 right?

24 A No, sir, them is not my exact words.

25 Q Oh, well, is it basically right?

MICHAEL DURAN WATSON - REDIRECT BY MR. ANDERSON

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1 **A** He has some similarities, yes, to the fact that
2 I dropped my kid off, but it was not at the Terrace.

3 **Q** Are you having trouble remembering certain
4 details?

5 **A** Certain details.

6 **Q** Like what?

7 **A** I mean, I'm saying I know I dropped my kid off
8 earlier that day. I went to the Terrace. I did ask
9 him about Andrew. And there's a possibility I could
10 have said some guys rushed the car instead of
11 several.

12 **Q** And so let me get this straight. The shotgun
13 has been all this time with somebody else?

14 **A** Yes.

15 **Q** Police came to your house, searched your house,
16 searched your car and now it's self-defense and you
17 still don't have the shotgun?

18 **A** No, sir. My lawyer had tried to get in contact
19 with him, but we haven't seen him.

20 **MR. YOUNG:** I don't have any further questions.

21 **THE COURT:** Redirect.

22 **MR. ANDERSON:** Just briefly, please.

23 REDIRECT EXAMINATION

24 **BY MR. ANDERSON:**

25 **Q** Michael, when you went down in there, did you

1 have any intention of hurting anybody?

2 A No, sir.

3 Q Can you tell the jury how it made you feel when
4 those people were approaching your car and you
5 heard, Shoot now?

6 A I felt for my safety. I was very scared at the
7 time.

8 MR. ANDERSON: That's all the questions I have.

9 THE COURT: Recross.

10 MR. YOUNG: None.

11 THE COURT: Thank you, sir. You may step down.
12 Do you need help?

13 THE WITNESS: No, sir.

14 MR. ANDERSON: Judge, that's the defense's
15 case.

16 THE COURT: Any reply?

17 MR. YOUNG: Your Honor, I need about one
18 minute.

19 THE COURT: Do you need to leave the courtroom?

20 MR. YOUNG: To step in that hallway, sir.

21 THE COURT: Ladies and gentlemen, please step
22 in the jury room. Don't discuss the case.

23 (The jury retires to the jury room.)

24 MR. YOUNG: Your Honor, I think this will be a
25 brief witness, but I need to make the Court aware of

1 something.

2 **THE COURT:** Go ahead.

3 **MR. YOUNG:** As a matter of proffer, the State
4 would say, if he's asked the question, did you pass
5 by Jarvis Stevens' house --

6 **THE COURT:** He can't hear you.

7 **MR. YOUNG:** If you passed by Jarvis Stevens'
8 house with -- in the company of Octavious Thomas and
9 your other cousin, did Duke have words with this
10 gentleman, Michael Duran Watson? And the answer to
11 that would be, Yes, that Duke did have words with
12 him. And it would be that, Why did you pull a gun
13 on my cousins? And that beyond that, the
14 conversation did not extend over into the yard, into
15 the car, just they were saying these things. And it
16 was -- there was no threatening behavior. It was
17 just a question as to why he did it.

18 Now, that gets into pointing and presenting a
19 firearm.

20 **THE COURT:** So you want to put up a witness
21 who's going to say that?

22 **MR. YOUNG:** The exact question was, Why did you
23 pull a shotgun or a firearm on my cousins? And it
24 was asked by Duke. He heard it. And there was no
25 further confrontation.

1 **THE COURT:** Who is he?

2 **MR. YOUNG:** Tobias Daniels who was identified
3 as being present. He's not previously testified.

4 **MR. ANDERSON:** Can I be heard, Judge?

5 **THE COURT:** Sure.

6 **MR. ANDERSON:** Judge, number one, we had a
7 pretrial, I guess, ruling that we weren't going to
8 get into that. Number two, the motivation for the
9 problem is irrelevant. They had a problem. Number
10 three, the young boy in the white T-shirt that
11 testified said it was a sawed-off shotgun. This boy
12 said it was a regular shotgun.

13 I guess, number four, Mr. Young just intimated
14 in his cross that the time they saw the shotgun was
15 at this altercation and he's actually trying to make
16 it like my client was lying that the gun wasn't in
17 the car because that's when these two young men
18 allegedly saw the gun.

19 But, I mean, I think if we go now and let them
20 talk about a prior incident where my client pointed
21 a shotgun at them, that's going against the pretrial
22 ruling. Plus, it's irrelevant to what happened
23 here. Clearly, they had problems, so the motivation
24 for the problem is irrelevant. They had a problem.
25 My client had a problem with Duke. Maybe Duke was

TOBIAS DANIELS (IN CAMERA) - DIRECT BY MR. YOUNG

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1 justified in being mad at my client, but he was mad
2 at him nonetheless.

3 **THE COURT:** Put your witness on the stand, make
4 your proffer so I'm clear that I know what you all
5 are talking about.

6 TOBIAS DANIELS,
7 having been duly sworn, testified as follows:

8 **THE COURT:** What's your name?

9 **THE WITNESS:** Tobias Daniels.

10 DIRECT EXAMINATION

11 BY MR. YOUNG:

12 **Q** All right. Mr. Daniels, do you know Duke
13 Thomas?

14 **A** Yes, sir.

15 **Q** And do you know -- were you in his company and
16 the company of any other persons near Jarvis
17 Stevens' house during the week prior to Andrew
18 Chandler being shot?

19 **A** Are you saying, like, around the same week?

20 **Q** Yeah, same week, during that same timeframe.

21 **A** It was around the same time.

22 **Q** Was it prior to the shooting before he got
23 shot?

24 **A** It was just about when he pulled a gun on us,
25 that's all.

1 Q No, wait a minute. I'm talking about when
2 Andrew Chandler got shot. Was it prior to when
3 Andrew Chandler got shot when this happened?
4 A Yes, sir.
5 Q Okay. And you passed by Jarvis Stevens' house?
6 A Uh-huh.
7 Q Who was with you?
8 A Me, Duke, Jarrod.
9 Q Jarrod who?
10 A Coleman.
11 Q Who is he?
12 A My cousin.
13 Q Okay. And you two were walking down the road
14 doing what?
15 A Coming from my grandma house.
16 Q Coming?
17 A From my grandma house.
18 Q From your grandmother's house?
19 A Yes, sir.
20 Q I'm trying to make sure I understand you.
21 You're going to have to speak up clearly, okay?
22 A All right.
23 Q When you did this, when you were walking down
24 the road, you walked past Jarvis Stevens' house,
25 when you went past that house, did you see anyone in

TOBIAS DANIELS (IN CAMERA) - DIRECT BY MR. YOUNG

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1 the yard?

2 **A** Yeah.

3 **Q** Who?

4 **A** Rand, Jarvis.

5 **Q** Rand and Jarvis. Rand is who?

6 **A** Him (indicating).

7 **Q** Michael Watson?

8 **A** Michael Watson.

9 **Q** The guy you just pointed to over there?

10 **A** Yeah.

11 **Q** All right. And they were out in the road or

12 street or where were they?

13 **A** No, they was in the yard.

14 **Q** Okay. And y'all were where?

15 **A** In the road.

16 **Q** Walking?

17 **A** Yeah.

18 **Q** And did you hear any words said by anyone

19 toward Mr. Watson?

20 **A** Duke, he just asked him why he pulled a gun out

21 on us.

22 **Q** He asked Duke what?

23 **A** No, Duke asked him.

24 **Q** Duke asked Michael Watson?

25 **A** Yeah.

1 Q And what did he ask him? .

2 A Why did he pull a gun out on --

3 Q On who?

4 A -- me and Jarrod.

5 Q Okay. So he asked that question of Michael
6 Watson?

7 A Yeah.

8 Q And what happened?

9 A Nothing.

10 Q Did he look at you?

11 A No. He ain't said nothing. Like, he was
12 scared or something.

13 Q Okay. Like he was scared or something?

14 A Yeah, that was all, though.

15 Q And you didn't do anything else?

16 A No.

17 Q You just walked on by?

18 A Walked on by.

19 MR. YOUNG: I don't have any further questions.

20 CROSS-EXAMINATION

21 BY MR. ANDERSON:

22 Q So if Octavious or Duke said that he didn't
23 have any words with Mike Michael Watson at Jarvis'
24 house, then Duke is a liar; would that be true?

25 A Yeah. He'll be a liar.

TOBIAS DANIELS (IN CAMERA) - CROSS BY MR. ANDERSON

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1 Q Yes. How long did this take place? How long
2 did it take for this exchange?

3 A It wasn't even five minutes.

4 Q Sir?

5 A It wasn't even five minutes.

6 Q Okay. And earlier when you say you had saw the
7 shotgun, you said it was a regular shotgun, correct?

8 A It was a double barrel, something like that.

9 Q Pardon?

10 A It was like a double barrel or something like
11 that.

12 Q And then your friend said it was a sawed-off
13 shotgun, didn't he?

14 A Yeah, he probably seen it.

15 MR. YOUNG: Your Honor, he's pitting the
16 witness, that's an improper question. He's pitting
17 the witness. He can't ask him what someone else
18 said.

19 THE COURT: Do you want to be heard?

20 MR. ANDERSON: No, sir.

21 THE COURT: Sustained.

22 BY MR. ANDERSON:

23 Q He didn't fire the gun at you, did he?

24 A No.

25 THE COURT: When are we talking about?

1 **MR. YOUNG:** I can't hear him.

2 **THE COURT:** I can't hear. I can't understand.

3 When are we talking about?

4 **MR. ANDERSON:** Are you asking me, Judge?

5 **THE COURT:** Please, anybody. I'm asking for
6 help from above if it'll come to me.

7 **MR. ANDERSON:** Judge, a week before this, these
8 two young men, this boy and the boy in the white
9 T-shirt, two days ago say that my client pointed a
10 shotgun at them. This is what we talked about
11 pretrial where Mr. Young was just going to say that
12 they saw him with a shotgun.

13 So then what they're saying is a couple days
14 after that is when this altercation happened at
15 Jarvis' house, who is the first witness we called
16 this morning. So they're now saying that it wasn't
17 a confrontation, that there was just words
18 exchanged.

19 **THE COURT:** What's the difference?

20 **MR. ANDERSON:** I don't know. And then I just
21 asked the young man, when they had seen Michael with
22 the shotgun a week earlier, he didn't shoot at them,
23 and he said, no.

24 **THE COURT:** All right. Go ahead.

25 **MR. YOUNG:** Your Honor, I'm just going to

1 withdraw this witness. I'm not going to offer any
2 reply.

3 **THE COURT:** All right. Thank you, sir. You
4 can step down.

5 **MR. YOUNG:** Thank you, sir.

6 **THE COURT:** All right. So the defense has
7 rested and no reply as I understand it?

8 **MR. YOUNG:** That's correct, Judge.

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

10 **MR. ANDERSON:** Judge, while we're in this,
11 could I remake my motions, please?

12 **THE COURT:** I'm going to let you make your
13 motions, yes, sir, but not right now.

14 **MR. ANDERSON:** Okay.

15 **THE COURT:** Bring the jury in.

16 (The jury returns to the courtroom.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 I'm informed you now have all of the evidence you're
19 going to have to decide these cases. And there are
20 two stages that remain in the trial, the closing
21 arguments and the charge.

22 As you heard me mention, apparently, there was
23 a scheduling issue. I think there are multiple
24 scheduling issues, but one major scheduling issue
25 where a group of people were subpoenaed to be here

1 this morning and I'm just trying to work out a
2 resolution as what I determine to be best. Other
3 people may disagree with me, I understand that.
4 Some of these things that are scheduled are just
5 going to have to be rescheduled.

6 What I'm going to do is I made arrangements for
7 you all to go down to Rosie's to eat, all right.
8 You're going to have to walk down there. Two
9 bailiffs are going to go with you. You cannot talk
10 about the case. You cannot let anybody else talk to
11 you about the case. All of those admonitions I've
12 told you before still apply.

13 They've got some tables that they've set aside.
14 You're going to have to split up into groups. They
15 don't have one big table, I don't think, but you'll
16 go there. The bailiffs will escort you. Whenever
17 you all have finished, and I'm going to tell you
18 don't rush, whenever you're finished, come back to
19 the jury room with the bailiffs and they'll let me
20 know you're back.

21 Now, obviously, I've got to let everybody eat,
22 so I'll balance things as best I can.

23 The bailiffs have to be placed under an oath.
24 I want you to listen to the oath that they're taking
25 and then I'll explain it to you a little bit.

1 All right. Where are the two bailiffs that are
2 going with them?

3 (Whereupon, the bailiffs were duly sworn by
4 the Clerk of Court.)

5 **THE COURT:** All right. Folks, there's pretty
6 strong words in there about not talking. What it
7 means is don't talk about the case, all right. You
8 can talk about other subjects, but don't talk about
9 the case in any way.

10 All right. If you'll go in the jury room, as
11 soon as they're ready, they'll escort you down to
12 Rosie's. Thank you.

13 (The jury was excused for lunch.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 if you're on this case, I ask that you, if you're
16 here as an audience member and you go to lunch,
17 don't go to Rosie's, pick another place.

18 All right. We're at ease on this case until I
19 can get back to you. I don't know when that will
20 be. So I need the defense attorney and his client
21 to stay obviously and the attorneys for the
22 prosecution.

23 (Brief Recess.)

24 **THE COURT:** All right. Bring the jury in.

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. Ladies and gentlemen,
2 at the end of this trial, I'll be able to explain to
3 you what developed and the difficulty we had with
4 scheduling today. Everything except that one matter
5 I have told to come back tomorrow or tried to
6 reschedule for another week. If that matter were
7 not the most serious type of matter imaginable, I
8 would have done likewise. Again, I can explain it
9 to you in more detail after this case is over. I
10 can't really talk about it anymore.

11 The problem is that since you left, I haven't
12 left this spot. It's taken this long to go through
13 all of that and because of that, nobody has had a
14 break other than you. I mean, the people in this
15 case have not been in the room, but all of the court
16 officials, all of the people that help me, they've
17 been right where they've been through your trial,
18 too.

19 So what I thought I needed to do was bring you
20 out here, explain that to you, ask for your
21 understanding and tell you that we're going to take
22 45 minutes for lunch. I'm going to try to get them
23 back sooner than that. And rather than tell you you
24 have to stay cooped up in that jury room for 30 or
25 45 minutes, I'm going to tell you that you can stay

1 in there if you like, but I need you back in that
2 jury room in 45 minutes, okay, because I have to
3 give people a break, I have to let them eat, all
4 right. I'm sorry. I did the best I could.

5 If you'll just follow the instructions,
6 remember stay away from people that might be
7 involved in the case and don't talk about the case.
8 And when you come back, you'll hear the closing
9 arguments, the charge and you'll get the case this
10 afternoon. Thank you.

11 (The jury retires to the jury room.)

12 **THE COURT:** Folks, y'all be real careful
13 because there's no telling where the jurors are
14 going to be. They might be in the hallway. They
15 might be in the parking lot. They might be just
16 walking around. Be real careful. Need y'all back
17 in place in 45 minutes, all right. Thank you.

18 (Whereupon, there was a luncheon recess.)

19 **THE COURT:** Motions?

20 **MR. ANDERSON:** Judge, now that all of the
21 evidence has been presented, we'd renew our motion
22 for a directed verdict of not guilty. With the
23 State having the burden of basically disproving
24 self-defense, when you take all of the evidence in
25 the light most favorable to the State, they have not

1 disproven self-defense.

2 And I think the testimony today by the
3 defendant was very credible. The testimony from the
4 State was varied and inconsistent, but out of the
5 State's testimony, did come, Shoot now. And more
6 witnesses than not acknowledged that the defendant's
7 car was sitting still, ample evidence of prior
8 difficulties came out.

9 So, first, we would move for a directed verdict
10 of not guilty based upon the self-defense that was
11 not disproven by the State beyond a reasonable
12 doubt. And we'd also move for a directed verdict in
13 general just taking all the evidence in the light
14 most favorable to the State with those same
15 inconsistencies and with the credible testimony from
16 the defendant, I believe that they failed to prove
17 him guilty beyond a reasonable doubt. Thank you,
18 Your Honor.

19 **THE COURT:** Thank you. They are jury issues.
20 The motion's respectfully denied.

21 Are y'all ready to argue?

22 **MR. YOUNG:** Yes, sir.

23 **MR. ANDERSON:** Could I inquire about the
24 charges, Judge.

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

1 **MR. ANDERSON:** What are you thinking?

2 **THE COURT:** What I've got is 17 pages long. I
3 can try to print it out. It's got expert witness,
4 it's circumstantial evidence, presumption of
5 innocence, the burden of proof.

6 It's got a recitation about the statements made
7 by the defendant, Miranda warnings and all that
8 stuff, goes through the indictments, discusses
9 murder, talks about malice, the lesser included
10 offense of voluntary manslaughter, self-defense,
11 pointing and presenting a firearm, possession of a
12 firearm during the commission of a violent crime, a
13 King charge about if they have any doubt about
14 whether the defendant's guilty of a greater offense
15 or a lesser offense, they have to resolve that in
16 favor of the defendant, but cannot convict him of
17 anything unless they're satisfied that all the
18 essential elements of an offense for which they're
19 finding him guilty would be proven by the State
20 beyond a reasonable doubt.

21 All I can do is tell -- I can print it out if
22 y'all want to see it. It's probably going to have
23 about 30 minutes.

24 **MR. ANDERSON:** No, sir.

25 **MR. YOUNG:** No, sir.

1 **MR. ANDERSON:** Judge, could you think about
2 while we're talking, I was wondering since that
3 young man yesterday had been convicted of lynching,
4 since that's a weird law that a lot of people aren't
5 familiar with, if you would consider just charging
6 what the law of lynching is? And then I was also
7 thinking --

8 **MR. YOUNG:** Your Honor, I believe that would be
9 a comment on the underlying facts or
10 circumstances --

11 **THE COURT:** I can cut this short. I'm not
12 giving a charge on something that's not -- he's not
13 charged with. In your arguments, if you want to
14 make mention of lynching, and lynching is really --
15 actually, they changed the name of it recently.
16 It's not called lynching anymore, but it's basically
17 mob violence.

18 **MR. ANDERSON:** It's not a big deal, Judge.
19 The other thing is I was looking at the Castle
20 Doctrine, the car part of Castle Doctrine, if Your
21 Honor would consider that.

22 **THE COURT:** Say that again.

23 **MR. ANDERSON:** The automobile part of Castle
24 Doctrine.

25 **THE COURT:** Well, I hadn't looked at that.

1 There's an automobile part of the Castle Doctrine?

2 **MR. ANDERSON:** There is, Judge. That's
3 16-11-440. And then I don't need -- I'm not asking
4 for a response, Judge.

5 **MR. YOUNG:** 16-11-440 of what, South Carolina?

6 **MR. ANDERSON:** Yeah.

7 **MR. YOUNG:** 16-11 S.C. 440?

8 **THE COURT:** No, he's talking about a statute.

9 **MR. ANDERSON:** And then the other thing, Judge,
10 in your self-defense, I would request at the
11 appropriate time that that language in the State v.
12 Rash and that State v. Fuller language --

13 **THE COURT:** You got to tell me what you're
14 talking about. I'm not going to remember cases.

15 **MR. ANDERSON:** Okay, Judge. State v. Fuller
16 talks about words accompanied by hostile acts may
17 establish self-defense. You have no duty to retreat
18 if doing so, you would increase your danger.

19 **THE COURT:** That's in there.

20 **MR. ANDERSON:** You can act on appearances.

21 **THE COURT:** That's in there.

22 **MR. ANDERSON:** You don't have to wait on them
23 to get the drop on you, that's the Rash. And you
24 got to view the situation from the defendant's
25 standpoint.

1 **THE COURT:** Viewing the situation from the
2 defendant's standpoint is in there, act on
3 appearances is in there.

4 **MR. ANDERSON:** Could I hand up Rash while we're
5 doing the closings?

6 **THE COURT:** Hand up whatever it is you want me
7 to charge, yes, sir.

8 **MR. ANDERSON:** Okay. That's all, Judge. Thank
9 you.

10 Judge, before we start, I hate to do it, but
11 can we turn that thing off because I have a tendency
12 to not talk loud enough?

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

14 (Pause.)

15 **THE COURT:** Do you want to open and close,
16 Mr. Young?

17 **MR. YOUNG:** No, sir, just close.

18 **THE COURT:** Are you ready, Mr. Anderson?

19 **MR. ANDERSON:** Yes, sir, Your Honor.

20 **THE COURT:** Bring the jury in, please.

21 (The jury returns to the courtroom.)

22 **THE COURT:** All right. Ladies and gentlemen,
23 you're now going to hear the closing arguments of
24 the attorneys. The way that these work is that the
25 defense will make the first closing argument. After

1 the defense is finished, the State, since it has the
2 burden of proof, gets to make the last closing
3 argument.

4 I sometimes take a break between the two
5 closing arguments. I always take a break between
6 the time that the closing arguments are finished and
7 when I give you the law. So we'll play it by ear
8 and see how it goes. I invite your close attention.

9 Mr. Anderson, you're recognized for your
10 closing argument.

11 **MR. ANDERSON:** Thank you, Your Honor. Please
12 the Court.

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

14 CLOSING ARGUMENT

15 **MR. ANDERSON:** I'm going to try to keep this
16 under two hours.

17 A nice car just drove by. That truck that's
18 gone by is a logging truck, it's full of logs. A
19 group of guys just went by fixing to go have some
20 fun and a traffic lady is walking up the front walk.

21 So when I said a nice car, I mean, probably
22 everybody had a different picture in their mind as
23 to what a nice car was because everybody has
24 different things they like. And everybody might
25 have a different image of what a nice looking woman

1 is. And everybody might have a different idea of
2 what people might be going to do to have fun. Now,
3 the logging truck was a pretty specific comment.
4 And I'll say this, it actually didn't have logs in
5 it.

6 But wouldn't it -- I'm trying to make two
7 points. One point is that your own perceptions
8 cloud how you hear things and what you are kind of
9 determines how you perceive things and that's human
10 nature. And then the other thing is rather than
11 just wondering, wouldn't it be nice to actually see
12 it for yourself, if I was able to take a video of
13 it, same thing about a conversation, if I could
14 record it, then it's not your own perceptions. It's
15 actually what went by or actually who came up the
16 steps or what these guys are going to do.

17 I mean, I like to go play golf, it's awful hot,
18 but I like to go play golf. Some people might want
19 to go fishing. My wife just wants to go home and
20 read a book. Maybe you want to go hunting. But, I
21 mean, it could be different for everybody and that's
22 the point I was trying to make at the beginning of
23 the case is every little word in this case could be
24 incredibly important.

25 And, you know, Michael talked to three

1 different police officers and -- I mean, I think
2 Charles is an incredibly nice guy. I don't think
3 you saw the female SLED agent. And then that other
4 officer that I kind of gave a hard time about in the
5 patrol car, Cody Cockrell, he seemed like a nice
6 guy. But, obviously, they didn't get exactly what
7 was said down. I mean, Cockrell thought the child
8 was a girl child. I mean, he got that wrong.

9 Now, he was quick to say he got the stuff about
10 the case right, but you just can't, you can't do
11 that. And it's very common for that to happen as
12 you make assumptions and you take things the way you
13 perceive them. And I don't think they mean bad,
14 but, I mean, in this case from the very first time
15 anybody talked to him, he said it's self-defense.
16 And what exploration did they do of self-defense
17 other than this trial three years later? They did
18 no looking into self-defense and it's because their
19 assumptions are he committed murder.

20 And, you know, if you switch it around, I'm not
21 a, as you can probably imagine, not a very good
22 fighter. My last fight was pretty quick. I was
23 playing basketball in the gym in not the nicest
24 neighborhood and there's this guy playing with us
25 who was a jerk and he was bigger than me. And like

1 young guys are, I wasn't going to let him push me
2 around. And I told him, and I didn't use the word
3 jerk, what I thought of him. And he knocked my
4 block off. And I'm laying down on the floor on the
5 court and I said, you're still a blank. You know, I
6 had to get that last word in.

7 But trying to figure out what I was going to
8 say to y'all this morning, I thought -- this
9 afternoon, I thought it would be a good example of
10 what if, what if I'm in a bad neighborhood, what if
11 I had had my pistol in my car and, you know, I
12 didn't know anybody else down there and I'd had this
13 altercation with this guy. He clearly didn't like
14 me. He clearly got a good lick in on me.

15 And I go to my car after we finished and I
16 finished when he decked me, but, anyway, I go to my
17 car. Let's say that I'm driving away. And I didn't
18 have air conditioning in my car. This was back when
19 I was in college. So I'm pulling up to the stop
20 sign. And let's say that he and his friends are
21 right over here to my right.

22 Now, I'm a college boy from a middle class
23 family. My mom's a school teacher. My dad works at
24 Furman University. And let's say that this boy that
25 I had just had this problem with and his friends say

1 something like, shoot now. And let's say that I
2 panic and I got my gun right there because I was
3 scared and let's say that I whipped the gun out and
4 I shoot him.

5 Now, the Judge is going to tell you in a little
6 while that the self-defense charge, and there's some
7 -- a lot of legal language, but, you know, the
8 defendant has a right to act on what he sees and
9 what he believes because as with perceptions, and I
10 don't want to be hypocritical here, you know, we
11 don't know other people's intentions either. We
12 know how we perceive it. We don't know what they're
13 really intending to do sometimes.

14 But let's say I shoot that guy. Now, that guy
15 probably wasn't from a middle class family. He
16 probably wasn't educated. He was bigger than me.
17 He wasn't any better at basketball, but he was a lot
18 stronger, but he's laying there dead and the police
19 come.

20 Now, here we go. This is the assumptions that
21 I was talking about. Would it be different? And
22 they've got all the power. I mean, they could look
23 at this situation and I'm saying, look, that was
24 self-defense and that guy just, you know, tell him
25 the whole story. And they very easily could have

1 not arrested me, just let it go, or they could have
2 done like they did in this case and arrested me and
3 then we'd be, you know, where Michael is.

4 And I don't know what it is about -- well, I
5 guess I do know what it is about, law enforcement
6 is. They're trained. They see stuff all the time
7 and they think they're right. And they come upon a
8 situation, they make the assumptions and they go
9 with it. And, you know, we see that in little cases
10 like DUIs. You see it in criminal domestic
11 violence, which is, you know, husband and wife get
12 in a fight, the police come to the scene, they think
13 they know it, they make the charge.

14 And what the system is set up for, what you're
15 supposed to do and it's hard to do, it doesn't get
16 done very often, is you do a complete investigation
17 with an open mind and that's what you're supposed to
18 do.

19 And in this case, I mean -- and it's easy to --
20 easy to Monday morning quarterback. Monday morning
21 quarterback is the guy that used to play football in
22 high school who sits there watching the football
23 game saying how all the players are screwing up.
24 It's easy to sit there in your living room and do
25 that. So I'm doing that to the police officers.

1 And, you know, if a smart, fancy, Columbia lawyer
2 came in here, he'd have 500 things he could
3 criticize me that I've done wrong or that I failed
4 to do and I understand that. But the reality is
5 you're supposed to come in with an open mind and
6 investigate the case. And what investigation did
7 they do?

8 I mean, sadly, they found the dead young man
9 and that's horrible. I told you guys that Tuesday.
10 It is horrible. They talked to his five -- strike
11 that -- four friends and his brother. They said,
12 and you heard them all testify, it was rather
13 interesting, but they talked to those guys whose
14 loyalty was obviously with the young man who's been
15 shot, understandably so. And their anger is
16 understandable, I get that, but they talked to them,
17 they talked to Michael. Michael said self-defense.
18 They talked to one lady up there who had brought her
19 kid back, one of the witnesses, and they talked to
20 one other bystander. That's it.

21 SLED comes in does their thing, but SLED's part
22 of the State. Coroner comes in. All that stuff
23 yesterday with the SLED witnesses was interesting,
24 but I don't, you know, if they had spent that much
25 time talking to witnesses, wonder what they would

1 have found out. We didn't need any of that
2 yesterday.

3 Michael said it was self-defense. They spent
4 all day yesterday proving that that was Michael's
5 shotgun. I mean, they -- he already told them three
6 years ago it was self-defense, but that's fine.

7 All those calls, you heard Charles Holloway
8 tell you that the 9-1-1 was flooded with calls.
9 Well, if you're calling 9-1-1, what does that mean?
10 You know something happened. If you know something
11 happened, what does that mean? Maybe you were there
12 or nearby, maybe you know something. You know,
13 there wasn't anybody in Aiken that called 9-1-1
14 about this incident. They didn't have a clue what
15 happened.

16 How many other people that called 9-1-1 did
17 they talk to? Maybe one, maybe two. I think the
18 lady that came up there called 9-1-1. And one of
19 these boys that testified called 9-1-1. I don't
20 know that we ever figured out which one.

21 You know, I'm not real bright, but sometimes I
22 can see the basic stuff. If you called 9-1-1, you
23 called 9-1-1 for a reason. Let's go talk to those
24 people and see what happened. Let's see if we could
25 hear -- maybe somebody heard something.

1 Well, nobody wants to get involved, that poor
2 Mr. Combs yesterday clearly didn't want to be here,
3 but he came. And if somebody hadn't investigated
4 that case about the gun, they wouldn't have got him
5 as a witness.

6 All right. So they didn't do any -- and the
7 9-1-1, as I think it was testified to, you know, you
8 call 9-1-1, it's recorded and they can figure out
9 which number it was called from. They can track it
10 down.

11 But, number two, they didn't go talk to anybody
12 in the Saluda Terrace Apartments. I mean, probably
13 if you had gone and talked to everybody at the
14 Saluda Terrace Apartments, you'd probably cover
15 everybody who called 9-1-1 if they were there or at
16 least most of them.

17 I thought some of the other assumptions,
18 thought it was interesting that there was a palm
19 print on the back of the car on the back window,
20 passenger window, of Michael's car. And the nice
21 lady from SLED yesterday testified that they matched
22 it against Andrew's palm print and it wasn't
23 Andrew's. Well, did they go match it against
24 anybody else? No.

25 Now, I'm not saying it was somebody else. I

1 wasn't there. I don't know. But based on the
2 defendant saying it's self-defense and the palm
3 print being there, why didn't they get everybody's
4 fingerprints and just check it? I mean, how hard
5 would that be?

6 Another thing that they didn't do was, I
7 thought it was interesting that -- that lighter,
8 they didn't fingerprint the lighter. They
9 fingerprinted a box of shells in the defendant's --
10 strike that -- an empty box of shells in the
11 defendant's bedroom after he'd already told them it
12 was self-defense, which is basically admitting that
13 you did it, it's a question of why. Well, why would
14 they fingerprint that box of shells in his bedroom
15 and not fingerprint other stuff? And I guess they
16 just, again, ignored the self-defense.

17 And, you know, in my imaginary scenario leaving
18 the gym, you know, they might have assumed that it
19 was self-defense in my case and, in that case, done
20 no investigation really, got my side, checked up on
21 me to see that I had no criminal record, looked at
22 the rap sheets of the guys that were with the guy
23 that had punched me and they're bad, the guy that
24 punched me, he's bad. They could have done no
25 investigation whatsoever and said, yeah, it's

1 self-defense.

2 Well, as I told you at the beginning, it's very
3 hard to explain what a presumption of innocence is.
4 It really is. And it's not exact, but, I mean, a
5 presumption of innocence would be I look out the
6 window, you can't see out there and I say there's a
7 red car and the State says there's not a red car,
8 okay. Before you look out the window, you've got to
9 assume that I'm right because I'm the defense and
10 they've got to prove to you that it's not a red car,
11 and that's about as simple as I can put it.

12 And, in this case, Michael is presumed not
13 guilty. He is presumed innocent. So everything
14 we've done this week, you've got to assume that he's
15 right.

16 Now, that doesn't mean you have to ignore the
17 fact that this is horrible because it is. And as I
18 told you on Monday, there's no winners in this, but
19 you've got to assume that he's right. You've got to
20 assume that they're wrong. And it is incredibly
21 hard to assume that they're wrong when they assumed
22 that they're right and didn't do anything to help
23 him prove that he's not guilty. And I know
24 that's -- I'm not trying to confuse you, but, I
25 mean, it is true. You've got to assume they're

1 wrong, they assumed they're right and he's presumed
2 not guilty.

3 So when you go back in there and deliberate, it
4 is very hard to do, but start over and try to just
5 close your eyes, and I don't know that it's -- I
6 don't know that you can't use my imaginary case as
7 maybe a model to help you do it, but go in there and
8 presume that he's not guilty. And then go through
9 the case, go through the, Shoot now, presuming that
10 he's not guilty, go through the -- the car was
11 clearly stopped. And he's presumed not guilty.

12 And as horrible as it is, I think what human
13 nature is is probably what the police did is they
14 get to the scene and this young man is laying there
15 dead and it's horrible and I think that was the
16 first, you know. And, you know, then Michael says,
17 it's self-defense. So they immediately, well, it's
18 done, you know, we've got the statements from these
19 boys, he's admitted he did it, we're done. And
20 that's essentially what they did.

21 I mean, this investigation, I forget what time
22 this nice lady from SLED said they left, but, you
23 know, 2:00 or 3:00 or 4:00 in the morning and
24 Mr. Young said, yeah, you had a late night, yeah.
25 But that was it. And then some time later they did

1 their paperwork and you heard they messed that up
2 and they redid it, but, I mean, that was it, that
3 was the investigation.

4 But if you can start it over with him being
5 presumed to be not guilty, you know, I just think
6 you'll look at it in an entirely different way.

7 And, you know, murder, murder is the
8 intentional killing of another with malice
9 aforethought. And, you know, if you believe that he
10 got a gun and went specifically to Saluda Terrace
11 Apartments specifically to shoot Andrew Chandler,
12 then the fact that when he's pulling in there, he
13 didn't notice specifically who these people were is
14 relevant. But if you believe that he was afraid for
15 his safety and he was over there and he encounters
16 these boys, well that really is an entirely
17 different scenario.

18 This is me leaving the gym. I know that
19 there's a problem here and they say, Shoot now,
20 they're coming at me, what do you do? What would a
21 reasonable person do in that situation?

22 And in self-defense, and Judge Keesley's going
23 to tell you, you have a right to act on the
24 appearances, you have the right to -- you don't have
25 to wait for somebody to get the better of you and

1 even if you're wrong.

2 I mean, we spent a lot of time debating whether
3 there were guns there. I can't imagine that there
4 weren't, but I can't prove to you there were. I
5 thought that that first young man that testified
6 when, you know, he said we went after him, I said,
7 What did you go after him for? And what did he say?
8 I mean, it was kind of chilling. We were going to
9 shoot him back. And I was like, wow, I'm not going
10 to ask you anything else. And Mr. Young jumped up
11 and said, But you didn't have a gun, did you? Now,
12 is he trying to find out the truth or is he still
13 pushing that assumption that the State made three
14 years ago?

15 But when that guy said, I was going to shoot
16 him back, and depending on which witnesses you
17 believe, there were three guys that chased after him
18 and this is -- they're chasing after somebody that
19 did just fire a gun, are you going to chase after
20 somebody that just fired a gun if you don't have a
21 gun?

22 Now, the State may say that it was a single
23 shot shotgun, but clearly it was dark. And they
24 made the biggest deal with Michael talking about it
25 wasn't that dark. All five of these boys said it

1 was pretty dark. They couldn't see in the car. One
2 guy said he didn't even see who fired the gun.
3 Interestingly, if he'd told the police that and he
4 was the first one that they had talked to, what
5 would have happened in this case? I don't know.
6 But it didn't go that way.

7 Clearly, there had to be guns there. And you
8 heard Warren testify that he didn't have a gun, but
9 you heard Mr. Combs say that he did see him with a
10 gun. And there was testimony about Warren being
11 convicted of having a gun at the ball field. And
12 Warren said, Yeah, I was convicted of having a gun
13 at the ball field, but I didn't have a gun. And
14 then you heard Mr. Combs, who clearly wasn't excited
15 about being here, say, I did see him with a gun.
16 Well, there's a gun.

17 The first boy that testified had a gun clearly.
18 And he said, if I didn't, I could have gotten one.
19 Now, again, I understand them being upset. Their
20 friend has been shot, that's horrible.

21 And I don't know if it's important or not, but
22 I just found -- and clearly SLED found this odd.
23 And I'm showing you Defendant's 2, that's odd.
24 That's the young man's pocket. As the SLED agent
25 testified, people don't normally walk around with

1 their pocket like this (indicating). Something came
2 out of that pocket. What came out of that pocket?
3 I don't know.

4 I thought that this lighter looked extremely
5 weird in the young man's hand with the thumb
6 underneath it. Now, it's horrible. I mean, he was
7 shot and that's terrible. And, no, I don't know
8 what people do when they get shot, but I don't know
9 how something gets in your hand like this
10 (indicating) and stays there and that's -- I mean,
11 all this evidence is going back with you. I don't
12 know. I found that weird. I don't know what it
13 means.

14 And that -- I kind of get two closings at this
15 -- I'm going to close, but the law, to me, is also
16 part of this, part of our case, the law of
17 self-defense. And the Judge is going to tell you
18 that once its raised, and again it was raised three
19 years ago, the day -- the night it happened it was
20 raised, if it's raised, the State has to disprove it
21 beyond a reasonable doubt and that's them. So,
22 again, with the presumption is since he's raised it
23 and he said it from the start, he's presumed to have
24 acted in self-defense.

25 And the Judge is going to tell you all kind of

1 stuff about it. And a lot of times what happens is
2 we use these words and we hear these things and we
3 say beyond a reasonable doubt and self-defense and
4 malice aforethought. These are legal words that
5 aren't always easily applied to everyday words, but
6 we know what a presumption is. And if he perceived
7 that he was in danger, he's allowed to act on that
8 and that's that, that's the presumption. They've
9 got to prove that he didn't perceive danger, that a
10 reasonable person wouldn't have perceived danger,
11 that he didn't act in a defensive way.

12 And, again, if -- clearly, they had
13 difficulties. And they're going to say that they --
14 that somebody had seen him with a shotgun and one of
15 those young men that testified said that they saw
16 him with a shotgun before, but, you know what, he
17 didn't use it. He told you he had it for
18 protection.

19 And, I mean, you've watched this whole trial
20 attentively. I feel like he had a right to feel
21 like he needed protection, it's unfortunate, but
22 it's reality. And again that, Shoot now, he reacted
23 to it.

24 Now, murder is the killing of another with
25 malice aforethought, meaning you're going to think

1 about it. Now, the Judge will tell you you don't
2 have to think about it for long, but you've got to
3 think about it.

4 We believe this to be self-defense. And the
5 Judge is going to tell you all about self-defense.
6 But if for some reason you feel like the State
7 disproved self-defense, this isn't a murder, this is
8 would be what's called manslaughter. And
9 manslaughter is the killing of another without
10 malice aforethought, but in the sudden heat of
11 passion and upon sufficient provocation, meaning
12 it's understandable how it happened, but it's not
13 legal. It's kind of like a fall back from the
14 self-defense.

15 And the Judge is going to tell you that
16 commotion like what we had -- strike that -- the
17 Judge is going to explain what manslaughter is. And
18 I argue that the commotion that happened in the,
19 Shoot now, and the people coming towards the car,
20 again I think that's self-defense, but if it's not
21 self-defense, that would be the kind of stuff that
22 would be a manslaughter.

23 I thought that yesterday that last witness,
24 that Jeremy fellow, did it seem like they were
25 trying to change his testimony or not? They were

1 trying to -- first of all, all of those boys said
2 they were smoking weed and nobody said anything
3 about not understanding and not having great
4 comprehension. And they took all this time to say,
5 you've been smoking weed, you probably were a little
6 groggy, maybe you didn't remember things right.
7 They didn't ask the other boys that because this boy
8 had some bad stuff to say about their case so
9 they're trying to explain the bad stuff.

10 They're also trying to get him to say that the
11 car stopped back here instead of up here like where
12 he said in his statement. And I think we cleared
13 that up.

14 But why would the State try to change his
15 testimony? Why would the State try to change what
16 he said and why would the State try to explain why
17 he didn't say exactly what they wanted him to say?
18 And he's an eyewitness and the State's supposed to
19 be seeking justice and seeking the truth. And I
20 just thought that summed up everything is, you know,
21 they're going to do what they want to do on this
22 instead of trying to find out the truth, instead of
23 doing a full investigation with an open mind,
24 they're trying to get a conviction.

25 I'm almost done. I've got to write stuff down

1 because I can't remember it all.

2 I thought the audio, video stuff was bad. And
3 the stuff they should have audioed, videoed was the
4 scene. We got some photographs. We had some debate
5 whether or not it was dark. I don't care how much
6 light was there, it's darker at night than it is in
7 the daytime. And if they had videoed the scene, at
8 least we'd see how dark it was and videoed the scene
9 without all the cars there. And there were numerous
10 police cars, every one of them has a camera.

11 They should have videoed and audioed the
12 witnesses' statements. They should have audioed,
13 videoed the defendant's statements, especially the
14 one in the car. I mean, that's inexcusable. They
15 had a 15 minute conversation about this case in the
16 car with the camera and a microphone.

17 I thought that was also interesting where that
18 -- some officer told that SLED lady that the Michael
19 Jord -- that the Air Jordan shoe and the shirt found
20 at the scene belonged to one of the witnesses when
21 that wasn't in anything anybody ever got.

22 All right. Now, I'm almost done. Thankfully.
23 During the trial when something came up, I'd just
24 write down little snippets and what I thought were
25 the most important things that just came out during

1 the trial, so I'm just going to throw them out
2 there.

3 When Corddaryl Ouzts said, shoot him back, we
4 were going to go shoot him back, they chased after
5 him -- and they never did find Warren's gun which he
6 denied that he had. I thought the, Shoot now, three
7 out of five of those young men said that somebody
8 said, Shoot now. I believe two of them said it was
9 Duke. The defendant said it was Duke.

10 And the car was clearly stopped, that makes a
11 difference. If the car was moving and somebody
12 shoots out of a moving car, I mean that's much worse
13 and you're not going to be vulnerable, as vulnerable
14 in a moving car as you are in a stopped car.

15 But if this young man is driving down there and
16 he's in the driver's seat and he's slowing down and
17 he's cranking the window down and he stops and he's
18 going to ask somebody if they've seen Candice and
19 these people come towards him and somebody says,
20 Shoot now, and you're stopped and you're vulnerable
21 and you've got an old 1994 Toyota and you've got the
22 shotgun there because you're scared and he says he
23 pulled it up and he put it out the window and he
24 fired it, that is reasonable, it's believable. And
25 the fact that the car was stopped makes a big

1 difference.

2 I also say this. I don't think that's a shot
3 that somebody could hit, I mean, it's horrible, you
4 saw the horrible picture of that young man,
5 one-handed with a shotgun. That would be a very
6 hard shot to hit on purpose. I mean, it really
7 would be. And I wouldn't -- it's not a lucky shot
8 by any stretch, I mean, it's terrible, but I don't
9 believe you could do that on purpose. I don't
10 believe he could do that on purpose one out of 50
11 times one-handed sitting down.

12 I thought it was interesting that the boys said
13 they were down in the woods smoking weed and they
14 were coming up the hill going to the car to turn the
15 light out. What are they doing over here then? If
16 they were coming out of the woods smoking weed
17 coming to turn the light out, what are they doing
18 over here? Waiting on Michael Watson to come back
19 around?

20 And they're the ones that said, There goes
21 Rand. His nickname being Duran. There goes Rand.
22 They saw him coming. They weren't up at the cars.
23 They were across the way waiting to intercept
24 Michael Watson. Did they even search the other
25 guys' cars? I sure don't remember hearing anybody

1 say they searched the other guys' cars that were
2 there.

3 People had seen Michael with a shotgun before
4 and he hadn't used it.

5 The pocket and the lighter. I thought it was
6 interesting when the pathologist testified, I asked
7 her to look at her paperwork, what was in Andrew's
8 pocket when he got to Newberry and she said a
9 lighter. There was a lighter in his hand and there
10 was a lighter in his pocket and that's in the
11 testimony. I thought that was interesting. What
12 does that mean?

13 Now, as the jurors, you can judge the
14 credibility and the believability of the witnesses.
15 You've seen a lot of witnesses testify, a lot of
16 them had criminal records. You heard Michael
17 testify. Michael had a job. He has a nice family.
18 He has two children and he's never been in trouble
19 before. He told you it was self-defense from the
20 start, he never deviated from that.

21 I think the two most important words in this
22 whole case, and you've got to again put yourself in
23 the shoes of the defendant, it's a terrible
24 situation, it's horrible what's happened, if we
25 could undo it, we'd undo it, but the two most

1 important words in this whole trial, four days of
2 this, Shoot now.

3 **THE COURT:** Thank you, Mr. Anderson.

4 Ladies and gentlemen, we'll take a ten minute
5 break and I'll get you back in here. Don't discuss
6 the case.

7 (The jury retires to the jury room.)

8 **THE COURT:** Court's in recess for ten minutes.

9 (Brief Recess.)

10 **THE COURT:** Are you ready, Mr. Young?

11 **MR. YOUNG:** I am ready, Your Honor.

12 **THE COURT:** Mr. Anderson, are you ready?

13 **MR. ANDERSON:** Yes, sir.

14 **THE COURT:** Bring in the jury.

15 (The jury returns to the courtroom.)

16 **THE COURT:** All right. Solicitor, you're
17 recognized for your closing argument.

18 **MR. YOUNG:** Thank you, Your Honor. Mr.
19 Anderson. May it please the Court.

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

21 **MR. YOUNG:** August 5th, 2007, 10:30 p.m.,
22 Saluda Terrace Apartments, five young men had been
23 down in the woods smoking dope. Among them is
24 Andrew Chandler. His brother, Warren, has not been
25 smoking dope. Jeremy Butler has got a buzz on.

1 Raymond Kirkland is walking up with them. Corddaryl
2 Ouzts is walking up with them.

3 They come past the dumpster because Raymond
4 left his lights on in his car. They're walking up
5 the hill going back up toward his car, hears some
6 music coming from top of the hill in the entrance to
7 the Saluda Terrace, hears some music. Boys say,
8 hmm, sounds like Rand. Sees the car, that's Rand.
9 He makes the loop, makes the turn, turns around.

10 They're still just sauntering around, walking
11 up because it ain't very far between here and there,
12 matter of a few steps. Along comes Rand in his car,
13 slows down and/or stops. Warren says it stops,
14 consistent with what the defendant says. Shotgun
15 comes out. Boom. That's the result (indicating).
16 Young man's life snuffed out.

17 Probably didn't take a whole lot longer than
18 that for me to tell you for the whole thing to
19 happen. I took my time saying it, that's why I
20 wanted to give you what I think is about the whole
21 length of time it took. I don't think it took that
22 long.

23 Off he goes (indicating). Police arrive at the
24 scene. Within a matter of minutes, they're there.
25 Cordoned the scene off. That's on the ground,

1 shotgun wadding. This young man's laying on the
2 ground with that lighter in his hand. His pocket's
3 pulled open.

4 I was wrong, this is his left hand, folks. I'm
5 sorry, I didn't mean to mislead you when I was
6 asking those questions. Mr. Anderson is right, this
7 is his left hand. His pockets are pulled out just
8 like he said, that's right. The pictures are there.
9 This is Defense Exhibit 1. The pockets are pulled
10 out, that lighter's in his hand.

11 That lighter is in the same hand and on the
12 same side of his body that the pocket's opened and
13 they've been smoking dope and there's a reefer
14 laying on the ground right there next to him. So, I
15 don't know, but that seems pretty logical that he
16 probably was -- either had just pulled out or was
17 pulling out the lighter and had either a marijuana
18 cigarette already in his hand or something, but they
19 had a lighter in the other pocket.

20 I appreciate your attention to all of the
21 detail you've heard in the last several days and all
22 of the information put out and all of the
23 insinuation as to what the evidence is or is not.

24 The issue before you about self-defense, let me
25 sum this up for you very quickly. Who brought the

1 gun? Who loaded the gun? Who brought the gun in
2 the car, was riding around with the gun in the car
3 for a week? Who, who pulled that gun up and pointed
4 it? Where was he when he reached for that gun? And
5 when he pulled that gun up and he cocked that gun
6 and he pointed it out that window and pulled that
7 trigger, what was he intending to do?

8 That's the inside of the car. Driver's seat's
9 down, okay, a little bit. It's leaned back. This
10 is the passenger side of the car from which the
11 shotgun came, okay. The shot entered the young
12 man's face right about here (indicating) and went up
13 and back.

14 These kids were coming uphill, okay. They're
15 not running toward anybody with any -- folks, even
16 he says that he was this far away from the witness
17 stand to where I am when he shot him.

18 Of course, you got to -- when I asked him
19 another question about it, he told me there were two
20 guys at the front of the car. I didn't see any
21 holes in the windshield of the car, do you, in these
22 pictures? He shot through the window and what he
23 did was he saw them, he sure did, at the front of
24 the car and drove past them and shot them through
25 the window, that's what he did.

1 And when he tells you, I couldn't see anything,
2 it was too dark, well, folks, if your lights are off
3 in your house and you're looking outside your house
4 and there's a street light out there, can you see
5 the people in the street? If you're riding down the
6 street and your lights are on and your lights come
7 across somebody in front of you, if you're not
8 paying close attention, maybe you won't see them,
9 but if there's lights behind them and there are
10 lights around them, you're going to see them.

11 And it's not like this young man don't know
12 them. He knows every one of them. I didn't say
13 that, he did.

14 Now, you can make up stories, try to make it
15 sound like perception and looking out the window and
16 what's riding in the street and try to make up some
17 idea in your head that says perception is
18 everything. Well, I don't know, I don't understand
19 that. What I do know is what's in these pictures.
20 What I do know is what I heard from that stand. And
21 it's not important what I heard, it's what you
22 heard.

23 And if there was self-defense available at the
24 scene, there were five young men present who were
25 all interviewed by the police as soon as they could.

1 And his version when the police asked him, it was
2 self-defense. Well, how is it self-defense? Well,
3 we heard it today three years later.

4 MR. ANDERSON: Your Honor, I've got to object.

5 THE COURT: Sir?

6 MR. ANDERSON: Can we approach?

7 THE COURT: You can approach, it won't be on
8 the record.

9 Ladies and gentlemen, step in the jury room.
10 Don't discuss the case.

11 (The jury retires to the jury room.)

12 MR. ANDERSON: Judge, I'm sorry, and I could be
13 wrong, but with the self-defense, I know it's a
14 weird issue, but he's commenting on my client. You
15 know, my client doesn't have to say anything or do
16 anything. And I know we've raised self-defense, but
17 I don't think -- I still don't think it's
18 appropriate for him to comment on the lack of what
19 my client said to the police.

20 THE COURT: Do you want to be heard?

21 MR. YOUNG: Your Honor, I believe my statement
22 was to the jury, and correct me if I'm wrong, maybe
23 the record will reflect more accurately what I
24 recall, but my recollection was when he asked -- the
25 police asked him what his story is and he says

1 self-defense, we hear about it today three years
2 later.

3 Now, those are the facts. And he took the
4 stand.

5 **THE COURT:** Yes, sir, but the objection is
6 you're commenting on his exercise of the right to
7 remain silent. That's what I understand the
8 objection to be is that you're attempting to, I
9 guess, I don't know if you're going any further with
10 that or not, but it does appear that what you're at
11 least starting down the road of is why didn't he
12 tell the police more then.

13 **MR. YOUNG:** I'm not going any further with
14 that, Your Honor. I'm just saying that we hear
15 about it, you got it today.

16 **THE COURT:** All right. The objection's
17 sustained. Don't go any further into any kind of
18 comment about him not talking to the police about
19 self-defense or anything else really for that
20 matter.

21 Bring in the jury.

22 (The jury returns to the courtroom.)

23 **THE COURT:** All right. The objection is
24 sustained. Move on, Solicitor.

25 **MR. YOUNG:** So when he's actually in custody,

1 two days after this, after he's brought into
2 custody, being transported to Greenwood Detention
3 Center, you heard from Officer Cockrell. He says,
4 I'm taking him up the road and I look in the back
5 seat and he's kind of shuffling around, he looks
6 uncomfortable to me, so I ask him, What's on your
7 mind? And right out of the blue comes, Where did I
8 hit him? And then he says, What do you mean? Where
9 did I hit him, you know? He said, Upper body,
10 something to that effect.

11 And then he says that the defendant gives him
12 an explanation that he was cutting a lap through the
13 Terrace Apartments, I think, after he dropped off
14 his kid, something to that effect, somebody waved
15 for him to stop. He stopped, four or five guys
16 rushed his car. He threw up the gun and just shot
17 it.

18 Well, today he tells us from there to here is
19 where they were. I'm not an expert, but that's
20 wadding, okay, and it came out of the end of that
21 gun. And there are striations on this young man's
22 face that look pretty apparent to me as to what this
23 might have been, what hit his face, part of what hit
24 his face. And if the wadding traveled and bounced
25 off of his face and landed on the ground and our

1 people from the ballistics folks say it just goes
2 about, you know, a few feet and then it just stops,
3 it was within that period. So we're right about
4 here.

5 I don't think there's anybody that's actually
6 said anything beyond the edge of the car and about
7 right here is about the distance where the shot
8 occurred. But there's a big difference about where
9 they say, the witnesses say, they saw him moving
10 around in the car. They saw him moving around in
11 the car when he's making the lap, get the shotgun.

12 And if he just can't see who that is and he
13 picks that shotgun up ahead of time because he's
14 anticipating who these folks are or he sees them and
15 recognizes them, he's getting ready, is he without
16 difficulty in bringing on this problem? Is he
17 without improper conduct or unlawful conduct in
18 bringing out this problem? Is he getting ready to
19 shoot somebody, is it in his mind? Has his cold
20 intention come out to play? I'm going to get this.
21 This is going to go down. I'm going to do this.

22 He's bringing something into the fray at that
23 moment where calculation begins, I'm beginning to
24 decide what to do.

25 No one made him bring that gun to this place.

1 No one -- no one said you better have a gun with
2 you. He brought that gun. He loaded that gun. He
3 fired that gun at his house to get used to it,
4 enough to empty this box between he and his brother.

5 And there's some pictures of this house where
6 they got those shells. Grass looks like it's been
7 mowed recently to me. Pretty short.

8 I don't know, because all of that doesn't boil
9 down to much except this, except at the point in
10 time he entered that location, he came with a
11 shotgun that was loaded and had enough fire power in
12 it to put a hole in the face of a young man and kill
13 him at a very short range and at a very short
14 distance and he couldn't make out who it was. And
15 he just got overwhelmingly scared, overwhelmingly
16 scared, so scared I had to pull the shotgun. I had
17 no choice. I just couldn't push down on the gas
18 pedal and leave the scene.

19 It just doesn't make sense. Of course, none of
20 this makes sense, but that's -- that right there
21 doesn't make any sense at all. That's the hardest
22 thing y'all have to accept. When your -- your
23 foot's on the gas pedal, you can make the choice and
24 you pull out a shotgun and kill somebody.

25 This is all going to come back to you. You'll

1 have a chance to look at it and make some decisions
2 as to what you think the evidence from that stand
3 was. And nothing I'm saying out here is evidence,
4 folks. You can ignore everything I just said
5 because I'm not the person that counts. Nothing I
6 said counts. It's just what you can recall from
7 that stand, what those witnesses said and, frankly,
8 folks, what you believe, what you believe. You've
9 got to make a decision. This is the hard part of
10 any case.

11 And do I, you know, does anyone here revel in
12 the fact that we're in here to do something to
13 decide the fate of a young man? Do we revel in
14 that? No.

15 The purpose here is to accomplish something
16 called justice, to seek the truth. And I made that
17 comment to you when we started this whole case. I
18 asked you pay attention because what you're going to
19 have to do when you go back in that deliberation
20 room after the conclusion of all the evidence is to
21 come back with a verdict and that word verdict comes
22 from Latin meaning veredicto, to speak the truth.
23 So what you have to do is decide what's the truth.

24 The defense wants you to believe that they just
25 didn't do their job, if we just had a recording, you

1 know, this would all be so much better. They talked
2 to every one of the witnesses who were present who
3 actually saw this thing happen. They talked to all
4 five of the young men who were present, in fact, his
5 brother standing right next to him when he watched
6 his brother die.

7 Folks, I'm not going to go any further.
8 There's no reason to try to substitute anything I'm
9 going to say in my mind to what you might think and
10 create a perception that you don't have. You have a
11 very hard job to do and one that's going to take
12 some thought. And I appreciate your attentiveness
13 to all that's happened in this courtroom. It's very
14 important to everybody in this courtroom that you're
15 doing (ph) with what you did. Thank you for what
16 you're doing.

17 And the State's going to ask you to go back in
18 there and return a verdict that this young man
19 killed him. This young man, Andrew Chandler, died
20 at the hand, in a premeditated, volitional way, at
21 the hand of Michael Watson. And he didn't take long
22 to think about it, but he took long enough. Thank
23 you.

24 **THE COURT:** All right. Ladies and gentlemen,
25 as I told you, I always take a break between closing

1 arguments and the charge. I've got to print out a
2 couple of things and then I'll tell you the law. .
3 It's going to take me about 38 minutes to tell you
4 the law. So if you'll step in the jury room, as
5 soon as I can, I'll get you back out here. It
6 should not be longer than five to ten minutes.
7 Thank you.

8 (The jury retires to the jury room.)

9 **THE COURT:** All right. Now, ladies and
10 gentlemen, when I give the jury the instructions on
11 the law, you're not going to be allowed to come and
12 go. You're going to have to wait until I finish.
13 So if you're -- if you want to be in here during the
14 charge, you better be in here when I start. And if
15 you're outside and you try to come in, you're not
16 going to be able to come in. If you're in here when
17 I'm giving the charge, you need to stay still and
18 stay quiet, don't move around, don't do anything to
19 distract the jury.

20 Now, if you get sick or if there's some
21 emergency, then act appropriately, but, otherwise, I
22 expect you to stay still and stay quiet. But all of
23 this movement has got to stop when I'm charging the
24 jury.

25 We're at ease.

1 (Brief Recess.)

2 THE COURT: I've shown to you both verdict
3 forms. Is there any objection to the verdict forms?

4 MR. YOUNG: None from the State.

5 MR. ANDERSON: No, sir.

6 THE COURT: With regard to the charge of
7 murder, I have given an option of the defendant
8 being found guilty of the lesser included offense of
9 voluntary manslaughter. My understanding is the
10 defense was requesting that.

11 There is one -- there is some U.S. Supreme
12 Court authority for the proposition that when
13 there's a lesser included offense, the jury has to
14 be given the option of finding not guilty as to the
15 lesser included offense and not guilty as to the
16 greater offense separately. I've found that to be
17 somewhat confusing so I've never put that on a
18 verdict form. I've never had a lawyer ask me to do
19 it.

20 But I always ask the attorneys to make sure
21 they have no problem with the form that I used,
22 which is the options for the jury are not guilty,
23 guilty of the lesser included offense of voluntary
24 manslaughter, guilty of murder. Any problem with
25 that?

1 **MR. ANDERSON:** No, sir.

2 **THE COURT:** All right. Everybody who wants to
3 be in needs to be in. Everybody who wants to leave
4 needs to be outside.

5 Bring the jury in.

6 (The jury returns to the courtroom.)

7 **CHARGE OF THE COURT**

8 **THE COURT:** Members of the jury, all of the
9 evidence has been presented, you've heard the
10 arguments of counsel. It's now time for me to
11 instruct you on the law that applies to the cases.
12 Please continue to pay close attention during this
13 next stage.

14 Now, first, you need to understand some basic
15 ground rules. You, the jury members, are the sole
16 judges of the facts. You decide all of the facts,
17 all of the issues of fact. You alone determine the
18 truth of the evidence, its effect, its value and its
19 weight. You alone judge the credibility of
20 witnesses, in other words, whether or not a witness'
21 testimony is believable.

22 Now, in that regard in evaluating the testimony
23 of the witnesses including any expert witnesses, you
24 may believe all that a witness said or none of it;
25 you may believe part of what a witness said and not

1 believe the balance; you may believe one witness
2 against many or many against one; you may consider
3 any interest, bias or prejudice that you feel that a
4 witness has in the case; you may consider the
5 demeanor and the appearance of the witness and the
6 opportunity for knowledge that the witness had; you
7 may consider whether a witness has been consistent
8 or inconsistent.

9 But you're not to exercise these considerations
10 arbitrarily. What I want you to do is to use your
11 common sense, use your sense of logic and reason and
12 your good judgment.

13 It's not proper for me to give you a charge on
14 the facts of the case. I can't discuss the facts
15 with you. I'm not even permitted to convey to you
16 an impression as to any personal opinions I may
17 develop about the facts of a case as it goes along.
18 So if during any stage of this trial, you develop an
19 impression that I have a personal opinion about the
20 facts, you must remove that totally from your minds.
21 You are the sole judges of the facts.

22 Now, I am the judge of the law that applies to
23 the case. And you're bound by your oath to accept
24 and apply the law as I give it to you, that means if
25 you've got conflicting ideas about what the law is

1 or what it should be, you have to abandon those. I
2 give you the law, you apply it to the facts as you
3 determine them to be and, in that way, you reach
4 your verdicts.

5 It's also my job to decide what evidence is
6 admissible. If I've ruled something inadmissible or
7 told you to disregard something, you're not to
8 consider those things in arriving at your verdicts.
9 Base your verdicts on the competent evidence before
10 you, consider the testimony of the witnesses and the
11 exhibits admitted in the trial.

12 Now, the rules of evidence allow for opinion
13 testimony to be given under certain circumstances.
14 And one area where that's allowed is where someone
15 by virtue of education, training and experience is
16 permitted to testify as an expert witness.

17 Now, the mere fact that a person is allowed to
18 give opinion testimony under our rules does not mean
19 that you have to accept the opinions given if you
20 choose not to do so. You may accept or reject the
21 testimony of an expert witness just as you may any
22 other witness in whole or in part.

23 I also need to explain to you that there are
24 two types of evidence generally presented during a
25 trial, direct evidence and circumstantial evidence.

1 Direct evidence is evidence of direct perception,
2 including the testimony of a person who asserts or
3 claims to have actual knowledge of a fact such as an
4 eyewitness. Circumstantial evidence is proof of a
5 chain. It's proof of a chain of facts and
6 circumstances indicating the existence of a fact.

7 Now, the law makes absolutely no distinction
8 between the weight or value to be given to either
9 direct or circumstantial evidence nor is a greater
10 degree of certainty required of circumstantial
11 evidence than of direct evidence. What you need to
12 do is weigh all of the evidence in the cases and
13 after weighing all of the evidence, if you're not
14 convinced of the guilt of the defendant beyond a
15 reasonable doubt, then you must find him not guilty.

16 The defendant in these cases, Mr. Watson, is
17 presumed to be innocent. This is no mere legal
18 theory. It is a fundamental and substantial right
19 to which everyone is entitled. It's been described
20 as being like a robe of righteousness that's placed
21 around an accused and remains with him through every
22 stage of the trial. It remains with him after you
23 go back to your jury room to deliberate and it
24 continues to exist so that he is presumed to be
25 innocent unless you, the jury, determine that the

1 State has proven him guilty beyond a reasonable
2 doubt.

3 In making your decision as to whether the
4 defendant has been proven guilty, you may consider
5 the lack of evidence presented by the State.

6 A defendant is not required to prove his
7 innocence. He's not required to prove anything at
8 all. The burden of proof is entirely upon the State
9 to prove the guilt of the defendant beyond a
10 reasonable doubt and it's required that every
11 essential element of an offense charged be proven by
12 the State beyond a reasonable doubt. That doesn't
13 mean that the State has to prove the guilt of the
14 defendant beyond all doubt or beyond every doubt.
15 The appropriate standard is proof beyond a
16 reasonable doubt.

17 Some of you may have served as jurors in civil
18 court and if you have, you know that the burden of
19 proof in civil cases is to establish that something
20 is probable, that it's more likely than not. And we
21 call that the greater weight or preponderance of the
22 evidence. But in criminal court, which is what
23 we're in now, the standard is much higher and the
24 proof required must be much stronger than what is
25 required in civil court. As I've told you numerous

1 times, the burden of proof in these criminal cases
2 is proof beyond a reasonable doubt. So what do I
3 mean by that term?

4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's
6 guilt. There are few things in the world that we
7 know with absolute certainty and in criminal cases,
8 the law does not require proof that overcomes every
9 possible doubt.

10 If, based on your consideration of the
11 evidence, you are firmly convinced that the
12 defendant is guilty of a crime charged, then you are
13 to find him guilty of that crime. If, on the other
14 hand, you think there is a real possibility that he
15 is not guilty, you must give him the benefit of the
16 doubt and find him not guilty on that charge.

17 There is no obligation on the part of the
18 defendant to raise any doubt or any other
19 possibility. He is presumed to be innocent. And
20 the State has the entire burden of proof and has to
21 prove to you that the defendant is guilty to the
22 exclusion of any other real possibility.

23 Now, statements allegedly made by the defendant
24 have been admitted into evidence in this trial. In
25 evaluating the alleged statements, you first need to

1 determine if the State has proven that the
2 defendant, in fact, made the statement in question.
3 If not, then you cannot consider that alleged
4 statement in any way against the defendant.

5 If you find that the defendant made the
6 statement, the next thing that you're going to have
7 to determine is whether the defendant made that
8 statement in response to police questioning. In
9 order for you to know what the law requires in this
10 regard concerning statements, I need to explain some
11 things to you.

12 You've probably heard about Miranda warnings.
13 The Miranda warnings are that you have the right to
14 remain silent; that any statement made can and will
15 be used against you in court; that you have the
16 right to an attorney and if you do not have the
17 resources to hire a lawyer, the court will appoint
18 one at no expense; that you have the right to
19 consult a lawyer before questioning -- answering any
20 questions or making any statement; that you have the
21 right to have a lawyer present at all times during
22 all interviews and all interrogations; and that you
23 may stop answering questions at any time.

24 Now, while these exact words do not have to be
25 used, the substantial equivalent must be

1 communicated to an accused in order to constitute
2 Miranda warnings.

3 Miranda warnings are required before the police
4 may interrogate a person whom they have in custody.
5 Police interrogation means that the police are
6 questioning the person or they're engaging in the
7 substantial equivalent of questioning. In other
8 words, where a police officer makes some statement
9 or engages in some conduct that's designed to elicit
10 a response, that's the functional equivalent of
11 interrogation.

12 But Miranda warnings only relate to
13 interrogations by the police. If a person makes a
14 spontaneous statement of his own free will not
15 prompted by police interrogation, the statement can
16 be considered by a jury even if Miranda warnings
17 have not been given.

18 So if you find that the statement in question
19 was given by the defendant while in custody and in
20 response to police interrogation or the functional
21 equivalent of interrogation, you cannot consider
22 that statement against the defendant unless the
23 State has proven beyond a reasonable doubt that the
24 defendant was first properly advised of his Miranda
25 rights before giving a statement.

1 The next thing the State has to prove before
2 you may consider any alleged statement against the
3 defendant is that the defendant knowingly and
4 intelligently waived his constitutional rights and
5 made the statement to police.

6 And the final requirement related to statements
7 is that the statement in question must have been
8 given voluntarily. The State has to prove that the
9 statement of the defendant was the expression of the
10 defendant's own free will and was not improperly
11 induced by compulsion, duress, force or fear or by
12 the promise of some reward or hope of reward.
13 Unless the State proves that the statement was given
14 freely and voluntarily, you cannot consider it in
15 any way against the defendant.

16 Now, let's turn to the specific charges that
17 have been made in these cases. As you know, the
18 defendant has been separately charged with murder,
19 possession of a firearm during the commission of a
20 violent crime and pointing and presenting a firearm.
21 Each indictment is separate and distinct. It has to
22 be evaluated separately on its own merit or lack of
23 merit.

24 I read these indictments to you before the
25 trial. The murder indictment basically charges that

1 Michael Duran Watson did in Saluda County on or
2 about August 5, 2007, feloniously, willfully and
3 with malice aforethought, kill one Andrew Chandler
4 by shooting him in the face with a shotgun and that
5 the said Andrew Chandler died in Saluda County as a
6 proximate result thereof, which is alleged to be in
7 violation of certain sections of the South Carolina
8 Code.

9 The indictment for possession of a firearm
10 during the commission of a violent crime alleges
11 that Michael Duran Watson did in Saluda County on or
12 about August 5, 2007, unlawfully have in his
13 possession a firearm, specifically a loaded shotgun,
14 during the commission of the violent crime of
15 murder, which is alleged to be in violation of code
16 section cited in the indictment.

17 And the indictment for pointing and presenting
18 a firearm alleges that Michael Duran Watson did in
19 Saluda County on or about August 5, 2007, willfully
20 and maliciously point and/or present a firearm,
21 specifically a shotgun, at Andrew Chandler, which is
22 alleged to be in violation of the code section set
23 forth in the indictment.

24 I remind you, ladies and gentlemen, that an
25 indictment is not evidence of anything. It is

1 merely the charging paper, the formal means by which
2 someone is charged and brought to trial. You may
3 not give an indictment any evidentiary value.

4 Now, first, I'm going to explain to you the
5 offense of murder. Murder is the unlawful killing
6 of another human being with malice aforethought.

7 Malice is a mental state. It is something that
8 springs from wickedness, from depravity, from a
9 heart devoid of social duty and fatally bent on
10 mischief.

11 The malice must be aforethought. And to make
12 sure that you know the word I'm using here and not
13 confusing it with a similar sounding word, I'm going
14 to spell it for you, a-f-o-r-e-t-h-o-u-g-h-t,
15 aforethought. The malice must exist in the mind of
16 the accused just before and at the time of the
17 commission of the act. It is not required that the
18 malice exist for any particular amount of time, but
19 there has to be a combination of a previous evil
20 intent of malice and the act that produces the fatal
21 result.

22 Malice aforethought may be expressed or it may
23 be inferred. Now, these terms, expressed and
24 inferred, do not mean different kinds of malice, but
25 merely the manner in which the malice may be shown

1 to exist. Examples of expressed malice would be
2 where a person speaks words that express hatred or
3 ill will for another or when a person prepares
4 beforehand to do an act later accomplished like
5 lying in wait.

6 The mental state of malice, which is the intent
7 that's required for murder, it may be proven by
8 direct evidence or by circumstantial evidence or by
9 a combination of both. It may be inferred from
10 facts and circumstances that are proven by the State
11 and which establish malice aforethought beyond a
12 reasonable doubt.

13 Now, malice does not necessarily require ill
14 will toward the specific person who was injured, but
15 rather it signifies a general malignancy towards and
16 recklessness for the life and safety of others or a
17 condition of the mind that shows a heart devoid of
18 social duty and fatally bent on mischief.

19 Malice may not be inferred, however, where a
20 defendant had a legal right to act as he did. Later
21 in this charge, I'm going to discuss issues with you
22 including self-defense. Self-defense, as I
23 mentioned to you earlier, is a lawful act. So
24 someone who is acting in self-defense cannot be
25 considered to have been acting with malice.

1 Now, the law recognizes that certain greater
2 crimes include within them lesser crimes. We call
3 those lesser included offenses. Murder includes
4 within it the lesser included offense of voluntary
5 manslaughter. If you have a reasonable doubt as to
6 whether the State has proven that the defendant
7 committed murder, you may consider whether the State
8 has proven beyond a reasonable doubt that the
9 defendant committed voluntary manslaughter.

10 Voluntary manslaughter is the unlawful killing
11 of another human being in sudden heat of passion
12 based on sufficient legal provocation. So malice is
13 not required to establish voluntary manslaughter,
14 but both heat of passion and a sufficient legal
15 provocation must be present at the time of the
16 killing to constitute voluntary manslaughter.

17 The law recognizes that sudden heat of passion
18 may, for a time, affect a person's self-control and
19 temporarily disturb a person's reason. The sudden
20 heat of passion must be the type that would make an
21 ordinary person unable to coolly reflect on his
22 actions and produce an uncontrollable impulse to do
23 violence.

24 Sufficient legal provocation must be the type
25 that would make a person of ordinary reason and

1 caution become enraged and lose control temporarily.
2 Now, the provocation that's needed for voluntary
3 manslaughter has to come from some act of or related
4 to the person who was killed.

5 If the heat of passion had cooled or if there
6 was enough time between the provocation, if any, and
7 the killing for the passion of a reasonable person
8 to cool, then the killing would not be voluntary
9 manslaughter.

10 In deciding whether a reasonable person would
11 have had enough time to cool off, you should
12 consider all the circumstances surrounding the
13 killing. You may consider the nature of the
14 provocation, if any, the defendant's mental and
15 physical state and the circumstances and the
16 relationships between the parties.

17 Okay. Now, I want to talk to you about
18 self-defense. One of the issues that you need to
19 consider is whether the defendant was acting in
20 self-defense. Self-defense is a complete defense.
21 If the defendant was acting in self-defense, his
22 conduct was lawful and you must find him not guilty.

23 A defendant does not have any burden to prove,
24 so a defendant does not have to prove self-defense.
25 Rather, the State has the burden of proving beyond a

1 reasonable doubt that the defendant was not acting
2 in self-defense.

3 If you have a reasonable doubt of a defendant's
4 guilt after considering all of the evidence,
5 including the evidence of self-defense, then you
6 must find that defendant not guilty. On the other
7 hand, if you have no reasonable doubt of the
8 defendant's guilt after considering all of the
9 evidence, including the evidence of self-defense,
10 then you are to find the defendant guilty.

11 Now, the following elements apply to
12 self-defense: First, the defendant must be without
13 fault in bringing on the difficulty. If the
14 defendant's conduct was the type which was
15 reasonably calculated to and did provoke a deadly
16 assault, the defendant would be at fault in bringing
17 on the difficulty and would not be entitled to an
18 acquittal based on self-defense.

19 Secondly, the defendant must have actually been
20 in imminent danger of death or serious bodily
21 injury, or he must have actually believed that he
22 was in imminent danger of death or serious bodily
23 injury.

24 If the defendant was actually in imminent
25 danger, it must be shown that the circumstances

1 would have warranted a person of ordinary firmness
2 and courage to strike out as the defendant did to
3 prevent death or serious bodily injury. If the
4 defendant believed he was in imminent danger of
5 death or serious bodily injury, it must be shown
6 that a reasonably prudent person of ordinary
7 firmness and courage would have held the same
8 belief.

9 Now, in deciding whether the defendant actually
10 was or believed that he was in imminent danger of
11 death or serious bodily injury, you need to look at
12 all of the facts and circumstances surrounding the
13 incident and the relationships between the parties.
14 So in assessing the defendant's beliefs, you may
15 consider whether there was any history of prior
16 difficulties between these individuals involved and
17 what those were.

18 Now, there's a statute in our state that
19 establishes that a person is presumed to have a
20 reasonable fear of imminent peril of death or great
21 bodily injury if the person against whom the deadly
22 force is used is in the process of unlawfully and
23 forcefully entering an occupied vehicle.

24 A person who is not engaged in an unlawful
25 activity and who is attacked in a place where he has

1 a right to be has the right to stand his ground and
2 meet force with force, including deadly force, if he
3 reasonably believes it is necessary to prevent death
4 or great bodily injury to himself or another person
5 or to prevent the commission of a violent crime.

6 A person who unlawfully and by force enters or
7 attempts to enter a person's occupied vehicle is
8 presumed to be doing so with the intent to commit an
9 unlawful act involving force or a violent crime.

10 A defendant has the right to act on appearances
11 even if his assessment was incorrect. It is not
12 necessary that a defendant was actually in danger.
13 It is enough if the defendant believed that he was
14 in imminent danger and a reasonably prudent person
15 of ordinary firmness and courage in his position and
16 with his knowledge would have held the same belief.

17 It's for you to decide whether the defendant
18 had a reasonable fear of immediate danger of death
19 or serious bodily injury and that it would have been
20 felt by a person of ordinary firmness and courage in
21 the same situation.

22 Words accompanied by hostile acts may,
23 depending on the circumstances, create an appearance
24 that the defendant could use to support -- well, let
25 me back up and say that again -- words accompanied

1 by hostile acts may, depending on the circumstances,
2 create an appearance that the defendant could act in
3 self-defense.

4 Now, the final element of self-defense is that
5 the defendant had no other probable way to avoid the
6 danger of death or serious bodily injury than to act
7 as he did in the particular instance, that's
8 generally referred to as an obligation to retreat.
9 But that obligation to retreat is limited and it has
10 been limited always and by that statute that I read
11 to you a little bit ago, so I'm going to cover that
12 -- this in some detail.

13 A defendant does not have to wait until an
14 assailant has the drop on him before acting in
15 self-defense. A defendant has no duty to retreat if
16 by doing so the danger of being killed or suffering
17 serious bodily injury would increase.

18 Further, he has no duty to retreat if the
19 person or the people who prompted the actions that
20 are maintained to have been taken in self-defense
21 were done in response to an unlawful and forceful
22 effort to enter an occupied vehicle.

23 And, further, regardless of whether the
24 defendant was in an occupied vehicle or not, a
25 defendant may stand his ground and defend himself if

1 he reasonably believes it is necessary to prevent
2 death or great bodily injury to himself or another
3 person or to prevent the commission of a violent
4 crime provided that the defendant was not engaged in
5 unlawful activity himself and was attacked in a
6 place where he had a right to be.

7 Now, a person who is confronted with a
8 self-defense situation is not required to make an
9 exact precise calculation of the degree of force
10 needed to avoid death or serious bodily harm, but is
11 permitted to use the degree of force in self-defense
12 that a person of ordinary reason and firmness would
13 have believed to be needed to prevent his own death
14 or serious bodily injury.

15 The force used in self-defense does not have to
16 be limited to the degree or amount of force used by
17 the opposing party. A defendant has the right to
18 use so much force as appeared to be necessary for
19 complete self-protection in which a person of
20 ordinary reason and firmness would have believed to
21 be needed to prevent death or serious bodily harm.

22 Now, I'm going to talk to you -- we're just
23 about through. We've got about five more minutes.
24 I'm going to talk to you about the other two
25 indictments.

1 The defendant is charged with pointing or
2 presenting a firearm. To prove the defendant guilty
3 of this offense, the State has to prove beyond a
4 reasonable doubt that the defendant unlawfully
5 presented or pointed a firearm at Andrew Chandler on
6 the date and at the time and place alleged in the
7 indictment.

8 Now, that one's pretty self-explanatory. It's
9 unlawfully pointing or presenting a firearm at
10 another person. Now, if the pointing was lawful,
11 he's not guilty of this offense.

12 And, finally, the defendant is charged with
13 possession of a firearm during the commission of a
14 violent crime. To prove this offense, the State has
15 to prove beyond a reasonable doubt that the
16 defendant possessed or visibly displayed a firearm
17 during the commission of a violent crime.

18 So, in order for you to find the defendant
19 guilty of possession of a firearm during the
20 commission of a violent crime, you first would have
21 to find him guilty on the charge of murder or
22 voluntary manslaughter, both of which are classified
23 as violent crimes. You must also find that the
24 State has proven beyond a reasonable doubt that the
25 defendant possessed a shotgun at the time as alleged

1 in the indictment.

2 Now, the final thing I need to tell you about
3 the law is that a defendant is entitled to every
4 reasonable doubt arising in an entire case or in any
5 defenses. If upon any issue of fact essential to a
6 conviction, you have a reasonable doubt as to how
7 that issue should be resolved, you have to resolve
8 that doubt in favor of the defendant.

9 If you have a reasonable doubt as to whether
10 the defendant is guilty of a greater crime charged
11 or a lesser included offense, you have to give him
12 the benefit of the doubt and find him guilty only of
13 the lesser offense, but you cannot find him guilty
14 of any offense greater or lesser unless you are
15 convinced that the State has proven every essential
16 element of that offense against this defendant
17 beyond a reasonable doubt.

18 If upon reviewing the entire case as to any
19 charge, you have a reasonable doubt as to the guilt
20 of the defendant on that charge, you must give him
21 the benefit of the doubt and find him not guilty.

22 On the other hand, if upon considering the
23 entire case as to a particular charge, you find the
24 State has proven every essential element of that
25 charge against the defendant beyond a reasonable

1 doubt, it is equally your duty to find the defendant
2 guilty on that charge.

3 Now, that's the law. ✓

4 Folks, when you go back to the jury room to
5 decide these cases, you're going to have with you
6 these verdict forms. There is a separate verdict
7 form for each indictment.

8 Now, I'm supposed to tell you that you're not
9 to infer from the order in which I state your
10 options that I'm trying to suggest any form of
11 verdict over another form of verdict. I've got to
12 say one thing first, one thing second, one thing
13 third, so on.

14 You'll see that each indictment has a -- I'm
15 sorry -- each verdict form has a caption and then in
16 the middle underlined, I've put what charge you're
17 considering. This one reads: As to the charge of
18 murder, we, the jury, unanimously find the
19 defendant, and you have three options here, you may
20 find the defendant not guilty, you may find the
21 defendant guilty of the lesser included offense of
22 voluntary manslaughter or you may find the defendant
23 guilty of murder.

24 This is on the charge of pointing and
25 presenting a firearm. You have two options, you may

1 find the defendant not guilty or you may find the
2 defendant guilty of pointing and presenting a
3 firearm.

4 And this verdict form is for possession of a
5 firearm during the commission of a violent crime.
6 Now, obviously, as I've explained to you, in order
7 to find the defendant guilty of this, you would have
8 to find him guilty of a violent crime first, common
9 sense. But you have two possible forms of verdict,
10 you may find him not guilty or you may find him
11 guilty of possession of a firearm during the
12 commission of a violent crime.

13 Mr. Foreman, part of your job is to record
14 these verdicts for me. I think when you see these
15 forms, you'll find them self-explanatory, just check
16 the options chosen by the jury and sign your name on
17 the signature lines at the bottom of each form.

18 **FOREMAN:** Okay.

19 **THE COURT:** Ladies and gentlemen, when you've
20 reached your verdicts, if you'll knock on the door,
21 the bailiff will respond to your knock.

22 I've told you now probably dozens of times not
23 to talk about the case until I tell you to. It's
24 not time yet. The law says that I have to go over
25 with the attorneys what I just told you and that's

1 just common sense. We don't want you back there
2 deciding these cases using the wrong law. And they
3 don't get to stand up and object while I'm talking.
4 They have to wait until I ask them if they have any
5 comment.

6 So what will happen is I'll send you back into
7 the jury room. I'll find out what the attorneys may
8 think I need to tell you differently than what I've
9 told you. If I agree with them that I need to
10 clarify something or I left something out, I'll
11 bring you back out and correct it.

12 But here's the signal you need to look for. If
13 I'm satisfied with what I've told you, I'm going to
14 send the exhibits and the verdict forms into the
15 jury room, I'm going to bring the two alternates
16 out. When the door is closed and it's just the 12
17 of you in there with the exhibits and the verdict
18 forms, you start talking about the case. You don't
19 have to wait another second, but don't talk about it
20 until then.

21 Thank you very much for your attention. You
22 may retire to your jury room.

23 (The jury retires to the jury room.)

24 **THE COURT:** State for the record any
25 exceptions, additions or objections to the charge,

1 from the State.

2 MR. YOUNG: No, Your Honor.

3 THE COURT: Defense.

4 MR. ANDERSON: Judge, just briefly, when you
5 were going through the self-defense and -- I mean, I
6 thought the charge was very good up -- even with
7 this, it was a very good charge, but it is a little
8 awkward with the self-defense, you're saying if the
9 defendant believed this and if the defendant
10 believed that. And with the burden on the State to
11 disprove self-defense, we would ask you just to
12 charge that the State has to prove that the
13 defendant didn't beyond a reasonable doubt. You
14 understand what I'm saying? That would be my only
15 exception, Judge.

16 MR. YOUNG: What did you say? Say it again.

17 THE COURT: He wants me to charge that the
18 State has to prove that the defendant did not hold a
19 contrary belief, I think is what he's saying.

20 MR. ANDERSON: I just think it's going to
21 introduce confusion, Judge.

22 THE COURT: Well, most of that charge, as you
23 know, came from a case that the South Carolina
24 Supreme Court handed down in which they basically
25 told us, charge this.

1 Now, when they passed -- the Legislature passed
2 that Castle Doctrine, they'd thrown kinks into it.
3 I didn't really have time -- to be honest with you,
4 that escaped my thought process. I've got some
5 e-mails back from 2007 where the judges circulated
6 around what we thought about the impact of the
7 Castle Doctrine. I went back and read those
8 e-mails, but I don't really have a current charge on
9 that and I'm trying to adapt it and I may have done
10 it wrong. I did it as quickly as I could and as
11 best as I could.

12 Your specific motion is denied. I made it very
13 clear that the State has to disprove self-defense.

14 **MR. ANDERSON:** Thank you, Your Honor.

15 **THE COURT:** Well, it's been a pleasure trying
16 the case with you guys. I'm about to lose my voice,
17 so I'll keep this short. Check the verdict forms,
18 check the exhibits. When you're satisfied, give
19 them to the bailiff, please.

20 (Pause.)

21 **THE COURT:** Bring the alternates out, please.

22 (The alternates enter the courtroom.)

23 **THE COURT:** All right, gentlemen, the 12 jurors
24 made it through the case without any problems so
25 your service is over. You don't have to worry about

1 coming back. You're through with jury duty.

2 They'll mail a little check to you. If you
3 need a slip for work, if you'll check with the
4 Clerk, she'll get that for you. You're welcome to
5 stay if you wish to stay. You're free to go if you
6 wish to go. You have an exemption for three
7 calendar years from serving on a state court jury
8 and you're disqualified for one year from serving on
9 a state court jury.

10 I do want to tell you before you go that I
11 generally do use an alternate in at least one in
12 about half the cases I do. So I hope you understand
13 I didn't have you sitting over there for nothing.
14 Once I swear the jury, we have to go forward, that's
15 when jeopardy attaches. If you've heard of double
16 jeopardy, jeopardy attaches once I swear that jury.
17 So once we start, I need to keep going so that's why
18 I had you sitting there. But you're through now.

19 If you've got questions, comments, criticisms
20 or complaints and I don't lose my voice, I'll be
21 happy to talk to you, otherwise, you're free to go.

22 We're at ease.

23 (The alternates were excused.)

24 (The jury commences its deliberations at
25 4:25 p.m.)

1 (A recess transpired.)

2 (The following occurred during jury
3 deliberations at 6:05 p.m.)

4 (Court's Exhibit Number 3, jury note, marked
5 for identification purposes.)

6 **THE COURT:** I have a note from the jury that
7 reads, Can we please have a copy of the transcript
8 and the definition of voluntary manslaughter?

9 Obviously, there is no transcript. I can give
10 them the definition of voluntary manslaughter. I
11 can give them the whole charge on voluntary
12 manslaughter. Do you all have any input?

13 **MR. YOUNG:** Your Honor, I think the only thing
14 appropriate is to probably just instruct them again
15 on voluntary manslaughter. I think that's the
16 restrictive nature of the question.

17 **THE COURT:** Mr. Anderson.

18 **MR. ANDERSON:** I agree with him, Your Honor.

19 **THE COURT:** Just the definition?

20 **MR. ANDERSON:** I mean, I think probably the
21 whole charge. I just ask, and I know you can do it
22 without me asking, but the burden of proof again --

23 **THE COURT:** I'm sorry, I can't hear you.

24 **MR. ANDERSON:** I would also ask if you're going
25 to recharge the manslaughter, if you remind them of

1 the burden of proof and the presumption, please.

2 **THE COURT:** All right. Bring the jury in.

3 (The jury returns to the courtroom at 6:07
4 p.m.)

5 **THE COURT:** Mr. Foreman, I received a note from
6 the jury that reads, Can we please have a copy of
7 the transcript and the definition of voluntary
8 manslaughter? Are those the jury's questions?

9 **FOREMAN:** Yes, sir.

10 **THE COURT:** Ladies and gentlemen, there is no
11 transcript. So the answer to the first part is, no,
12 there is none to give you.

13 The court reporter takes down what's said. It
14 goes into a computer. It's what they call a dirty
15 transcript, which means it hadn't been cleaned up
16 and it would take her weeks to prepare a transcript
17 even with all the technology we have today.

18 They do have backup tapes which means they tape
19 record what is said. If there is a section of the
20 trial that you want to be played back and you can
21 tell us with some specificity what you want to hear,
22 we can try to find it for you. We'll play the whole
23 trial back for you if you want to.

24 The only thing is just be mindful of this fact.
25 If you come out, like, with an issue, I'm not going

1 to be in a position to decide what that issue may
2 have been -- where that issue may have been covered
3 in different people's testimony at different points
4 in time. So if you can tell us that you want to
5 hear something replayed, we'll try our best to meet
6 you halfway and do it for you, but if you just come
7 out here and say we want to hear testimony about X,
8 I doubt I can do that because I can't be certain
9 that I've covered every place where that X is
10 discussed, all right. So I can't give you a
11 transcript. There is none.

12 With regard to the definition of voluntary
13 manslaughter, what I can do on that is I can tell
14 you again what I told you during the charge. And if
15 you need to be recharged on anything, that's fine.
16 There's absolutely no problem with that.

17 And, again, I don't want to discourage you from
18 asking to hear the testimony replayed. It's just I
19 want to be realistic with you about what we can and
20 cannot do, so I'm not discouraging it in any way.
21 If you want to hear it, we'll try to find it. If
22 you say you want to hear a whole witness' testimony,
23 that's fine. If y'all know what y'all want to hear
24 and you want to hear a witness up to a certain point
25 and you can agree to stop it at that point, that's

1 fine too, but you have to let us know.

2 All right. The law recognizes that certain
3 crimes include within them lesser crimes. These are
4 known as lesser included offenses. Murder includes
5 within it the lesser included offense of voluntary
6 manslaughter. If you have a reasonable doubt as to
7 whether the State has proven that the defendant
8 committed murder, you may consider whether the State
9 has proven beyond a reasonable doubt that the
10 defendant committed voluntary manslaughter.

11 Voluntary manslaughter is the unlawful killing
12 of another human being in sudden heat of passion
13 based on sufficient legal provocation. Provocation
14 means provoked, all right.

15 Malice is not required to establish voluntary
16 manslaughter, but both the heat of passion and
17 sufficient legal provocation must be present at the
18 time of the killing to constitute voluntary
19 manslaughter.

20 The law recognizes that sudden heat of passion
21 may, for a time, affect the person's self-control
22 and temporarily disturb a person's reason. The
23 sudden heat of passion must be the type that would
24 make an ordinary person unable to coolly reflect on
25 his actions and produce an uncontrollable impulse to

1 do violence.

2 Sufficient legal provocation must be the type
3 that would make a person of ordinary reason and
4 caution become enraged and lose control temporarily.
5 The provocation needed for voluntary manslaughter
6 must come from some act of or related to the person
7 who was killed.

8 If the heat of passion had cooled or if there
9 was sufficient time between the provocation, if any,
10 and the killing for the passion of a reasonable
11 person to cool, the killing would not be voluntary
12 manslaughter.

13 In deciding whether a reasonable person would
14 have had enough time to cool off, you should
15 consider all of the circumstances surrounding the
16 killing. You may consider the nature of the
17 provocation, if any, the defendant's mental and
18 physical state and the circumstances and the
19 relationships between the parties.

20 Now, that's what I told you about voluntary
21 manslaughter. If you need anything else, send me
22 word, all right. Thank you.

23 (The jury retires to the jury room to
24 continue its deliberations at 6:13 p.m.)

25 **THE COURT:** State for the record exceptions,

1 additions, objections to the Court's instruction,
2 from the State.

3 **MR. YOUNG:** None from the State.

4 **THE COURT:** Defense.

5 **MR. ANDERSON:** Judge, I just ask you if you
6 would remind them of the presumption of innocence,
7 but you did remind them of burden of proof.

8 **THE COURT:** All right. I note your request.
9 If that jury doesn't understand presumption of
10 innocence by now, I could say it a million more
11 times and they wouldn't understand it. I'm
12 confident they understand it. Thank you.

13 We're at ease pending a verdict.

14 (A recess transpired.)

15 **THE COURT:** I've been informed the jury has
16 verdicts. I have no way of knowing what the jury
17 has decided, so please understand that the
18 instruction I'm about to give you is not directed at
19 anybody in particular. You all have conducted
20 yourselves very well and I appreciate the respect
21 you've shown to the Court.

22 When the verdict is published and thereafter,
23 you have to keep control of your emotions, do not
24 show any sign of approval or disapproval with the
25 verdict, don't shake your head in agreement or

1 disagreement, don't make any sounds, just stay still
2 and stay quiet.

3 If you don't think you can control your
4 emotions, good or bad, you need to leave because if
5 anybody violates what I just told you, I could send
6 you to prison for six months without a jury trial,
7 so we don't want that. Everybody stay still, stay
8 quiet. We'll get through this just fine.

9 Bring in the jury.

10 (The jury returns to open court to report
11 its verdict at 7:10 p.m.)

12 **THE COURT:** Madame Clerk.

13 **THE CLERK:** Mr. Foreman, have you reached a
14 verdict?

15 **FOREMAN:** Yes.

16 **THE CLERK:** Would you pass it to the bailiff,
17 please?

18 (The Clerk hands the verdicts to the Judge.)

19 VERDICT OF THE JURY

20 **THE COURT:** All right. These verdicts are
21 entered in the cases of the State versus Michael
22 Duran Watson. Case number 2007-GS-41-00552, as to
23 the charge of murder, we, the jury, unanimously find
24 the defendant guilty of the lesser included offense
25 of voluntary manslaughter, signed by the Foreman.

1 Indictment 2007-GS-41-553, as to the charge of
2 possession of a firearm during the commission of a
3 violent crime, we, the jury, unanimously find the
4 defendant guilty of possession of a firearm during
5 the commission of a violent crime, signed by the
6 Foreman.

7 Indictment 2007-GS-41-551, as to the charge of
8 pointing and presenting a firearm, we, the jury,
9 unanimously find the defendant guilty of pointing
10 and presenting a firearm, signed by the Foreman.

11 Ladies and gentlemen, if I have accurately
12 stated your verdicts, that is guilty of voluntary
13 manslaughter as to the charge of murder and guilty
14 as charged on the other two offenses, please signify
15 by raising your right hand.

16 All 12 hands are raised.

17 Are there any matters to take up prior to the
18 jury being discharged, from the State?

19 MR. YOUNG: No, sir.

20 THE COURT: From the defense?

21 MR. ANDERSON: No thank you.

22 THE COURT: Thank you very much.

23 Ladies and gentlemen, that's going to conclude
24 your jury service, but there's some matters that I
25 have to address with the attorneys. There are a few

1 things that I need to tell you before I let you go.
2 I know what time it is, but if you'll wait on me in
3 the jury room, I'll get back there as quickly as I
4 can. Thank you very much. If you'll follow the
5 bailiff, please.

6 (The jury was excused.)

7 **THE COURT:** Motions.

8 **MR. ANDERSON:** Judge, I honestly can't put them
9 together right at this moment. I would ask for --
10 would you give me a few days to be able to submit
11 any post-trial motions?

12 **THE COURT:** I don't know of that procedure in
13 criminal court.

14 **MR. ANDERSON:** I know the term ends tomorrow.
15 I guess I would move --

16 **THE COURT:** I'll give you a few minutes to
17 collect your thoughts. I mean, basically you just
18 need to give some thought to what motions you want
19 to make for a new trial and otherwise.

20 We're at ease. I can't talk to the jury until
21 I'm finished so let me know when you're ready.

22 (Brief recess.)

23 **MR. ANDERSON:** Judge, I would move for a new
24 trial on the basis that the deliberations were
25 approximately three hours. They did have a question

1 about the -- wanting the transcript, which we
2 obviously couldn't provide.

3 And I just think due to the late hour, the jury
4 could have felt, you know, some urgency in getting
5 out of here. And without that transcript to review,
6 I don't know what the reason was they wanted the
7 transcript, perhaps if they had had an opportunity
8 to review testimony, they could have come up with a
9 different verdict.

10 Furthermore, they have found him guilty even
11 though the State failed to prove him guilty beyond a
12 reasonable doubt. So we'd ask for a new trial, Your
13 Honor.

14 **THE COURT:** Well, actually, requesting a
15 transcript is a fairly common request from a jury.
16 I get that all the time.

17 I don't see any indication that the jury's
18 decision was the result of any improper motive, any
19 passion, caprice, prejudice or the result of any
20 impropriety whatsoever. All of the verdicts seem to
21 be supported by the evidence. They could obviously
22 have found differently than they did, but I don't
23 see anything in their verdicts in the way they
24 conducted themselves in their deliberations or in
25 their questions that give me any pause. Request for

1 a new trial, request for arrest of judgment, those
2 motions are respectfully denied.

3 All right. Does the State have anything on
4 sentencing?

5 MR. YOUNG: Yes, Your Honor. A family member
6 would like to come forward, Mr. Antoine Brown, to
7 speak to the Court. He speaks for the family.

8 THE COURT: Come up by the court reporter,
9 please, sir. What's your name, sir?

10 MR. BROWN: Antoine Brown.

11 THE COURT: Yes, sir. Go ahead.

12 MR. BROWN: Basically, what I would like to say
13 is that for those that don't know who I am, the
14 young man that got killed was my brother. I'm his
15 oldest brother. I miss my brother. I hate that it
16 ever happened to him.

17 You're looking at a young man that may not have
18 done everything right as far as making all of the
19 right decisions. He had a young man that took his
20 life, you know, at 17 years old and I think so much
21 about that. You know, he never got to a point in
22 his life that he had begun to live his life.

23 You know, that's a life that will never, ever,
24 you know, be able to regain back again and that's
25 something that as me as a big brother and also my

1 family is going to have to deal with for the rest of
2 our lives and that doesn't set too well with me and
3 my family. And, you know, I just wish that there
4 was something that I could have done to, you know,
5 to make sure that that never had happened to him.

6 But one thing I say is this here, he was a
7 young man that loves the Lord, had a love for God
8 and he had a lot of great qualities, a lot of great
9 gifts. You know, I remembered all of the good times
10 that I shared, you know, with him, the good times
11 that we had to spend together. You know, my brother
12 was not a, you know, a bad kid. You know, he, you
13 know, was just at the wrong place at the wrong time
14 and I just hate that that happened to him.

15 One thing that I say is this here, I mean, you
16 know, regardless of, you know, what goes on in our
17 lives, you know, we need to, you know, stick
18 together as a family and, you know, and to be able
19 to cherish one another and be able to help one
20 another. And, basically, that's what I, you know,
21 wanted to share with everyone, you know, that I love
22 my brother and he will always be in my heart always
23 and forever. And those that are part of my family
24 also, you know, have him also in their hearts always
25 and forever.

1 **THE COURT:** Thank you, Mr. Brown.

2 **MR. YOUNG:** Your Honor, the State's only
3 position on this is that this is a taking of a
4 completely innocent life. This is not a situation
5 where a person may have been a rider in a car and he
6 got into a car that the person was drinking and
7 driving and he started drinking, too. This is a
8 person that's standing with a group of friends and
9 he lost his life because he was standing around with
10 a bunch of friends.

11 **THE COURT:** All right. Mr. Anderson, do you
12 want to tell me anything related to sentencing?

13 **MR. ANDERSON:** If I could, Your Honor, please
14 the Court.

15 **THE COURT:** Sure.

16 **MR. ANDERSON:** Judge, as I said at the
17 beginning of this trial, this is a horrible case.
18 There's no winners. Everybody is a loser in this
19 case.

20 I think, Judge, when we talked to you back in
21 October, you know, I couldn't tell you everything
22 that I knew about the case. And I think the case
23 you heard over this week is totally, well, maybe not
24 totally, but a lot different than what you'd heard
25 when we came to your office.

1 Judge, this is just something that just back
2 and forth that got too far, but I think that what my
3 client said under oath rings true. And I think he
4 shouldn't have been riding around with that shotgun,
5 no question about it. I truly believe he was
6 scared. And I truly believe these kids just don't
7 understand the seriousness of everything they do.
8 And I truly believe that my client was so afraid
9 that when he heard that, Shoot now, he just reacted.
10 I don't believe for a minute that he wanted to go
11 kill Andrew Chandler. I believe to this day that he
12 didn't mean to kill Andrew Chandler and it's
13 horrible.

14 My client had a job. He's got two kids. He's
15 got a great family, nice family. We'd ask you to
16 consider everything you heard this week.

17 And I don't know what the jury was talking
18 about if they're talking about something for three
19 hours. And I'd like to think they were talking
20 about self-defense versus the manslaughter which may
21 be could give the Court some pause in sentencing
22 thinking that this quite easily could have gone the
23 other way and he could have been walking out of
24 here.

25 I'm really concerned about those young people

1 we saw in court this week. It's a very bad
2 situation. My client put himself in a bad
3 situation, too, but I truly don't believe he's a
4 black-hearted person that wanted to hurt anybody. I
5 think things just got carried away.

6 So we'd ask you to consider all of that in the
7 sentence and we'd ask you to consider not giving him
8 the maximum sentence. You know, you've heard more
9 on this case than if this had been a guilty plea and
10 I think you heard enough to find some mitigation
11 here.

12 **THE COURT:** Thank you, sir.

13 All right. Mr. Watson, do you want to tell me
14 anything?

15 **DEFENDANT:** No. I'd just like to apologize to
16 the family.

17 **THE COURT:** All right. If you wish to take any
18 appeal from anything that's happened in this case,
19 it has to be done in writing. You understand that?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** There's a short timeframe in which
22 that writing has to be submitted to the courts in
23 Columbia for review. So if you want to file an
24 appeal, you need to tell Mr. Anderson to file the
25 notice of appeal. And if you cannot afford a

1 lawyer, there are provisions to appoint you an
2 attorney to handle your appeal. You understand?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** So make sure you tell Mr. Anderson
5 if you want to file an appeal. And to be honest
6 with you, in most instances, it's better to file it.
7 You can always drop it, if you want to drop it, but
8 it's --

9 **MR. ANDERSON:** Could I say one other thing,
10 Your Honor?

11 **THE COURT:** Sure.

12 **MR. ANDERSON:** You know, he went home. He
13 cooperated with the police. He cooperated with all
14 of the facilities he's been in. I haven't had any
15 complaints about him at any of the three places.
16 And he's been nothing but courteous to me and my
17 office. And I just think that's -- you just don't
18 see somebody with this charge act the way that he's
19 acted. You know, this isn't some black-hearted, bad
20 boy. He just got in a bad, bad situation.

21 **THE COURT:** Thank you.

22 Y'all arrested him on August the 5th or August
23 the 6th, 2007?

24 **MR. YOUNG:** He was arrested that night, Your
25 Honor, on August 6th.

1 **THE COURT:** After midnight?

2 **MR. YOUNG:** Yes, sir.

3 SENTENCE OF THE COURT

4 **THE COURT:** Well, it's a tragic situation.
5 There's no question about it. I learned a long time
6 ago, the best thing to do is just announce the
7 sentence and move forward.

8 The sentence of the Court on voluntary
9 manslaughter is that you be committed to the South
10 Carolina Department of Corrections for 30 years plus
11 costs and assessments. The sentence on the other
12 two charges is five years concurrent.

13 You're given credit for jail time under section
14 24-13-40 as calculated and applied by the department
15 of corrections. Restitution is waived. Pay your
16 court costs within one year of release from prison.

17 Do you understand your sentences?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Good luck, sir.

20

21

 END OF PROCEEDINGS

22

23

24

25

C E R T I F I C A T E

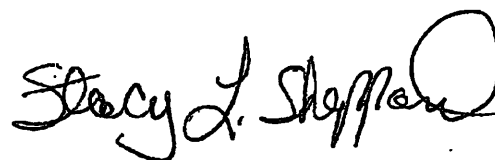
STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 26th of July, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 22, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

FROM :

FAX NO. :8644453772

Nov. 18 2011 12:01PM PB

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
)

STATE OF SOUTH CAROLINA)

V.)

MICHAEL WATSON,
Defendant.)

) INDICTMENT NOS.: 07-GS-41-552
) 07-GS-41-552 & 07-GS-41-553
)

2010 AUG -5 AM 11:27
CLERK OF COURT
SALUDA CO. S.C.

FILED

MOTION TO RECONSIDER SENTENCE

Defendant Michael Watson respectfully moves this Court to Reconsider the Sentence issued by this Court in the above-referenced matter on July 29, 2010. Defendant shows unto this Honorable Court as follows:

1. This matter was tried before a jury beginning on July 26, 2010, and concluding on July 29, 2010.
2. The jury was charged: murder, manslaughter and self defense.
3. After lengthy deliberations, a request to review all of the trial transcript and a request regarding the definition of voluntary manslaughter, the Defendant was found guilty of voluntary manslaughter.
4. Throughout the trial, the Court and the jury heard testimony regarding the interaction of the Defendant and the victim and his friends. This interaction was aggressive, frightening and tense.

5. The Court and jury heard evidence that the Defendant herein acted in fear of his own life at the time of the shooting. In fact, several witnesses indicated that the victim's group of friends on the night in question exclaimed "shoot now." Defendant believed this exclamation meant that one of them was going to shoot Defendant. This prompted the fatal shot.

6. At the conclusion of jury deliberations and Defendant's conviction, this Court sentenced Defendant herein to thirty (30) years. This is the maximum sentence allowed by law under the manslaughter charge.

7. It clearly appeared that the jury arrived at its verdict as a compromise.

8. Defendant believes that the jury had no idea that Defendant would receive a 30 year sentence. The Court did discuss this matter with the jury *in camera* after the sentence was imposed. Perhaps jurors expressed their feelings regarding the sentence to the Court and the Court has reflected upon the sentence.

9. This Court knew of the State's providing critical evidence to the defense almost three years into this case. Furthermore, the Court had previously indicated a lesser sentence was probable in a plea setting based solely upon the State's version of the case. After hearing the entire story, the Court had to see Defendant's reasons for going to trial. Furthermore, the jury had to give serious consideration to self defense (as evidenced by their lengthy deliberations).

10. This Defendant respectfully requests that this Court reconsider this sentence in light of the testimony and proof that was offered of the Defendant's state of mind and the circumstances in which this shooting took place. These facts mitigate in the Defendant's favor in requesting a lesser sentence.

FROM :

FAX NO. :8644453772

Nov. 18 2011 12:01PM P10

Respectfully submitted,

ANDERSON & ANDERSON, LLP

BY: 

P. ANDREW ANDERSON

Attorney for Defendant

211 York Street, NE

Aiken, South Carolina 29801

(803) 648-6000

July 30, 2010.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,)

-vs-)

MICHAEL WATSON)

Defendant.)

ORDER REGARDING MOTION
 FOR RECONSIDERATION

Case Nos.: 2007-GS-41-551, 552, & 553

FILED
 2010 AUG 12 AM 10:00
 CLERK OF COURT
 SALUDA CO. SC.

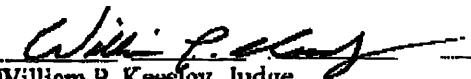
The defendant has filed a motion for reconsideration of sentence. Rule 29(a), SCRCrP, provides that the court, in its discretion, may decide the motion based on briefs without oral argument. The court has elected to determine the issue on written submissions.

Written submissions are not required by the non-moving party, but will be considered. The moving party may choose to rely upon what has already been filed or may supplement it.

The defendant and the State may file with the Clerk of Court's office written briefs and any supporting affidavits or documentation by 5:00P.M. on Monday, August 16, 2010. Each side shall then have an opportunity to file reply briefs until 5:00 P.M. on Monday, August 23, 2010. A copy of any documents filed by the prosecutor/probation agent, defense counsel, or any self-represented defendant must immediately be forwarded to the undersigned judge and to opposing counsel or any opposing self-represented defendant. The copies to the judge shall be sent by mail to Post Office Box 10, Edgefield, South Carolina 29824, and the attorneys must send a copy by email to wkeesleyj@sccourts.org and wkeesleylc@sccourts.org.

AND IT IS SO ORDERED.

August 5, 2010


 William P. Keesley, Judge

FROM :

FAX NO. :8644453772

Nov. 18 2011 12:00PM P2

FILED

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF SALUDA 2010 SEP -1 AM 9:24
 STATE OF SOUTH CAROLINA)
) CLERK OF COURT
) SALUDA CO. S.C.
 -vs-)
)
 MICHAEL WATSON,)
) Case Numbers 2007-GS-41-00551,
) 2007-GS-41-00552, and 2007-GS-41-00553
 Defendant.)

The defendant has moved for the court to reconsider and reduce the 30-year sentence imposed upon him. The motion is denied.

WPK #1

The parties were advised that the motion would be decided on written submissions pursuant to Rule 29(a), SCRCrP. A memorandum was submitted from defense counsel dated August 13, 2010. The court had established a timetable to allow the State the ability to respond to the submissions of the defense and for the defense to file any reply brief that it deemed necessary. Nothing has been received from the State.

Mr. Watson had a jury trial on charges of murder and firearm violations. The jury convicted the defendant of the lesser-included offense of voluntary manslaughter. A 30-year sentence was imposed on the manslaughter conviction and a 5-year sentence was given on the firearms charge, running concurrently.

In his brief, the defendant refers to an informal conference that the court held with the attorneys in October 2009. It was held at counsel's request. The court does not completely agree with defense counsel's recitation or interpretation of the court's analysis of the case in October or after the trial of the case. If the court indicated that it would be comfortable imposing a sentence of 25 years on a voluntary manslaughter plea

in October 2009, without knowing all the facts of the case or having the benefit of sitting through the trial, defense counsel knew full well that the court was not setting the sentence and the court always places a caveat that, after hearing the presentation in open court, if the court feels that it must exceed the time previously discussed, it will announce that fact and let the defendant withdraw his guilty plea. Moreover, the court is very careful never to punish someone for exercising his right to a jury trial. At the time of sentencing here, the court had only a vague recollection of the October 2009 discussion and no recall of the possible sentence that may have been imposed at that time. The court does not negotiate sentences with the attorneys or defendants.

WAL #2

All of the issues in mitigation that were raised in the brief were made known to the court prior to the imposition of sentence, except the assertion that three of the jurors were seen crying after they left the courthouse and the speculation that some of the jurors were upset with the sentence. As the attorneys know very well, it is the court's function to impose the sentence and the jury's decision to decide the facts. Different people demonstrate emotion in different ways and react to momentous decisions differently. The jurors were told at the outset of the post-sentencing meeting that the court cannot comment on any jury's verdict. No comments were made about the decision. The court told the jurors the sentence that was imposed. No juror demonstrated emotion at that time or expressed any outrage over the sentence. Even if the court were to accept the speculation as to why the jurors were acting as they were post-trial, the court does not try to fashion sentences that please all the jurors or that please the litigants on either side of the case. The jury's verdict was supported by the evidence. The court imposes sentences that it feels are warranted under the circumstances. Others have the right to disagree with

the sentences imposed, and the court respects that right. It does not, however, yield its function to those who disagree. The brief states that the sentence imposed was not "fair and just." The court disagrees. Mr. Watson made a conscious decision to ride around with a loaded shotgun at the ready. He stopped the vehicle he was driving when he could have driven away (or he could have avoided that location altogether). He shot a young man in the face and killed him. The court appreciates the dedication that defense counsel has towards his client and his seemingly complete acceptance of his client's version of what happened. The court does not believe the situation to have been exactly as portrayed by the defendant.

This leads into what the court considers to be a very troubling portion of the defense's brief. The brief reads, in part, beginning on page 2 and continuing onto page 3, as follows:

*WPA
#3*

It is very disappointing that the Court would give the Defendant the maximum sentence after all of these proceedings and after the jury must have seriously considered self defense. Again, the jury seemed to be giving Defendant a favorable result by finding him guilty of manslaughter rather than murder. The Court then takes that favorable result and, essentially, makes it as bad as possible. Why would the Court do this? Clearly, this sentence sends a message that the State can be as difficult and aggressive as they like with nothing to lose and the Defendant will be punished as harshly as possible if he is convicted of anything in a trial. This is most unfortunate.

If this is an assertion of bias on the part of the court towards the State, the court does not believe that such an assertion is warranted. If this is an assertion that the court believes that the jury did not consider every issue seriously (including self-defense), then the court does not accept that proposition. The court had no intention of sending and does not believe that it did send the message asserted in this section of the brief. The court strenuously disagrees that it did so in this case or any other.

With regard to the actual issues that existed in the case, the court stood ready and attempted in good faith to rule on every issue raised, regardless of what it was based upon. But, the court was frequently provided arguments that the rulings should somehow be based upon the defense's feelings of frustration or disappointment. Many of the pretrial motions included those arguments. The post-trial motion now recites it. The court understands those feelings, but a ruling has to be based on some legal or procedural principle.

*WPA
HJ*

What the court attempted to do was to give the parties a fair trial. When the defense wanted the option of the lesser-included offense, the court gave it. The court gave a self-defense charge, incorporating aspects of the castle doctrine at the defendant's request, and fully expected self-defense to be seriously considered by the jury. That does not mean that the court believed that the defendant acted in self-defense. Seemingly, the jury properly applied the law when it rejected self-defense. When the defendant was found guilty, the court determined that it should impose a sentence of 30 years. Others may find that excessive or overly harsh, and they have every right to feel that way. But, if any message was intended, it was not the one that the defense believes came from the bench. Instead, the message would be that having young people riding around with loaded shotguns (perhaps sawed-off shotguns) at the ready to shoot and kill other kids with whom they have had prior difficulties is not going to be tolerated.

The court finds no basis upon which to modify the sentence. The motion is denied.

THEREFORE, IT IS ORDERED that the motion to alter or amend the sentence is denied.

FROM :

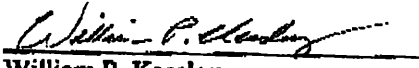
FAX NO. :8644453772

Nov. 18 2011 12:01PM P6

613

AND IT IS SO ORDERED.

August 31, 2010


William P. Keesley
Judge

#5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Michael D. Watson #342010
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014 JUL 8 AM 8:42 THE COURT OF COMMON PLEAS

CLERK OF COURT
SALUDA CO. S.C.

2014-CP-41-144

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention SCDC; McCormick C.I. 386 Redemption Way
2. Name and location of Court which imposed sentence General Sessions, Saluda County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07-GS-41-551; 07-GS-41-552; 07-GS-41-553
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 29, 2010/ 30 yrs.; 5yrs. concurrent; time served. August 6th 2007
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (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. S.C. Court of Appeals
- ii. Direct Appeal- Saluda County
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Respectfully denied (Appeal; on April 5, 2012
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. On April 5, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel See
Supporting Memorandum
- (b) Prosecutor Misconduct [Please see support
Memorandum]
- (c) _____

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

- (a) See Supporting Memorandum
- (b) " See Supporting Memorandum
- (c) N/A

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
- (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. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/a
- ii. N/A
- iii. N/A
- iv. N/A
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. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
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) P.C.R. Proper Remedy
- (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? no

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. Mr. P. Andrew; Anderson & Anderson, LLP 211 York Street, NE Aiken S.C. 29801
- ii. Ms. Katherine Hudgins; South Carolina Commission on Indigent Defense; Division of Appellant Defense; P.O. Box 11589 Columbia S.C. 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial; Reconsideration of Sentence
- ii. Direct Appeal
- iii. _____

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

Resentencing under Solicitor's offer

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

No

STATE OF SOUTH CAROLINA)

County of Saluda)

VERIFICATION

I, ^{Michael Watson}, 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.

Michael Watson

SWORN to and subscribed before me this 02
day of July, 2014.

Jeff Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Michael Watson, 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.

Michael Watson
Applicant

SWORN or affirmed to and subscribed before me this

02 day of July, 2014.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

State of South Carolina

County S A L U D A

In the Court of Common Pleas

C.A. NO:

2014-CP-41-144Michael D. Watson #342010
Applicant,

v.

State of South Carolina
Respondent.APPLICATION FOR POST-
CONVICTION RELIEF

ABOVE CAPTIONED APPLICANT (Watson) moves to concisely outline facts supporting grounds within conjoined application for Post-Conviction Relief. (APCR).

- I -

Number 1D(a) APCR

(I.) Watson's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsels failure to prepare and argue a viable self-defense argument/defense for said Applicant.

11(a). Trial counsel was well aware of Watson's stance of self-defense from initial discovery and where he stated to detectives that he acted in self-defense. He should have then proceeded, after further investigation and study of facts, to develop a defense tailored around his clients admission and description of events. However, Watson's trial counsel stated that he didn't know what defense to argue because of a forensic page that he received approximately one month prior to trial. Tr. p.62. He then relaxed his efforts further by implying that the solicitor's offer of manslaughter be placed 'back on the table', as to say that he was looking toward settling for less than a plea, or conviction of self-defense from the very beginning, Tr. p.84, See Strickland v. Washington, supra; Cobbs v. State, 408 S.E. 2d 223 (S.C. 1991); Holman v. State, 674 S.E. 2d 171

(S.C. 2009); Brightman v. State, 520 S.E. 2d 614 (S.C. 1999); Battle v. State, 409 S.E. 2d 400 (S.C. 1991); Stone v. State, 363 S.E. 2d 903 (S.C.1988). The altercation that led up to the fatal shooting and subsequent dying of victim were definitely contributing factors to Watson having a loaded shotgun to protect himself from threats of physical harm and/or loss of life. Had it not been for these run-ins, there would not have been a reason to carry a shotgun. During one incident where a rock was thrown and struck the vehicle Watson was riding in along with others, a gun fired from the same, therefore equipping Watson with knowledge of victim's possession and/or potential to access a firearm- albeit, his associates or himself. Furthermore, when Watson was in his cousin's yard, the victim along with others walked back and forth taunting him and making threats towards him. Testimony states, that victim even entered the yard and sat on Watson's car- practically urging him to react in some manner. Testimony also states that Watson's vehicle was completely stopped and assailants approached from the front of his car speaking the words, "shoot now." Having to make a split second decision after hearing the voice of victim that had shot a gun on one occasion, (or had been with those that did), and had made threats to him on another occasion. Watson reacted out of fear for his life, not ordinary reasoning. He felt cornered, trapped, and in imminent danger of losing his life. He then sped off to avoid any further trouble from those approaching his vehicle in a menacing manner. He felt like if he didn't shoot first that he would be shot or worse, killed himself. Trial counsel was made aware of these facts well in advance of trial, yet he never made any earnest attempt to prepare for self-defense charge. See State v. Frazier, 401 S.C. 224, 736 S.E. 2d 301; State v. Belcher, 385 S.C. 597, 685 S.E. 2d 802; State v. Dickey, 394 S.C. at 499, 716 S.E.2d at 101.

- II -

Number 10(b) APCR.

(I.) Watson right to due process of law as guaranteed by the Fifth, and Fourth Amendment to the United States Constitution and South Carolina law was violated by trial court and prosecutors' misconduct repeatedly mentioning the terms "sawed-off" in referring to the weapon used when there was no supporting evidence.

11(b). Prosecutor, along with court, did incriminate Watson by stating he had a sawed-off shotgun, using hearsay testimony to demonize the Applicant, in turn causing the jury to be influenced to view him in a negative light. Conclusive or otherwise tangible evidence as it pertains to the actual weapon itself was never produced. Even forensics/ballistics could not determine the size of the shotgun through its rigorous and expert testing.

The prosecuting attorney's argument to the jury was undignified and assertions calculated to mislead the jury. See Berger v. United States, 295 U.S. 78, 55 S.Ct. 629 U.S. 1935. A trial Judge refrain from any comment that tends to indicate to the jury his opinion on the credibility of witnesses, the weight of the evidence, or the guilt of the accused. This hearsay had a direct effect towards the judges sentencing of Watson as stated in order modification of sentence, clearly creating prejudice to the fundamental fairness to Watson's conviction and subsequent sentencing. See Order denying Modification of Sentence (Judge William P. Keesley).

State of South Carolina

County of S A L U D A

In the Court of Common Pleas

Mr. Michael D. Watson #342010
Applicant,

v.

State of South Carolina
Respondent,

2014-CP-41-144

CERTIFICATE OF SERVICE

I, Michael Duran Watson, applicant in the above titled action, do hereby certify that the enclosed is being deposited in the United States mail, postage prepaid. addressed to:

The Saluda County Clerk of Court
Doris B. Holmes
100 East Church Street, Suite 6
Saluda, South Carolina 29138

2014 JUL -8 AM 8:49
CLERK OF COURT
SALUDA CO. S.C.

FILED

Sworn to before me this

23 day of June 2014Jefferson
Notary Public for South CarolinaMy commission expires: 12-16-2019

s/ Michael Watson
Micheal D. Watson #342010
McCormick Corr. Inst.
386 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA)
 COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS)
 2014-CP-41-144)

MICHAEL D. WATSON)
 SCDC # 342010,)

Applicant,)

vs.)

**AMENDED APPLICATION
 FOR POST CONVICTION RELIEF**

STATE OF SOUTH CAROLINA,)
Defendant.)

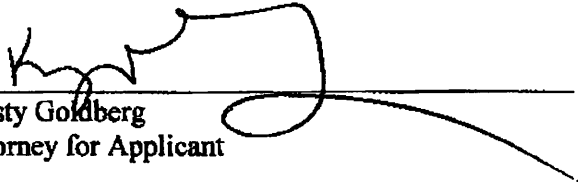
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 SALUDA CO. S.C.

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – counsel was ineffective for telling the jury that he didn't know if they would put up a defense or not and that "nobody's going to win this case." Page 148 and 149 and 152.
- (b) Ineffective assistance of trial counsel – counsel was ineffective for failing to object when witnesses testified that the Defendant was in possession of a sawed-off shotgun. Page 164 and 226 and 283.
- (c) Ineffective assistance of trial counsel – counsel was ineffective for questioning Octavious Thomas about a prior unrelated incident where Thomas testified that the Defendant pulled a sawed-off shotgun on Thomas' cousin the week before. Page 217.
- (d) Ineffective assistance of trial counsel – counsel was ineffective for failing to object and request a mistrial when Dr. Ross testified differently than the information originally provided to Defense counsel in discovery. Page 279 - 280
- (e) Ineffective assistance of trial counsel – counsel failed to sufficiently argue and present testimony providing a basis for the self-defense argument.

- (f) Ineffective assistance of trial counsel – counsel was ineffective for allowing jury to see and know about shackles on the Applicant. Page 452-454, 461.



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Columbia, South Carolina

This 13th day of October, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SALUDA	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Michael D. Watson,	)	C.A. No. 2014-CP-41-0144
S.C.D.C. No. 342010	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 8, 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 Saluda County Clerk of Court. The Applicant was indicted at the October 2007 term of the Saluda County Grand Jury for murder (2007-GS-41-0552); possession of a weapon during a violent crime (2007-Gs-41-0553); and pointing and presenting a firearm (2007-GS-41-0551). The Applicant was represented by Paul Andrew Anderson, Esquire. From July 26-29, 2010, the Applicant proceeded to trial by jury before the Honorable William P. Keesley. The Applicant was convicted of the lesser included offense of voluntary manslaughter, and convicted as indicted on both weapons charges. Judge Keesley sentenced the Applicant to thirty (30) years for voluntary manslaughter, and five years on each weapons charge. The sentences were set to run concurrently with one another.

A timely notice of appeal was filed and perfected on Applicant's behalf by Kathrine H. Hudgins, Esquire. The South Carolina Court of Appeals Affirmed Applicant's convictions in a

written opinion. State v. Michael Watson, 2013-UP-276 (Filed June 26, 2013). The Remittitur was returned on July 15, 2013.

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

II.

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

1. Ineffective assistance of counsel; specifically
 - a. Failure to prepare and argue a viable self-defense argument
2. Prosecutor misconduct; specifically
 - a. Prosecutor repeatedly mentioned the term "sawed-off" in referring to the weapon used when there was no supporting evidence.

III.

Applicant's first allegation is one of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant next alleges prosecutorial misconduct. Prosecutorial misconduct is not an appropriate issue for post-conviction relief. Rather, it is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v.

Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as a ground for relief. Therefore, Respondent request that this allegation be dismissed pursuant to Rule 12(b)(6), SCRCF.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §§17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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April 28th, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

MICHAEL D. WATSON, #342010)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

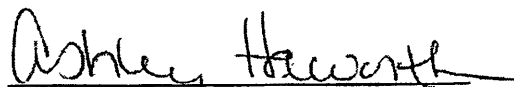
2014-CP-41-0144

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Mrs. Kristy Grafton Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 303
Columbia, SC 29201**

DATED this 1ST day of May, 2015.



Ashley Haworth, Legal Assistant
For Respondent

1 State of South Carolina Court of Common Pleas
2 County of Saluda Eleventh Judicial Circuit
3
4 Michael Watson,) Transcript of Record
5 Applicant,)
6 vs.) 2014-CP-41-00144
7 State of South Carolina,)
8 Defendant.)

9
10 November 8, 2016
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable R. Keith Kelly, Judge
14

15 A P P E A R A N C E S:

16 Kristy G. Goldberg, Esquire
17 On behalf of the Applicant

18 Johanna C. Valenzuela, Esquire
19 On behalf of the State of South Carolina
20

21 Stacy S. Johnson
22 Circuit Court Reporter
23
24
25

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10 E X H I B I T S

11 **NO EXHIBITS WERE INTRODUCED**

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1 (Whereupon, the following proceedings were held on
2 November 8, 2016, beginning at 3:14 PM.)

3 **THE COURT:** This is Watson.

4 **MS. VALENZUELA:** This is Watson. I'm not sure where
5 my witness went, but I know that we can start without him.
6 May it please the Court?

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

8 **MS. VALENZUELA:** Your Honor, this is the case of
9 Michael Watson versus the State of South Carolina. Case
10 Number 2014-CP-41-0144. Mr. Watson filed the application
11 that brings us to the hearing today in July of 2014.
12 Mr. Watson is currently still incarcerated in the
13 Department of Corrections. This is a Saluda County case.
14 He was indicted by the Saluda County Grand Jury in the
15 October 2007 term for murder, possession of a weapon during
16 a violent crime, and pointing and presenting a firearm.
17 The Applicant was represented by Mr. Andrew Anderson and
18 he proceeded to trial on July 26th of 2010. That trial
19 lasted approximately three days. That trial was before a
20 jury and the Honorable -- and Judge Keesley. The judge --
21 excuse me, the Applicant ended up being convicted of a
22 lesser included offense of voluntary manslaughter and he
23 was convicted as indicted on the weapons charges, on the
24 pointing and presenting and possession of a weapon. Judge
25 Keesley ended up sentencing the Applicant to thirty years

1 for voluntary manslaughter and five years each on the
2 weapons charges and all of those charges were to run --
3 all of those sentences were to be run concurrent. A
4 timely notice of appeal was filed on behalf of the
5 Applicant and the Court of Appeals ended up confirming
6 the Applicant's convictions and that remittitur was sent
7 on July 15th of 2013.

8 The Applicant is represented by Ms. Kristy Goldberg.
9 Both the Applicant and Ms. Goldberg are present in the
10 courtroom and Ms. Goldberg filed timely amendments to the
11 application and made the following allegations. One, that
12 counsel was ineffective for telling the jury that he didn't
13 know if they would put up a defense or not and that, quote,
14 nobody's gonna win this case, and she included specific
15 citations to the transcript at Page 148, 149 and 152.

16 The second allegation is that counsel was ineffective
17 for failing to object when a witness testified that the
18 Defendant was in possession of a sawed-off shotgun. And,
19 again, she included specific citations at Page 164, 226
20 and 283.

21 The third allegation was that counsel was ineffective
22 for questioning Octavius Thomas, one of the witnesses,
23 about a prior unrelated incident when -- where Thomas
24 testified that the Defendant pulled a sawed-off shotgun on
25 Thomas's cousin the week before. That's at Page 217 in

1 the citation provided by counsel.

2 The fourth allegation is that counsel was ineffective
3 for failing to object and request a mistrial when Dr. Ross
4 testified differently than the information originally
5 provided to defense counsel in discovery, and citations to
6 the transcript were provided for that on Page 279 to 280.

7 The fifth allegation is that counsel failed to
8 sufficiently argue and present testimony providing a basis
9 for the self-defense argument.

10 And then last, that counsel was ineffective for
11 allowing the jury to see and know about shackles on the
12 Applicant, and transcript citation pages are Page 452 to
13 454 and Page 461.

14 **THE COURT:** Okay.

15 **MS. GOLDBERG:** Thank you, Your Honor. May it please
16 the Court? That is all stated correctly. At this time
17 I'd call Michael Watson as my first witness.

18 (Whereupon, Michael Watson was duly sworn by the Clerk
19 of Court.)

20 MICHAEL WATSON,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. GOLDBERG:

24 Q. State your -- your full name, please.

25 A. Michael Watson.

- 1 Q. Do you have a middle name?
- 2 A. Michael Duran Watson.
- 3 Q. Thank you, sir. Spell your last name.
- 4 A. W-A-T-S-O-N.
- 5 Q. All right, Michael. Where are you housed right now?
- 6 A. McCormick Correctional Institution.
- 7 Q. And what sentence are you serving?
- 8 A. Thirty years for voluntary manslaughter.
- 9 Q. That was after a trial, correct?
- 10 A. Yes.
- 11 Q. Was -- what charge were you facing at trial?
- 12 A. Murder.
- 13 Q. So the jury found you guilty of a lesser offense?
- 14 A. Yes.
- 15 Q. But your sentence was thirty years?
- 16 A. Yes.
- 17 Q. How long did you sit in jail waiting on trial?
- 18 A. From August till June -- it was like almost
- 19 three years.
- 20 Q. August of what year?
- 21 A. 2007.
- 22 Q. And then your trial was three years later?
- 23 A. Yes.
- 24 Q. Was Andy Anderson always your attorney?
- 25 A. Yes.

1 Q. Did your family hire him?

2 A. Yes.

3 Q. When -- and while you were in jail, did he come and
4 meet with you and discuss the case with you?

5 A. Yes.

6 Q. You worked together to prepare your case for trial?

7 A. Yes.

8 Q. When you went to court that day that trial began, did
9 you know that there was gonna be a trial?

10 A. Yeah, he told me that we was getting ready, you know,
11 but it wasn't for sure yet.

12 Q. Okay. You weren't sure if it would be a trial or not?

13 A. Yeah.

14 Q. Were there any plea offers in your case?

15 A. Yes, I was offered twenty-five years for manslaughter.

16 Q. To voluntary manslaughter?

17 A. Yes.

18 Q. That was before your trial started?

19 A. Yes.

20 Q. Was that like weeks or months before your trial
21 started or --

22 A. Probably like a few weeks.

23 Q. A few weeks?

24 **THE COURT:** Sir, if you could speak up just a little
25 bit.

1 **THE WITNESS:** Okay.

2 **THE COURT:** Thank you.

3 BY MS. GOLDBERG:

4 Q. Why didn't you take that offer?

5 A. Because I felt like with all the circumstances that
6 was going on at the time that a jury would not find me
7 guilty of what they wanted me to plead to.

8 Q. Of voluntary?

9 A. Yes.

10 Q. When you went to court, were you ready and willing
11 to go ahead and have your trial or did you want it be
12 continued for longer date?

13 A. I was pretty much ready.

14 Q. You were ready?

15 A. (Nods head.)

16 Q. What was your defense?

17 A. It really wasn't one to be honest with you. We just
18 wanted the witnesses to state exactly what happened that
19 night.

20 Q. And what is it that happened -- well, let me back up.
21 From the time you were arrested, you never -- you never
22 denied the shooting --

23 A. Correct.

24 Q. -- that is a part of this case, correct?

25 A. Correct.

1 Q. Okay. At all times you've always admitted that you
2 were the one who shot the individual?

3 A. Correct.

4 Q. Why did you -- what was your standpoint on why you
5 were not guilty?

6 A. Because it was self-defense. They was gonna shoot
7 me.

8 Q. Okay. So that was your defense, that it was
9 self-defense?

10 A. Yes.

11 Q. And you told investigators that at the beginning,
12 correct?

13 A. Yes.

14 Q. When you met with Andy Anderson, did you meet with him
15 several times in jail?

16 A. Yes, he came to see me.

17 Q. He always knew that this was your defense, right?

18 A. Yes.

19 Q. And you testified at trial?

20 A. Yes, I did.

21 Q. Had you ever really been in trouble before?

22 A. No.

23 Q. And you told the jury your own story of why you acted
24 in self-defense?

25 A. Yes.

1 Q. Can you briefly give the Court a description of why
2 that was? What happened?

3 A. Like?

4 Q. Can you summarize what your testimony was?

5 A. Okay. It was that I had went to Saluda Terrace to
6 take my child's mother's sister some money, but she had
7 just moved over there so I did not know the apartment that
8 she lived in. I stopped to ask some guys that was standing
9 out there, but before it went to any of that I heard
10 someone say "shoot now" and I shot first.

11 Q. How many guys?

12 A. It was five or six.

13 Q. They approached your car?

14 A. Yes.

15 Q. And one of them yelled something about shoot?

16 A. Someone said "shoot now", yeah.

17 Q. Did that story ever change from --

18 A. No.

19 Q. -- from the day you were arrested until the day you
20 testified at trial --

21 A. No.

22 Q. -- till today?

23 A. No, it has not changed.

24 Q. Okay. Did your -- when you and your lawyer met in the
25 jail and discussed trial coming up and how to prepare for

1 trial, did you discuss the possibility of you testifying
2 like you did?

3 A. Yeah, he -- he kept saying that it was in my best
4 interest for me to testify.

5 Q. Okay. Was there ever a time that the two of you
6 weren't sure if you were gonna testify or not?

7 A. No, he just always kept saying that I should testify.

8 Q. And you were okay with that?

9 A. Yeah, because I thought that I should testify.

10 Q. So you were always planning to testify?

11 A. (Nods head.)

12 Q. Now when you testified in trial, you testified about
13 a prior incident between you and some of these same boys;
14 is that right?

15 A. That's correct.

16 Q. And when did that incident take place?

17 A. It was probably like a week before that incident of
18 what I'm locked up for happened.

19 Q. Okay. And what happened on that occasion?

20 A. That it was something between -- I need some names
21 because --

22 Q. At the ball park.

23 A. Okay. You're talking about between Andrew Chandler,
24 Warren Chandler, Octavius Thomas and some more of their
25 friends.

1 Q. Okay. Let me break this down for the Court. Andrew
2 Chandler is the individual who actually is deceased?

3 A. He's deceased.

4 Q. Warren Chandler is his brother?

5 A. Correct.

6 Q. And a witness to the charge you were on trial for?

7 A. Correct.

8 Q. And the other name? Octavius?

9 A. Octavius. He's another witness.

10 Q. He was another witness?

11 A. Correct.

12 Q. Okay. They were at the ball park a week prior?

13 A. Yes.

14 Q. And what happened?

15 A. Okay. We was leaving the ball park and they threw a
16 rock at one of the cars that was leaving out of the ball
17 park and I was in the car they throw a rock at, so when we
18 got out to find out why they threw the rock Warren Chandler
19 pulled a gun out and he shot, so.

20 Q. Warren Chandler pulled out a gun and what?

21 A. And he shot.

22 Q. He shot?

23 A. Yeah.

24 Q. And what direction did he shoot in?

25 A. He shot towards us.

1 Q. He shot towards you?

2 A. (Nods head.)

3 Q. Now during your trial, Warren Chandler admitted that
4 he had been arrested for discharging a firearm in city
5 limits as a result of that incident, right?

6 A. Correct.

7 Q. And he admitted that he plead guilty to it?

8 A. Correct.

9 **MS. GOLDBERG:** I beg the Court's indulgence.

10 BY MS. GOLDBERG:

11 Q. During the testimony that you gave at the jury trial,
12 your lawyer asked you about this incident, right?

13 A. Yes.

14 Q. Did it ever come out that the Chandler boys actually
15 shot at you?

16 A. No, it was more like he say that he just shot, but
17 never shot at us. It didn't come out in trial like that.

18 Q. It didn't come out in trial that day?

19 A. (Shakes head.)

20 Q. Why didn't you say that?

21 A. I really wasn't ever asked like just to go into
22 detail. It was more like he wasn't charged -- not really
23 charged. I was waiting for the detective on the case to
24 really elaborate because he was the one that stopped us
25 that day.

1 Q. You just weren't asked the right questions?

2 A. That's correct.

3 Q. So the jury never knew that you were actually shot at
4 by these boys the week before?

5 A. No, they just know they shot a gun.

6 Q. What issues or concerns do you have with the fact that
7 witnesses mentioned a sawed-off shotgun in your trial on
8 several occasions?

9 A. It just paints a very evil picture.

10 Q. You believe it's inherently prejudicial?

11 A. Yes, I do.

12 Q. Did you and your lawyer have any conversations about
13 trying to keep that out or asking the judge to limit that
14 testimony?

15 A. (Nods head.)

16 Q. You also had an issue with Dr. Ross's testimony; is
17 that correct?

18 A. Yes.

19 Q. And what is -- who is Dr. Ross?

20 A. She was the -- the one that did the gun residue,
21 correct?

22 Q. Okay. She testified regarding some -- was she the
23 doctor who did the autopsy or did she only talk about gun
24 residue?

25 A. I think Ross is the one that did the GSR report.

1 Q. What was your issue with her testimony?

2 A. That before we went to trial there was no gunshot
3 residue found anywhere and then when we go to trial she say
4 that she found some gunshot residue.

5 Q. Other than what we've discussed already today, is
6 there anything else your lawyer should have done to explain
7 to the jury how and why you acted in self-defense or have
8 we covered the self-defense issue?

9 A. I think we're --

10 **THE COURT REPORTER:** You're gonna have to repeat that.

11 **THE COURT:** I can't hear that.

12 **THE WITNESS:** Okay. I said I think we're all right.

13 BY MS. GOLDBERG:

14 Q. Okay. Now when you testified during your jury trial,
15 what kind of clothes were you wearing? Were you dressed
16 like you are today?

17 A. No, ma'am.

18 Q. What were you dressed like?

19 A. I had on just regular clothes. Like some slacks and
20 a button-up.

21 Q. Okay. Did your family or anybody bring that for you?

22 A. Yes.

23 Q. When you walked from the table you were sitting at to
24 the witness stand, did you have leg shackles on?

25 A. Yes.

1 Q. Did you do that walk in front of the jury?

2 A. I can't recall.

3 Q. Do you remember your lawyer pointing out to the jury
4 that you had shackles on?

5 A. I remember -- I remember him saying that he -- he put
6 in a motion for the judge so I wouldn't have to wear the
7 shackles because they would lock up when I got up from the
8 table to walk to the stand, but I don't remember if the
9 jury was there when I got up.

10 Q. Okay.

11 **MS. GOLDBERG:** All right. No further questions.

12 **MS. VALENZUELA:** May it please the Court?

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

14 CROSS-EXAMINATION

15 BY MS. VALENZUELA:

16 Q. Okay. Mr. Watson, let's go through this a little bit.
17 I want to go back to when you had the opportunity to tell
18 the jury about the incident in the park the week before you
19 shot the victim, okay?

20 A. Okay.

21 Q. You said that you would have said to the jury that
22 Chandler shot at you and that it wasn't just a discharging
23 of the weapon, that he shot at you, if only you had been
24 asked the right question?

25 A. Correct.

1 Q. Okay. And so looking at Page 463, Line 11 -- actually
2 let me make sure -- Line 12. And actually I'm just gonna
3 approach you.

4 **MS. VALENZUELA:** Your Honor, may I approach the
5 witness?

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

7 BY MS. VALENZUELA:

8 Q. Mr. Watson, do you see that this is the trial
9 transcript for your trial?

10 A. Correct.

11 Q. So I'm looking at Page 463 and I'm actually gonna
12 start right here at Line 9. Your attorney says, All right.
13 Then the thing at the park was about two weeks? Line 11,
14 No, it was -- yes, it was about two weeks. That's you
15 answering?

16 A. Yes.

17 Q. Okay. And then your attorney says, All right. So
18 what happened at the park?

19 A. Okay.

20 Q. Okay. So if what happened at the park is not a good
21 question to get you to say that you were shot at in the
22 park, what question did you need to answer that?

23 A. He should have pretty much just came out and asked
24 me did Chandler shoot at me so the jury would know the
25 individual personally who he was talking about instead of

1 what happened at the park because it was too broad of a
2 scope of a question.

3 Q. Okay. And you understand that there are rules as to
4 what you can ask on a direct examination and what you can
5 ask when you're cross-examining someone?

6 A. No, I didn't know that.

7 Q. Okay. When you were talking about the GSR issue,
8 that's the issue that you have in terms of your attorney
9 not objecting to it, that there was an expert witness who
10 testified as to the gunshot residue who gave different
11 information at the trial?

12 A. Right. The -- the motion that we got before the trial
13 and the -- whatever she was reading off of during the trial
14 was not the same.

15 Q. And that's -- and so your allegation is limited to the
16 gunshot residue expert?

17 A. Well, the paper as a whole. If we would have had a
18 copy of whatever she was reading off of.

19 Q. As to gunshot residue?

20 A. Correct, for the wound.

21 Q. Okay. And you mentioned that you remember your
22 attorney raising the issue of the leg shackles to the
23 judge?

24 A. Yes.

25 Q. And those leg shackles were actually hidden underneath

- 1 your -- your street pants, right?
- 2 A. Yes.
- 3 Q. They're not visible if you're sitting -- or even if
- 4 you're walking, they're not visible to the eye?
- 5 A. If I walk, you would know I had something on my legs.
- 6 Q. From seeing them --
- 7 A. Yes.
- 8 Q. -- or from hearing them?
- 9 A. From the walk, the way I walk with them.
- 10 Q. So it affects the way that you walk, but you can't see
- 11 them through your pants?
- 12 A. Correct.
- 13 Q. Okay. And do you remember your attorney raising that
- 14 issue as a comfort issue, that it was uncomfortable for
- 15 you?
- 16 A. He said something about it, but he never did renew it
- 17 again when it was time for me to get up and walk in front
- 18 of the jury.
- 19 Q. Okay. And do you remember that your attorney when you
- 20 got on the stand, did he try to emphasize how young you
- 21 were at the time?
- 22 A. Yes, he did.
- 23 Q. That you were twenty-one at the time?
- 24 A. Yes, at the time of being in trial.
- 25 Q. And when he was first introducing -- when he was first

1 doing that direct and introducing you to the jury, did he
2 actually spend time talking about each of your family
3 members who were in the courtroom?

4 A. Yeah, he tried to make me feel comfortable when he did
5 that.

6 Q. And there was one point where the Court had to tell
7 y'all to stop talking to each other, you and the family
8 members?

9 A. Because they were trying to spell someone's name.

10 Q. Yes. You remember that?

11 A. Yes.

12 Q. And then do you remember that was in the same
13 introduction to the jury that that's when your attorney
14 brought up the shackles --

15 A. Okay.

16 Q. -- that were on your legs?

17 A. Yes. If that's what you're saying now, then I had to
18 walk in front of the jury.

19 Q. Okay. Do you remember him bringing that up?

20 A. Okay. I remember that.

21 Q. And then do you remember him asking you if you had
22 been in any trouble at all since you had been in jail?

23 A. Yes.

24 Q. And you were able to tell the jury that you hadn't
25 been?

1 A. Correct.

2 Q. And that they weren't very comfortable?

3 A. Correct.

4 **MS. VALENZUELA:** Your Honor, if I could just have one
5 moment. Nothing further, Your Honor.

6 **THE COURT:** Okay. Anything else?

7 **MS. GOLDBERG:** Nothing for this witness, Your Honor.

8 **THE COURT:** Okay. Sir, you may step down. Please be
9 very careful.

10 (Witness excused.)

11 **MS. GOLDBERG:** At this time the Applicant would call
12 Andy Anderson.

13 (Whereupon, P. Andrew Anderson was duly sworn by the
14 Clerk of Court.)

15 P. ANDREW ANDERSON,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. GOLDBERG:

19 Q. Good afternoon.

20 A. Hello.

21 Q. All right. Mr. Anderson, briefly go ahead and give
22 the Court your history with criminal defense work again.

23 A. Okay. I'm P. Andrew Anderson, A-N-D-E-R-S-O-N.

24 Q. Thank you.

25 A. In 1991, I graduated law school and was a public

1 defender for two years. I went on to be a prosecutor for
2 six years ball park; two with the solicitor's office, four
3 with the City of Aiken, and then I went into private
4 practice after that.

5 Q. Were you retained by Michael Watson's family?

6 A. Yes.

7 Q. And do you recall approximately when you were
8 retained?

9 A. Can I look at my notes?

10 Q. Yes.

11 A. I believe September of 2007.

12 Q. And trial was in 2010, correct?

13 A. Yes, ma'am.

14 Q. You represented Mr. Watson that entire time?

15 A. Yes.

16 Q. All right. And visited him -- with him at the jail
17 and reviewed the case with him during that time?

18 A. Yes, ma'am.

19 Q. Okay. Just for the Court's assistance, can you kind
20 of just provide the facts of this case?

21 A. Sure. Michael had had the incident at the park in
22 Saluda and he felt in danger from the other boys, so he
23 started riding around with a shotgun in his car. About
24 two weeks before this incident, there was an allegation
25 that he had pointed that shotgun at two other boys that

1 were connected to the other side of the park and on the
2 occasion of our incident, like Michael said, he was there
3 at the apartment complex innocently and they call it
4 making the loop, I think, and he went -- looped through
5 the parking lot and came back around and stopped to ask
6 these boys if they had seen the person he was looking for,
7 I guess, and somebody did say "shoot now" and he panicked
8 and he shot out the passenger window of his car.

9 Q. When Michael was arrested back in 2007, was that his
10 story then?

11 A. Yeah, pretty much.

12 Q. Did it ever change?

13 A. No.

14 Q. Did y'all anticipate that he would testify in his own
15 defense?

16 A. I assumed he would.

17 Q. Are there any reasons that he wouldn't?

18 A. If we didn't put up a defense.

19 Q. So -- and why wouldn't you have put up a defense?

20 A. I don't know. I don't think you ever really know
21 how a trial's gonna go until it starts and so that's why
22 I said in the opening that I didn't know if we were gonna
23 put up a defense or not just to keep our options open. I
24 didn't want to make a promise to the jury and then renege
25 on the promise, but I guess deep down I assumed he was

1 gonna testify. He's a nice kid. I mean, I think the jury
2 would want to hear from him.

3 Q. What was the defense at trial?

4 A. It was kind of a hodgepodge, but it was self-defense.
5 I thought the self-defense was kind of weak because nobody
6 saw the Chandler boy with a gun and then trying to get the
7 manslaughter because there's some other evidence that --
8 we couldn't really say that we didn't do it. The question
9 was why did we do it.

10 Q. When you went to court originally for this -- the
11 trial to begin, you started -- did you start out requesting
12 a continuance in this case?

13 A. You know, my memory is, and in reading back through
14 the transcript, I didn't really want a continuance because
15 he had been in jail so long and I felt like if we got a
16 continuance it would just give the State more time to work
17 on the case, too, so really I -- I wasn't shooting for a
18 continuance. And I think there was a time when Judge
19 Keesley kind of brought that up, but we didn't -- I don't
20 believe we tried to get a continuance.

21 Q. Now -- and you've -- you've recently made yourself
22 familiar with the transcript?

23 A. I have. I mean, it's long and I do tend to run on in
24 some places, but, yes.

25 Q. Okay. During -- in the transcript there are pre-trial

1 hearings where you made a motion to exclude testimony of a
2 witness named Jared Coleman and Tobias Daniels because you
3 understood they would testify about this allegation you
4 just mentioned that a week before this incident Mr. Watson
5 pointed a sawed-off shotgun at them?

6 A. That's correct.

7 Q. Are you familiar with that?

8 A. And he actually got charged with that.

9 Q. It was pending at the time of trial?

10 A. Correct.

11 Q. And you were successful on that motion -- or you were
12 partially?

13 A. I think the judge said he'd allow them to mention --
14 didn't the judge say he would allow them to mention the
15 gun, but they couldn't talk about him pointing it at them?
16 I think that's how the judge ruled on that.

17 Q. During that hearing the State confirmed they wanted
18 to offer the testimony solely to show that he was in the
19 possession of the gun and the car the week before, so
20 that's what you're saying. That it ended up being they
21 could just testify that he was in possession, not that he
22 did anything illegal with the gun, correct?

23 A. Correct.

24 Q. During that hearing, the solicitor conceded that he
25 did not think the State should be able to present evidence

1 of a sawed-off shotgun because that would likely be
2 prejudicial as possession of such would be a crime. Do
3 you recall that?

4 A. Yes, I think so. That sounds right.

5 Q. Later when Jared Watson -- or Jared Coleman testified,
6 the solicitor specifically asked him if the weapon was
7 short and Coleman said yes. Do you recall that?

8 **MS. GOLDBERG:** And for the Court's reference, that's
9 on Page 283.

10 **THE WITNESS:** Can I look at that?

11 BY MS. VALENZUELA:

12 Q. You can. Yeah, go ahead and look at that to see if
13 there's any testimony. Page -- yeah, Page 283.

14 A. Yes, I see it.

15 Q. By the solicitor's own statements in the pre-trial
16 hearing, that was prejudicial information, correct?

17 A. Yeah, I think -- I think reading it, it goes along
18 with the sawed-off shotgun idea. I agree with you.

19 Q. Any particular reason you didn't object when that
20 information was elicited by the solicitor?

21 A. I don't -- I honestly don't know.

22 Q. During the trial there were other occasions where
23 witnesses mentioned that the weapon used in this actual
24 incident was a sawed-off shotgun. Did you ever consider
25 asking the Court to limit that testimony?

1 A. I don't remember, but I don't -- I don't think so. I
2 think some of the people said it was a sawed-off shotgun,
3 some of the people just said shotgun. I think it was
4 inconsistent if memory serves correctly. You know, in my
5 mind it was like a small -- smaller gun, so I didn't think
6 it was a sawed-off shotgun.

7 Q. Would you agree that there's a negative connotation to
8 the phrase "sawed off shotgun"?

9 A. I think hearing Michael today say that, but, yeah, I
10 mean, I think so.

11 Q. Would you agree that you should have asked the Court
12 to limit any such references to possibly just a shorter
13 gun, something that would stay away from such a prejudicial
14 term?

15 A. I think it probably would have been smarter. I
16 honestly don't know why -- like right there where you
17 pointed out, I don't know. I mean, I think in hindsight
18 it wouldn't have probably hurt anything.

19 **MS. GOLDBERG:** I beg the Court's indulgence. Thank
20 you.

21 **BY MS. GOLDBERG:**

22 Q. If you'll look with me on Page 317. That's not the
23 right page. I'm sorry. Hold on. 217. This is your
24 cross-examination of Octavius Thomas and if you'll recall
25 he was one of the witnesses that you brought up in the

1 pre-trial hearing; is that right?

2 A. Isn't he the kinfolk of one of those boys from the
3 previous incident?

4 Q. He may be, but I believe in the pre-trial -- in the
5 transcript of the pre-trial testimony, he was one of the
6 ones where you asked the Court to limit his testimony to
7 the fact that Watson had been in possession of a weapon in
8 a car a week before without further emphasis on what he
9 did with the weapon or that it was sawed-off. Is that --
10 do you understand what I'm --

11 A. I'm not sure if that's the actual alleged victim or a
12 family member of the alleged victim. I'm not saying it's
13 one or the other. I'm not sure which he is.

14 Q. In your cross-examination here, you asked him about
15 the incident a week prior. Do you see that?

16 A. Yes.

17 **THE COURT:** I'm sorry, can you give me a line number?

18 **MS. GOLDBERG:** I can. Page 217 starting with Line 12.

19 BY MS. GOLDBERG:

20 Q. Do you remember having a little incident with Michael
21 a little earlier than this at Jarvis's house? And you
22 essentially asked him -- you go on to say were there words
23 exchanged. Well, basically you asked him what happened and
24 Mr. Thomas was able to elaborate on the bottom of that page
25 exactly what happened. Why did you ask him those questions

1 if you wanted to keep that testimony out?

2 A. Yeah, I don't -- I don't think this is the guy that
3 he's alleged to have pointed the shotgun at. I might be
4 wrong. I think I was talking about another incident and
5 then he kind of blurted that out, which wasn't good when he
6 did such, and I think we had a -- I think we had a bench
7 conference there and I was trying to kind of gloss over
8 that because that wasn't -- that wasn't what I was after
9 for sure. But if I'm wrong on the identity --

10 Q. Okay. You thought -- you thought it was a different
11 witness?

12 A. Well, I'm saying right now I'm thinking --

13 Q. Right.

14 A. -- that this guy was not one of the two boys that
15 Michael was alleged to have pointed the shotgun at. I
16 think this was kinfolk to one of those two boys.

17 Q. So you didn't expect him to get into this?

18 A. I did not expect that. That was not good.

19 Q. Understood.

20 **MS. VALENZUELA:** Can I just clarify? We're on
21 Page 216?

22 **MS. GOLDBERG:** Yes. Or 217.

23 **THE COURT:** 217, Line 24 maybe.

24 **MS. GOLDBERG:** Yes.

25 **MS. VALENZUELA:** Okay.

1 **MS. GOLDBERG:** I beg the Court's indulgence.

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

3 BY MS. GOLDBERG:

4 Q. In your opening statement, you told them that nobody
5 was gonna win this case.

6 A. I did.

7 Q. But Mr. Watson's defense was always self-defense,
8 correct?

9 A. Yeah.

10 Q. And self-defense is an absolute defense to his
11 charges?

12 A. Correct.

13 Q. If he was acting in self-defense, and you believed him
14 that he was acting in self-defense, he would be legally
15 entitled to act the way he did because there would be no
16 other option. Would you agree with that?

17 A. Yes.

18 Q. So if the jury believed that he acted in self-defense,
19 there would be a winner to this case?

20 A. We -- we would get a not guilty verdict if they
21 believed it.

22 Q. Why did you tell the jury from the beginning that you
23 didn't believe there was a winner in this case?

24 A. My thing was, what I was trying to do, Michael's a
25 nice young man, an extremely nice family. Andrew's family

1 was there, they were upset, our family was upset, and
2 Michael had sat in jail for three years, so I was trying
3 to say that no matter how this thing plays out it's a
4 tragedy and, you know, reading it on -- in the black and
5 white, it doesn't -- I see, what you're saying, but that's
6 not what I was -- that's not what I was meaning.

7 Q. Okay.

8 A. Because there was gonna be no winner in that case. I
9 mean, he couldn't get that time back and the other boy's
10 dead.

11 Q. Okay. Dr. Janice Ross was a witness in this case. Do
12 you recall who she is?

13 A. She was Dr. Sexton's, who does -- did all the
14 autopsies, assistant and then she took over as the head
15 medical examiner.

16 Q. If you could look with me on Page 279 and 280. Just
17 kind of read through those pages first.

18 A. Yes, I was looking at that when you were --

19 Q. Okay.

20 A. -- earlier.

21 Q. All right. It appears the discovery that you
22 received prior to trial said that the victim did have
23 evidence of soot on him indicating the shot was from close
24 range. That information you had prior to trial was good
25 for your defense because it would have shown the victim

1 was approaching the car; is that right?

2 A. Yes.

3 Q. Okay. Now during the trial she testified that the
4 report was incorrect and that the evidence as you
5 understood it was not accurate?

6 A. Correct.

7 Q. Did you -- did this hurt your self-defense case?

8 A. I mean, it wasn't helpful and I -- I brought it up
9 pre-trial and it was -- it was relatively new information.

10 Q. You knew about this pre-trial, this particular issue?

11 A. I believe. Am I getting the issues confused?

12 Q. Well, to be fair, it's possible. There was an issue
13 where there was a late delivered gunshot residue document
14 that you received.

15 A. Okay.

16 Q. I think that's what you were talking about pre-trial.

17 A. Okay.

18 Q. This is from the doctor who did the autopsy who's
19 testifying about the presence of soot or not.

20 A. I think this was the document that we were surprised
21 with.

22 Q. Okay. Did you request a mistrial when that
23 information was different?

24 A. I did not.

25 Q. Any particular reason why not?

1 A. No.

2 Q. Did you know going into trial about the incident
3 between Michael and the Chandler boys that happened at the
4 ball park a couple of weeks prior?

5 A. Yes.

6 Q. Did you ever have an incident report or any documents
7 related to that?

8 A. I don't remember. I can peruse my file. I honestly
9 don't remember.

10 Q. What did you understand or what was your -- what's
11 your memory of what your understanding was about what
12 happened that day?

13 A. I thought that when they were at the park somebody
14 shot at them.

15 Q. You thought somebody shot at Michael?

16 A. Uh-huh. It was Michael or his people. He was there
17 with several other guys and my memory is that somebody shot
18 at them.

19 Q. When we were going over it on Michael's examination,
20 did you look at that part of the transcript where he
21 testified?

22 A. I did not.

23 Q. Okay. If you could go ahead now and look at Page 463
24 through 464. Now you begin to ask Michael on these
25 transcript pages what happened at the park and he starts

1 walking you through it line by line as the events go; is
2 that right? Is that fair?

3 A. I'm -- can you repeat the question?

4 Q. Yes. You start out generally by asking Michael what
5 happened at the park, correct?

6 A. Right.

7 Q. Okay. And he starts at the beginning telling you the
8 time when this occurred and that he was fixing to leave
9 and he goes on chronologically with what happened from
10 there, correct?

11 A. Correct.

12 Q. And then finally he gets to the point where he said
13 Warren Chandler pulled a gun, correct?

14 A. Yes.

15 Q. All right. And that's when you direct him to identify
16 that Mr. Chandler was one of the witnesses from earlier?

17 A. Right.

18 Q. In there -- or did you ever elicit from him that
19 information that Mr. Chandler actually shot the gun at him?

20 A. I did not.

21 Q. Is there any reason why not?

22 A. I don't know.

23 Q. You agree that's an important fact for his
24 self-defense defense?

25 A. Well, I think it could be. I mean, I'm reading this

1 and this actually looked like it went pretty decent, so I
2 don't know. I don't know why I didn't ask about the
3 gunshot.

4 Q. Prior to trial you did move and request that the
5 Court allow your client to not be shackled because the leg
6 restraints were uncomfortable. Do you recall that?

7 A. Yes.

8 Q. Okay. And the record reflects that that's the only
9 argument you presented at that time. Would you disagree
10 with that characterization?

11 A. You know, I'd never seen these before on anybody and
12 I was a little surprised when they had them on Michael and
13 I really thought Judge Keesley would let them be removed
14 during the trial and I just remember being surprised that
15 he wouldn't take them off, but I don't remember exactly
16 what I said.

17 Q. Okay.

18 A. But they -- it wasn't that they were uncomfortable.
19 I found them to be -- probably they would have been
20 distracting.

21 Q. If you would look with me on Page 452.

22 A. Okay.

23 Q. And to make it easy, just the very last line on that
24 page and then it goes through 454. There's a conversation
25 with the Court. You can read over that.

1 A. Yes.

2 Q. Okay. During this colloquy, you and the judge
3 discussed whether or not provisions should be made so that
4 the jury could not see Mr. Watson's leg shackles, correct?

5 A. Correct.

6 Q. And he -- the judge gave you the opportunity to make
7 it so that the jury would not see those shackles?

8 A. Correct.

9 Q. Okay. And you told the judge that you didn't think it
10 mattered; is that right? Or did you not elaborate?

11 A. Well, I mean, in all candor it pissed me off when they
12 wouldn't take them off at the beginning of the trial and he
13 had to have those things on the whole time and he is such a
14 nice kid, at that point since he had to wear them, I kind
15 of thought it might make the jury feel sorry for him that
16 he had that stuff on, so it was a conscious decision there
17 that I -- I thought it would help.

18 Q. Because it might make the jury feel sorry for him?

19 A. I mean, they were -- yes, they -- they did not look
20 very comfortable.

21 Q. And so that would be why on Page 461 -- on the bottom
22 of Page 460 during your direct of Mr. Watson you ask him
23 about the shackles on his legs in front of the jury?

24 A. That's probably why. And he did walk in front of the
25 jury with them on and, you know, I figured throughout the

1 trial they probably saw him looking weird with his legs
2 in the courtroom, so, yes.

3 MS. GOLDBERG: I beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 MS. GOLDBERG: No further questions for this witness.

6 MS. VALENZUELA: May it please the Court?

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. VALENZUELA:

10 Q. Okay. Mr. Anderson, I want to go back and clarify
11 the Defendant's claim was that -- the Applicant's claim
12 was that at one point he had been at a cousin's house and
13 there had been a series of like maybe four or five guys
14 who had come up and harassed them at that point. This was
15 like weeks before the shooting.

16 A. This was at the ball field.

17 Q. Well, there were -- there were two different incidents
18 though, right?

19 A. Now I don't remember.

20 Q. Okay. Do you remember having one of the witnesses
21 who testified was one of your client's cousins? Do you
22 remember that?

23 A. Vaguely.

24 Q. Hold on. I'll pull it up for you. Okay. Page 445.
25 Okay. So Page 446, I think this is when Jarvis starts

1 testifying -- Jarvis Stevens starts testifying.

2 A. Correct.

3 Q. Okay. How are you related to the Defendant? He's a
4 first cousin. Was there an incident --

5 **MS. VALENZUELA:** And this is Line 18 to 19, Your
6 Honor, on Page 446.

7 BY MS. VALENZUELA:

8 Q. Was there an incident that happened at your house,
9 and then you asked Jarvis to explain that incident to you,
10 right?

11 A. Correct.

12 Q. And then on Page 447, Line 2, there was some guys
13 walking up and down the street antagonizing him, you know,
14 trying to get him to fight or whatever, right?

15 A. Right. Yes.

16 Q. That's in there, too?

17 A. Yes.

18 Q. And then you go through a series of questions where
19 you were trying to say would that make you scared, you
20 know, was the Defendant scared, and you get Jarvis to say
21 that these are black males around the same age of the
22 Defendant, correct?

23 A. Correct.

24 Q. And I'm gonna skip quickly, but the five men that your
25 client claimed were walking up to his car that he ended up

1 shooting the shotgun at, those were five men who were black
2 males around the same age of your client?

3 A. That's correct.

4 Q. Okay. So this is -- so you're -- you're eliciting
5 testimony from your client's cousin saying hey, wasn't
6 there a similar incident where, you know, four or five
7 black men walk up to my client and are intimidating him
8 in your yard, and so this is a separate incident from the
9 park?

10 A. That's correct.

11 Q. Okay. And this is all put in front of the jury to
12 support your self-defense argument?

13 A. Yes, ma'am.

14 Q. Okay. And then separately there was the incident
15 involving the park where there was someone who shot there?

16 A. Correct.

17 Q. Okay. So you've got the incident at the cousin's
18 house and you've got an incident at the park and then it
19 comes to the actual events that led to your client being
20 put on trial is your client is in a car and he drives into
21 a series of apartments where these five men have been
22 hanging out in the woods together?

23 A. I mean, they were probably there selling weed.

24 Q. And I think the testimony, and you can correct me, the
25 testimony was that they were there smoking weed, right?

1 They didn't admit at trial that they were selling weed,
2 they said that they were there to smoke it?

3 A. Right.

4 Q. Okay. So he drives down and turns around in the -- in
5 the street and comes back and there's some dispute about
6 whether your client stopped the car or whether he slowed
7 down a little bit, but either way there's testimony that
8 the car comes back around?

9 A. Correct.

10 Q. And then you elicited testimony from at least two to
11 three different State's witnesses that at least two or
12 three of the men who were outside of that car heard one of
13 the men -- one of their group say "shoot now", right?

14 A. That's correct.

15 Q. And you put that in front of the jury?

16 A. That's correct.

17 Q. And then you had your client testify to the same
18 thing, that he heard someone say "shoot now"?

19 A. Correct.

20 Q. Okay. But then you had two other State's witnesses
21 saying I never heard "shoot now"?

22 A. Correct.

23 Q. And then every single one of the State's witnesses
24 were consistent that there were no guns on them at all that
25 night?

1 A. That's what they said.

2 Q. That's what -- that's what they said in front of the
3 jury. And then your client has a shotgun that he admits
4 that he's riding around in the car with where the -- the
5 butt of the shotgun is just kind of sticking out where the
6 passenger seat is?

7 A. That's correct.

8 Q. And that he pulls up the shotgun and he fires and then
9 it ends up killing the victim?

10 A. That's right.

11 Q. And some of the men who were involved the night that
12 the victim is killed were also present at the park incident
13 that happened the week before?

14 A. I think so, yes.

15 Q. Okay.

16 A. And I just remember one of the guys actually chased
17 Michael down.

18 Q. Are you talking about the park or afterwards?

19 A. After the shooting.

20 Q. Okay. And then that -- you're right. So the series
21 continues and then afterwards, after your client shoots his
22 shotgun out of the car, you elicited testimony that where
23 those -- some of the men who were there left to go -- to go
24 find your client?

25 A. Yes.

1 Q. And, in fact, that's how your client ended up arrested
2 is because I think a sister or a family member called to
3 report that these men were coming to find her brother and
4 -- and your client was scared?

5 A. I don't remember that. I just remember he went home
6 and he waited for the police.

7 Q. Okay. The -- and did you, in fact, elicit testimony
8 from one of those witnesses who said that they were gonna
9 go find the Defendant and you asked them what exactly they
10 were planning to do with your client if they had found him
11 that night and they said -- and I'm just trying to find
12 this so I don't misstate it -- that they were looking for
13 the Defendant so they could shoot him back?

14 A. That sounds right.

15 Q. Okay.

16 **MS. VALENZUELA:** And that's on Page 178, Your Honor.

17 **BY MS. VALENZUELA:**

18 Q. Okay. So now we've got all these different incidents
19 laid out and you were able to bring up those incidents
20 either through a witness or your own client's testimony
21 before the jury, the incident at the cousin's house, the
22 incident at the park, the incident that night and then the
23 incident -- how the -- what happened after the shooting?

24 A. That's correct.

25 Q. Okay. When you started it -- and I think you

1 described this earlier, when you started your opening
2 argument to everybody and said nobody's gonna win this case
3 and you might not put up a defense, you were trying to
4 leave your options open to see how testimony was gonna
5 develop throughout the trial?

6 A. Technically, yes. Technically, yeah, I was.

7 Q. And you were trying to explain to the jury that you
8 understood that this was a sad situation because regardless
9 of what happened one person had sat in jail for three years
10 no matter what, and that was your client, and I think you
11 told that to the jury?

12 A. Uh-huh.

13 Q. And then there was a man -- a young man who was dead?

14 A. That's correct.

15 Q. Okay. And when you started trial there was one
16 important witness, the only witness from the night of the
17 shooting who had -- who had done a written statement who
18 was not present in the courtroom, correct? Do you remember
19 that?

20 A. Actually I don't.

21 Q. Do you remember, Page 320, arguing that the State was
22 intentionally not calling Butler because he's the only one
23 who said "shoot now" while going towards the Defendant?

24 A. I'm trying to look for --

25 Q. And that's 302 starting at Line 16.

1 A. I did say that.

2 Q. Okay. And then it turns out that y'all are trying
3 to find this -- y'all -- you had subpoenaed this witness,
4 this Jared Butler, and you had been in touch with the
5 grandmother, I believe, but nobody had heard from him and
6 he wasn't present. He was the only person who was at the
7 scene of the crime that night who was not present to
8 testify at that time.

9 A. That sounds right.

10 Q. All right. But then y'all did end up finding him and
11 he did end up testifying later. Excuse me. And I think
12 that's at Page 393. On Page 393, do you see that we did
13 end up having him come in?

14 A. Yeah, that's right.

15 Q. Okay. And so when you started that trial, you didn't
16 yet know which witnesses would be able to come in that the
17 jury would be able to see. At least one witness you didn't
18 know if you would be able to get them there. Not based on
19 your own -- and I'm sorry, I keep filling in, but let me
20 let you answer.

21 A. I mean, I don't know. I -- I mean, I don't think --
22 I don't think I can answer that right now. I don't know.
23 I mean, there's a witness list and he was a critical
24 witness, but you never know who's actually gonna come, who
25 they're gonna call.

1 Q. Okay. And I think that's my point in terms of why
2 you would want to leave it open for the jury.

3 A. Okay.

4 Q. And so your opening argument and what you said was
5 strategic in terms of how you chose to phrase the things
6 that you said?

7 A. Yeah, I mean, it was such a hard case because he's
8 such a nice, nice young man and there's no question that,
9 you know, he did it. The question is, is there a defense
10 or is there a lesser included and, you know, I wanted that
11 jury to like him as much as I did and I wanted the jury to
12 like his family and I didn't want to come out being, you
13 know, real nasty because I didn't think that would be nice,
14 so I don't know. That was my -- that was my idea, yes.

15 Q. And so one of your strategies as you just said was to
16 try to get a lesser included if self-defense wasn't gonna
17 work and your strategy worked, the jury did end up coming
18 back with a lesser included.

19 A. Yes, but then we got the thirty year sentence.

20 Q. Well, and understanding the frustration with the
21 sentencing judge that y'all might have, the jury ended up,
22 you know, coming through in terms of your strategy that you
23 had started off in the trial?

24 A. Yes. I mean, I wasn't -- the "shoot now" was a big
25 deal and -- but, you know, I was worried about the

1 self-defense defense working.

2 Q. And I'm gonna get to the self-defense. I want to move
3 to the second allegation where it was you failed to object
4 when the Defendant -- when there was testimony that the
5 Defendant was in possession of a sawed-off shotgun and you
6 raised this in your pre-trial -- one of your pre-trial
7 motions was to address that the State planned to call these
8 two witnesses to talk about the shooting and that you, you
9 know, didn't want them to mention the sawed-off shotgun.

10 A. Correct. Well, I think -- I think they were able to
11 mention the shotgun.

12 Q. But not call it a sawed-off shotgun?

13 A. Okay. I don't remember that.

14 Q. Okay. Okay. So on Page 72 there was some discussion
15 about not presenting evidence of a sawed-off shotgun and
16 then on Page 75 you bring up to both the Court and the
17 State that it's tricky relying on juvenile witnesses to
18 remember what they should and should not say on the stand?

19 A. I remember that, yeah.

20 Q. Okay. And so then we get started with trial. Trial
21 is going and it's moving and there's a reference to a
22 sawed-off shotgun and I think that's on Page 164.

23 A. I just remember some people said it was sawed-off and
24 other people said it was not.

25 Q. Okay. And so did you have a strategy related to why

1 -- or do you have a strategy related to when you decide to
2 object? Have you found in your practice that sometimes
3 objecting to something can call the jury's attention to
4 that issue more than if you were not to object?

5 A. I mean, that -- that is true. I honestly don't have
6 a recollection as to when Ms. Goldberg was questioning me
7 on why I didn't object to that. I honestly don't know.

8 Q. Well, if you turn to Page 217, which is another
9 reference to the sawed-off shotgun, on Page 217 at the
10 bottom, and you're questioning the witness at this point,
11 and then he starts to tell you -- it was something about
12 he had pulled out the sawed-off shotgun and you went over
13 this with Ms. Goldberg -- Ms. Goldberg went over it, so
14 you go there and then you turn to Page 218 and you say
15 Your Honor, and then the judge says hold on and then he
16 turns to you and you say never mind, that's fine.

17 A. Yeah, I think at that point, you know, the bell's
18 already rung.

19 Q. Okay. So tell me about the strategy related to the
20 bell is already rung and when you decide to make objections
21 and not make objections.

22 A. Well, clearly reading this, and this -- I wonder if
23 we had a bench conference there, maybe we didn't, but just
24 reading this it looks like I figured it's done, there's
25 nothing I can do about it being out there, so I just kind

1 of went along and tried to gloss it over.

2 Q. Okay. And you did make several objections at other
3 points preserving issues that you felt like these were
4 issues that did need to be preserved on appeal, right, at
5 other parts in the trial?

6 A. Sure. I made other objections.

7 Q. And then let's turn to Page 318 and we're still on the
8 shotgun discussion, the sawed-off shotgun discussion, and
9 this is you on cross here, and I'm looking at Line 8, and
10 you're asking isn't it true that you interviewed those five
11 witnesses and none of them said anything about sawed-off
12 shotguns; isn't that correct? And then the officer said
13 no, sir, none of them mentioned a sawed-off shotgun, okay?

14 A. Yes.

15 Q. And so you had had witnesses testify in front of the
16 jury who at times used the word "sawed off shotgun" and
17 then you had the State's police officer -- investigator
18 and you got him to admit that no, at no time had these
19 five witnesses ever used the term "sawed off shotgun",
20 right?

21 A. That looks to be correct.

22 Q. So you were helping to impeach testimony that had been
23 presented to the jury by other witnesses?

24 A. It looks that way.

25 Q. Okay. So we discussed the strategy that you used for

1 your opening argument and the strategy that you used in
2 terms of when you decided to make objections or what to
3 bring up in terms of the sawed-off shotgun. And now moving
4 on to the other allegation about Octavius Thomas, and I
5 think we touched on that already, so -- and the strategy
6 related to that Page 217 discussion where he starts to talk
7 to you about the sawed-off shotgun you say Your Honor and
8 then you say never mind and you decide not to make the
9 objection.

10 Let's turn to the discussion about Dr. Ross and the
11 gunshot residue. And I think that this is genuinely a
12 little bit worth kind of slowing down and talking about
13 the two different issues because you did make a pre-trial
14 motion at the beginning of this case where you asked the
15 judge -- you moved to exclude evidence based on the fact
16 that the State -- in a three-year-old case the State had
17 only given you several pieces of information three weeks
18 before you were going to trial, right?

19 A. That's correct.

20 Q. And that's at Page 63 and you say, you know, for
21 example, there's a gunshot residue finding and then looking
22 at Page 62 -- and I'll give you the line. It's Line 19.
23 And then you go from there, and what we had received there
24 was no positive GSR, we were just informed that that was a
25 typo and there was GSR found on the passenger door.

1 A. That's correct.

2 Q. Okay. And then it goes on and says that actually --
3 and it's in the transcript for the Court to see, that the
4 GSR on the door wasn't that it was a typo, it's that the
5 SLED reporter forgot to include the very last page of her
6 report. Do you remember that?

7 A. That sound right. That's right.

8 Q. So you had one GSR issue, which was this is a
9 multipage report, they forgot to give the State the last
10 page, the State finds out three weeks before trial that
11 there is one last missing page, and they go on to say they
12 call you, they bring this to your attention before trial,
13 correct?

14 A. That sounds right.

15 Q. Okay. But then when you turn to that Page 279
16 reference with Dr. Ross, then we get to the not GSR, but
17 the shot residue in terms of the soot and there being a
18 typo in the document?

19 A. That's correct. That's the typo.

20 Q. So you -- so before trial -- at least three weeks
21 before trial, you had the corrected information?

22 A. You know, I thought I did, but then I -- when
23 Ms. Goldberg was questioning me, I'm not --

24 Q. Well, so help --

25 A. Show me --

1 Q. -- talk me through this because -- tell me an attorney
2 who's gonna start pre-trial and he's gonna tell the judge
3 I am infuriated that the State just gave me this three
4 weeks ago, I am asking you to exclude evidence, this is
5 completely unacceptable and you bring it up multiple times,
6 and then you get to a point where if someone was surprising
7 you with something that was completely unexpected that you
8 just wouldn't have said anything, you would have just
9 continued with your questioning?

10 A. I wouldn't think that. I would not think that. I
11 don't think there's anything in the transcript that hashes
12 that out and I was looking in my file at the report from
13 Dr. Ross, and my wife and I had actually gone to Newberry
14 and talked to Dr. Sexton like way back before the trial.
15 I can't imagine -- I mean, what you say is -- sounds right.
16 I just can't put my fingers on it.

17 Q. Okay. So -- but we do know that at one point in
18 pre-trial you bring up I'm not getting evidence and at
19 least one of those is gunshot-related and there's a typo
20 and then later on you cross someone in front of the jury
21 and you're trying to make the point hey, wait a minute,
22 didn't you give me a report that said that there was
23 gunshot residue and she says I gave you the corrected
24 report and you go okay, but that doesn't dispute the fact
25 that earlier you gave me a different report, and then you

1 keep going with that?

2 A. That rings true, yes.

3 Q. Okay. And if you had never seen that report, what
4 do you think your practice would have been if you were
5 suddenly learning about a corrected report in the middle
6 of trial?

7 A. I mean, I guess I would have done the same thing as
8 with the other one.

9 Q. Which is?

10 A. Move to object. I would have objected to it.

11 Q. Okay. So -- and the last allegation is that you
12 failed to sufficiently argue and present testimony
13 regarding the self-defense argument. We talked about how
14 you presented testimony from the cousin related to the
15 circumstance where your client was in his cousin's yard
16 and four men matching the same description as the men
17 surrounding the victim had also come in and harassed him
18 at that point, right?

19 A. Correct.

20 Q. And then you were also able to get out that your
21 client had had a separate altercation with some of the
22 same men at a park where a gun was involved, correct?

23 A. That's correct.

24 Q. And you got the witness in that case to admit that he
25 had pled guilty to firing the -- I believe it was firing

1 in city limits, a gun conviction for firing in the city
2 limits?

3 A. That sounds about right.

4 Q. But the witness refused to admit that he -- he claimed
5 that he had not had a gun and he had just plead guilty for
6 whatever reason?

7 A. Okay.

8 Q. And you did that and that's on Page -- it should be
9 right around 195.

10 **MS. VALENZUELA:** It will be between 195 and 202,
11 Your Honor, just so that we can move things along.

12 BY MS. VALENZUELA:

13 Q. And you do all of that in front of the jury. You're
14 able to get that information out?

15 A. Correct.

16 Q. And you're able to get witnesses who were there the
17 night of the crime who were friends with the victim to say
18 that they heard the same person, right, Duke, which is
19 Octavius Thomas, they all say that Duke was the one -- and
20 if not Duke, that at least it came from somewhere in Duke's
21 direction said "shoot now"?

22 A. Right.

23 Q. Okay. Now Duke on the stand denies that he says that,
24 but you were able to elicit testimony that confirmed and
25 matched up with what your client had been saying to the

1 police the whole time, which is that this was self-defense?

2 A. Right.

3 Q. Okay. And then you get your client up there to say
4 the same thing. I heard someone say "shoot now" and that's
5 why I ended up shooting?

6 A. Correct.

7 Q. And then you spend a lot of time talking to the
8 State's witnesses and using photographs of the State to
9 your own benefit to show the jury that the victim fell in
10 a way where his hand was shaped in a very unusual way and
11 there was like a lighter in his hand, correct?

12 A. His hand really did look like a gun had been in it and
13 been taken away.

14 Q. And when you say that, is it because that they were
15 -- like his hand was extended and like certain of his
16 fingers were curled around as if -- almost as if when he
17 died his hand was curled around something and that
18 something had been removed?

19 A. That's the way it looked to me.

20 Q. And were you able to put that theory of the case out
21 in front of the jury through several different witnesses?

22 A. I think so. I mean, we brought it up. The picture
23 was in evidence.

24 Q. Were you also able to use photographs that the State
25 had as to how the victim looked in terms of his pants

1 pocket being halfway pulled out?

2 A. Yes.

3 Q. And you got witnesses to say that that is unusual,
4 but it -- it look like a halfway pulled out pocket when he
5 fell to the ground?

6 A. That's correct.

7 Q. Okay. You were also able to challenge the lighting
8 in the area of where the crime occurred?

9 A. It was dark.

10 Q. And you started your story to the jury about how I'm
11 gonna tell you about how the police officers did not want
12 to believe my client's story about self-defense and they
13 did not investigate it, and that's the story that you laid
14 out throughout your trial where you asked the officers and
15 did you investigate your self-defense theory, did you do
16 anything with the men who had been there near the victim,
17 and you were able to get testimony out there that the
18 officers had not done the investigation that they should
19 have into your client's story of self-defense?

20 A. That's true.

21 Q. And then you emphasize that again in your closing
22 argument?

23 A. That's true.

24 Q. You were able to elicit from your client that he was
25 in fear that night, that he was in fear of those men?

1 A. That's true.

2 Q. That he was in fear the week leading up because of
3 the events that happened in the park?

4 A. That's true.

5 Q. That he was in fear based on the behavior that
6 happened in his cousin's yard?

7 A. Yes.

8 Q. Okay. I know you're disappointed with the sentencing
9 judge's sentence in this case, but looking at the work that
10 you did in this trial and everything that we talked about,
11 do you think that you gave your client the representation
12 that he needed in terms of a self-defense argument that
13 ended up getting him a lesser included charge?

14 A. I mean, the end result wasn't great. I did my best.
15 I really cared about him and his family. I want -- I
16 wish he had a different result. I did my best. I am --
17 I've got some anxiety about this Dr. Ross report. I'm
18 embarrassed to say I cannot remember when I got that
19 corrected version. But, I mean, I did the best I could.
20 I was very disappointed with what happened in the end. I
21 was very disappointed with the result and with the thirty
22 year sentence.

23 Q. But you were not disappointed with your representation
24 of your client that day in the trial?

25 A. I mean, I would have rather got a not guilty verdict,

1 so, I mean, I'm disappointed in that.

2 Q. Yes.

3 **MS. VALENZUELA:** Okay. Thank you.

4 (Witness excused.)

5 **THE COURT:** Okay. We're gonna take about fifteen
6 minutes.

7 **MS. GOLDBERG:** Thank you, Your Honor.

8 (Recess taken.)

9 **BAILIFF:** All rise. Court's now in session.

10 **THE COURT:** Thank you.

11 Thank you. Please be seated.

12 Okay.

13 **MS. GOLDBERG:** Your Honor, at this time the Applicant
14 has no further witnesses, only brief argument.

15 **THE COURT:** Okay.

16 **MS. GOLDBERG:** All right. Your Honor, for the record
17 I want to go over the amended application a little bit and
18 make sure that these allegations are clear. Mr. Watson,
19 based on the trial transcript, at all times announced that
20 he had a self-defense defense in this case. He told
21 police officers when he was arrested. That's in the trial
22 transcript. He told his lawyer when they prepared for
23 trial. At all times he believed he was acting in
24 self-defense.

25 As far as Allegation A -- 11-A goes, the argument is

1 that it would just be inherently unreasonable for the
2 lawyer to go up before the jury in opening statements and
3 state that nobody's gonna win and that we don't know if
4 we're gonna put up a defense or not. It's clear to the
5 jury at that point that he doesn't believe Mr. Watson's
6 own statement because if he did he would know from the
7 beginning that Mr. Watson claims he was acting within his
8 legal rights, acting in self-defense. I think that is
9 ineffective and inherently unreasonable and it -- it hurt
10 their case from the very beginning.

11 Now allegations B and C regarding the sawed-off
12 shotgun, I just want to clarify that there's two similar
13 but different situations we have here. One is there was
14 an incident that occurred a week prior to the one
15 Mr. Watson was on trial for where it was alleged that
16 Mr. Watson pointed a sawed-off shotgun at two boys. There
17 was a pre-trial motion in that regard. The solicitor for
18 the State said he did not believe it would be admissible
19 under 403 to mention that a sawed-off shotgun was used in
20 that prior incident because that in itself would be an
21 inadmissible prior bad act because possession of a
22 sawed-off shotgun in itself is a crime as well as pointing
23 one at someone. However, then the State later elicited
24 that very same testimony and defense counsel did not
25 object. That's unreasonable, that's ineffective. That

1 clearly would have prejudiced the case.

2 The other argument regarding a sawed-off shotgun
3 would be regarding this incident itself. The argument
4 that Mr. Watson wants to make is that the term "sawed off
5 shotgun" is inherently prejudicial. It is not necessary
6 for any fact to be proven in this case. Mr. Anderson
7 could have made a motion prior to trial stating that no
8 witness be allowed to use that particular term because of
9 its overly prejudicial nature. That argument was never
10 made by defense counsel and we would argue that it should
11 have been made.

12 Dr. Ross's testimony, everybody's testified as to
13 that. I believe when Your Honor does go back and look over
14 this case, if you look at those pages 279 and 280 you will
15 see that Mr. Anderson is clearly trying to impeach Dr. Ross
16 with her report with the typo in it. It's clear that he
17 did not know that information was incorrect at the time of
18 trial, yet did not raise the issue with the judge, did not
19 request a mistrial. It was a fact that made a difference
20 in this case and we believe that is ineffective.

21 Allegation E, Mr. Anderson testified that he knew the
22 situation that occurred with Mr. Watson and some -- these
23 same boys two weeks prior at the ball park involved one of
24 the boys actually shooting at Mr. Watson. That fact is
25 extremely important because without that the jury hears

1 that there's juveniles talking trash, egging each other on,
2 trying to fight, but nobody ever knew. The jury didn't
3 know that he had actually physically been shot at prior to
4 this incident. That leaving out that fact is a major issue
5 in this case. The jury could have latched onto that issue,
6 it could have made the entire difference on whether they
7 considered this to be self-defense versus a voluntary.

8 And then, finally, Allegation F regarding the
9 shackles. There's a great deal of case law out there that
10 it's very clear. I gonna cite to a United States Supreme
11 Court case, Deck versus Missouri, and the important part
12 is it said the Fifth and Fourteenth amendments prohibit
13 the use of physical restraints visible to the jury absent
14 a trial court determination in the exercise of its
15 discretion that they are justified by a State-specific
16 interest. I think -- I don't think there's any real
17 dispute as to what the law is in that regard. If a court
18 believes that it is for security reasons necessary, they
19 are often allowed on during trial. However, even when
20 that happens courts make provisions so that the jurors do
21 not see those shackles because of the inherent nature of
22 viewing them. The Court gave Mr. Anderson the opportunity
23 in this case and he didn't. And he even brought it out
24 in front of the jury. Mr. Anderson testified that he had
25 a strategy in doing that. We would argue that that

1 strategy is unreasonable by prevailing professional norms.
2 Everybody knows that they are generally referred to or
3 generally seen as extremely prejudicial as they make the
4 individual appear to be more dangerous than they are,
5 appear to have security threats and issues that go along
6 with them, that's unreasonable, and we ask that
7 Mr. Watson's case be overturned for one or all of those
8 reasons.

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

10 **MS. VALENZUELA:** Your Honor, we're aware that you
11 heard the testimony today that covered the different
12 strategic reasons why defense counsel believed that --
13 the decisions he was making as to all of those, how he
14 phrased his opening argument, whether he chose to object
15 or why he decided not to pursue an objection as to the
16 sawed-off shotgun, and we think that those were valid
17 strategic reasons that -- that he proceeded forward with.
18 And we also don't think that there's anything about the
19 statement in the opening argument or the sawed-off shotgun
20 that would have resulted in a completely different result
21 than this verdict, that -- that would have been so
22 prejudicial that the client -- that the Applicant would
23 have gotten a different result and so, therefore, even if
24 this Court were to disagree with us that that strategy
25 wasn't reasonable, we still don't think that the Applicant

1 has met his burden of establishing how he was prejudiced
2 -- how there was undue prejudice caused by that alleged
3 deficiency by counsel as to those issues.

4 Additionally, there was -- you know, the -- the
5 gunshot residue issue was -- was brought up in pre-trial,
6 it was discussed with the Court, and that's part of the
7 transcript that the Court has before it today in terms of
8 how -- how much Mr. Anderson ended up pushing there and he
9 explained to the Court that the reason why he didn't want
10 to continue the case in that situation was because his
11 client had been waiting in prison for three years and he
12 wanted to go ahead and get a conclusion that he was hoping
13 would be favorable to him and he didn't want to give the
14 State additional time to try to build their case against
15 his client.

16 There are numerous references throughout that whole
17 trial of how -- a very effective cross-examination by
18 Mr. Anderson of the State's witnesses and then the
19 witnesses that he himself put up along with his client to
20 help establish self-defense for the jury, but the jury
21 ended up coming back with a lesser included, which was
22 part of the strategy going into it because the client had
23 never said, you know, that he hadn't shot the weapon --
24 excuse me, that he hadn't shot the shotgun. And even at
25 the end of trial the Applicant wasn't able to explain

1 where that shotgun, you know, went and why he drove off
2 immediately after shooting somebody at that moment.

3 And then finally as to the handcuffs -- the leg
4 braces argument, Your Honor -- sorry, I'm tired -- the
5 Applicant testified that those leg shackles were
6 underneath his street clothes. And then the trial
7 transcript does explain different things. There was a
8 pre-trial motion that's part of the record that talks
9 about having those shackles removed because they were
10 uncomfortable and talks about whether -- you know,
11 sometimes you have a skirt, oh, this is unusual that
12 they're under the leg, and then there's the separate part
13 of the transcript that acknowledges that Judge Keesley
14 says hey, okay, your client's about to walk up here,
15 does he want to go ahead and sit in the seat or does he
16 want to walk up here, how do you want to handle this, and
17 then Mr. Anderson specifically said in the -- in the
18 transcript, you can see, where he's like no, that's why I
19 want to leave them on there and then elicits the testimony
20 which you heard Applicant testify to in the same time that
21 he's introducing him to the jury saying aren't you young,
22 you're a twenty-one year old man, isn't this your family
23 here, look at the relationship that you have with your
24 family, aren't those leg shackles uncomfortable, but you
25 haven't given anybody any problem, have you, and he's

1 trying to explain to the jury hey, you know, if these leg
2 shackles that they cannot visually see could have been
3 affecting the jury as to how he moved and how -- you know,
4 how he moved his legs, I just gave them an explanation as
5 to why the Applicant may be have been moving differently,
6 and that was part of Mr. Anderson's testimony in direct
7 when the Applicant's attorney was asking him as to the
8 strategy of doing that.

9 Now, yes, there's case law that says that a court --
10 if a court were to do that without security reasons, and
11 so I would just put to the -- you know, point out to Your
12 Honor that obviously Judge Keesley offered to have those
13 removed before they went on there, but this is not a trial
14 transcript that reflects that there were no security
15 issues at all. In fact, Judge Keesley in the pretrial
16 goes through different reasons why he ends up keeping the
17 leg shackles on. At one point he says in the trial
18 transcript that he heard that people were letting people
19 in the side door and there will be no more of that because
20 he thinks that's a security issue and then at one point he
21 has to tell the bailiff to please stop allowing family
22 members to just walk up to the Applicant and hug him and
23 touch him because he's never observed that in the middle
24 of trial and then you heard the Applicant himself confirm
25 that yes, while he was on the stand Judge Keesley had to

1 say can we please conform to the -- you know, the control
2 of the courtroom and please stop talking to each other
3 here. So certainly there is -- there would have been
4 sufficient reason for -- if Judge Keesley had chosen not
5 to take those off that those would have been supported
6 under a due process argument. And then here you've heard
7 reasons why strategically counsel thought that this was
8 gonna inspire more -- more sympathy from the jury than it
9 was going to prejudice them and that jury did, in fact,
10 come back after hearing that he had shot a man with a
11 shotgun and said that this was manslaughter, pointing and
12 presenting and possession of a weapon. Thank you, Your
13 Honor.

14 **THE COURT:** All right. Let me ask one question here.
15 The shackles we're talking about, are those KUBs? Is that
16 what they have?

17 **MS. VALENZUELA:** I don't --

18 **THE APPLICANT:** There's a whole leg brace thing.

19 **THE COURT:** Yeah, they lock?

20 **DEPUTY:** There's a shackle on this side, one on this
21 side and a chain runs across the bottom.

22 **THE COURT:** Oh, the chain runs across the bottom?

23 **MS. VALENZUELA:** Did you have chains across the
24 bottom?

25 **THE APPLICANT:** There's no chain.

1 **THE COURT:** No, you were wearing -- you were wearing
2 the leg braces that lock in place when you put your leg
3 straight?

4 **THE APPLICANT:** Right.

5 **THE COURT:** Yeah, I've heard them called KUBs.

6 **DEPUTY:** We don't have those here.

7 **THE COURT:** Okay.

8 **DEPUTY:** If it was here, we have the other ones.

9 **THE COURT:** Yeah, but there's no visible chain? It's
10 inside your pants leg and it looks like you might be
11 wearing something -- a brace of some sort --

12 **THE APPLICANT:** Right.

13 **THE COURT:** -- but there's no visible chains dragging
14 on the carpet, right?

15 **THE APPLICANT:** Correct.

16 **THE COURT:** You straighten your leg all the way out
17 and they lock in place and you can't move them?

18 **THE APPLICANT:** Correct.

19 **THE COURT:** Okay. Anything from anybody else?

20 **MS. VALENZUELA:** No, Your Honor.

21 **THE COURT:** Okay. All right. Thank you.

22 (Whereupon, the proceedings were concluded at
23 4:59 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 8th day of November, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

August 15, 2017

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

Michael D. Watson, #342010,

Case No. 2014-CP-41-00144

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes to the Court by way of an application for post-conviction relief (PCR) filed July 8, 2014. Respondent made its return dated May 1, 2015. An evidentiary hearing was held on November 8, 2016. Applicant was present and represented by Kristy Goldberg, Esq. Senior Assistant Deputy Attorney General Johanna C. Valenzuela of the South Carolina Attorney General's Office represented respondent. Applicant and trial counsel P. Andrew Anderson, Esq., testified. The Court had before it records from the Saluda County Clerk of Court and South Carolina Department of Corrections (SCDC), trial transcript, and relevant direct appeal documents.

Following review of testimony presented at the hearing and all other evidence, this Court finds applicant received constitutionally effective assistance of counsel at all stages of the trial, and relief must be denied.

Procedural History

Applicant is presently confined in SCDC pursuant to orders of commitment of the Saluda County Clerk of Court. During the October 2007 term, a Saluda County grand jury indicted Applicant for murder, possession of a weapon during the commission of a violent crime, and pointing and presenting a firearm. (2007-GS-41-0551, -0552, -0553). Applicant proceeded to a

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jury trial on July 26, 2009, and was represented by P. Andrew Anderson, Esq. The jury convicted Applicant of the lesser included offense of voluntary manslaughter and both weapons charges. The Honorable William P. Keesley sentenced Applicant to thirty years imprisonment for voluntary manslaughter and a concurrent five years for each weapons charge. Applicant served and filed a timely notice of appeal.

Assistant Appellate Defender Kathrine H. Hudgins represented Applicant on appeal. Counsel raised two issues on Applicant's behalf:

1. ... whether the trial court erred in denying Watson's motion to reconsider his sentence for voluntary manslaughter...
2. ... whether the trial court erred in refusing to suppress Watson's statement to Officer Cockrell...

State v. Watson, No. 2013-UP-276, 2013 WL 8538719, at *1 (S.C. Ct. App. June 26, 2013).

The South Carolina Court of Appeals affirmed in an unpublished opinion filed June 26, 2013. *Id.* The court issued its remittitur on July 15, 2013.

In his original *pro se* PCR application filed July 8, 2014, Applicant alleged the following claims of error:

Ineffective assistance of trial counsel:

- i. Failure to prepare and argue a viable self-defense argument

Prosecutor misconduct, specifically:

- i. Prosecutor repeatedly mentioned the term sawed-off in referring to the weapon used when there was no supporting evidence

In the amended application filed by PCR counsel on October 13, 2016, Applicant raised the additional claims for relief:

Ineffective assistance of trial counsel:

- i. Counsel told the jury in his opening statement he did not know if they would put up a defense or not and that "nobody's going to win this case"
- ii. Failure to object when witnesses testified applicant was in possession of a sawed-off shotgun
- iii. Questioning Octavious Thomas about a prior unrelated incident where Thomas testified applicant pulled a sawed-off shotgun on Thomas's cousin the week before
- iv. Failure to object and request a mistrial when Dr. Ross testified differently than the information originally provided during discovery
- v. Failure to sufficiently argue and present testimony providing a basis for a self-defense argument
- vi. Allowing the jury to see and know about shackles on applicant

At the hearing, Applicant proceeded on the grounds of ineffective assistance of counsel raised in the amended application.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record, and further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds trial counsel's testimony is credible and should be afforded great weight, while also finding Applicant's testimony lacks credibility on the critical facts and allegations. Set forth below are the relevant findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his application and establishing he is entitled to relief. *Goin v. State*, 397 S.C. 573, 726 S.E.2d 1, 3 (2012). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant 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, 686 (1984).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, counsel's performance is measured by its reasonableness under professional norms. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland*, 446 U.S. at 688). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Moreover, where counsel articulates valid reasons for choosing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992); see also *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding where counsel articulates a valid strategy, it is measured under an objective standard of reasonableness).

Second, the applicant must demonstrate prejudice and show there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. A reasonable probability is one sufficient to undermine confidence in the outcome of the trial. *Id.* at 331, 642 S.E.2d at 596. When a conviction is challenged, "the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. Importantly, overwhelming evidence of guilt negates any claim counsel's deficient performance could have reasonably affected the result of applicant's trial to the level of required prejudice. *Harris v. State*, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008).

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After careful review of the record and testimony presented at the evidentiary hearing, and based on the standard above, this Court denies and dismisses with prejudice the application for relief. The Court finds, as to all claims of ineffective assistance of counsel raised by Applicant, counsel had adequate and proper strategic grounds upon which to base his decisions. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding courts presume counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case). Counsel's performance was not deficient, there was no resulting prejudice to Applicant, and Applicant failed to carry his burden. Below are the findings related to each of the allegations raised in the PCR application:

Comments Made During Opening Statement

Applicant first alleged trial counsel was ineffective for telling the jury during his opening statement he was not sure if they would put up a defense, and further stating he felt "nobody's going to win this case." (Trial Tr. pp. 148-49; p. 152). At PCR, Applicant testified his family retained counsel, they met several times, and they frequently discussed his claim of self-defense. (PCR Tr. pp. 7-9). Applicant stated he always wanted to testify at trial. (PCR Tr. p. 11).

Trial counsel testified his strategy was to present self-defense and let Applicant testify. (PCR Tr. p. 23). However, counsel stated he believed the case for self-defense was weak because the victim did not have a gun, so he wanted to see how the trial progressed and keep his options open, and he did not "want to make a promise to the jury and then renege on the promise." (PCR Tr. pp. 23-24). Counsel testified he also argued for the lesser-included offense of voluntary manslaughter. (PCR Tr. p. 45). Finally, counsel stated his comments regarding there being no winners in the case should not be taken out of context because, while Applicant could have received a not guilty verdict, both his family and the victim's family were emotional and upset,

Applicant had been in jail awaiting trial for three years, and counsel "was trying to say that no matter how this thing plays out it's a tragedy." (PCR Tr. pp. 30-31).

This Court finds this claim of ineffective assistance of counsel is without merit. First, the Court finds trial counsel's performance was not deficient where counsel credibly testified, while he said in his opening he was not sure what defense he would put up, his strategy was to present both self-defense and the lesser-included offense of voluntary manslaughter, which counsel ably argued throughout trial. Such a strategy was valid and objectively reasonable under professional standards. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding there is a strong presumption counsel exercised reasonable professional judgment in making decisions in the case); *see also Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (holding where counsel articulates a valid strategy, it is measured under an objective standard of reasonableness). The Court further finds the statement that "there's no winner" was not improper given the context in which it was made, and counsel's PCR testimony regarding the emotions surrounding the trial.

Regardless, Applicant cannot demonstrate prejudice where trial counsel, in fact, presented two defenses—self-defense and voluntary manslaughter—and the jury heard Applicant's version of the deadly incident when he testified at trial. (Trial Tr. pp. 454-504). Counsel testified at PCR he believed self-defense was the weaker theory, so his strategy was to present the jury with a third alternative to murder. Counsel's strategy was successful as the jury convicted Applicant of the lesser-included offense, rather than murder. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding to establish prejudice, an applicant must demonstrate the result of the proceeding would have been different but for counsel's errors). Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

Failure to Object to Mention of Sawed-Off Shotgun

Applicant next alleged trial counsel was ineffective in failing to object when multiple witnesses referred to the gun Applicant used to shoot the victim as a sawed-off shotgun. (Trial Tr. p. 164; p. 226; see also p. 283 "short shotgun"). At the PCR hearing, Applicant testified it "paint[ed] a very evil picture" and was inherently prejudicial when witnesses testified he used such a weapon. (PCR Tr. p. 14). Applicant stated further he and counsel discussed trying to keep out any mention of the type of weapon used. (PCR Tr. p. 14). Counsel agreed upon questioning in the PCR hearing that during the original pretrial motions "the solicitor conceded that he did not think the State should be able to present evidence of a sawed-off shotgun because that would likely be prejudicial as possession of such would be a crime" responding, "Yes, I think so. That sounds right." (PCR Tr. p. 26). (See Also Trial Tr. pp. 72-77). Counsel testified he did not recall considering a request to limit the testimony specifically because the witnesses were inconsistent and he did not consider the testimony particularly harmful. (PCR Tr. pp. 26-27). Counsel recalled some witnesses simply called it a shotgun, while others said it was a sawed-off shotgun. (PCR Tr. p. 27). When asked if he should have sought to "limit any such references to possibly just a shorter gun," counsel testified: "I think it probably would have been smarter. I honestly don't know why - - like right there where you pointed out, I don't know. I mean, I think in hindsight it wouldn't have probably hurt anything." (PCR Tr. p. 27).

This Court finds this claim of ineffective assistance of counsel is without merit. While trial counsel did not object when "sawed-off" was used in reference to the weapon, the record demonstrates he vigorously cross-examined each witness about their recollection of the events, including their interactions with Applicant prior to the night of the shooting and with police, to bolster the claim of self-defense. Further, he asked the investigator about the failure to previously

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identify the gun as a "sawed-off shotgun" to further impeach the testimony. (See PCR Tr. p.48, defense counsel had investigator admit at trial that witnesses had not "said anything about a sawed-off shotgun" in previous interviews; see also Tr. p. 318, lines 5-12). The Court is convinced counsel's performance was reasonable under professional standards and was not deficient. Further, *Strickland* specifically instructs courts to be highly deferential in reviewing counsel's actions because a "fair assessment" of performance requires "every effort be made to eliminate the distorting effects of hindsight." See *Strickland*, 466 U.S. at 689 (noting "it is all too easy for a court, examining counsel's defense after it has proved unsuccessful," to conclude a particular act or omission was unreasonable); see also *Bell v. Evatt*, 72 F.3d 421, 429 (4th Cir. 1995) ("Standing alone, unsuccessful trial tactics neither constitute prejudice nor definitively prove ineffective assistance of counsel."). Because Applicant cannot demonstrate deficiency, he also cannot show counsel's performance prejudiced him under *Strickland*. Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

Cross-Examination of Witness Regarding Unrelated Incident

Third, Applicant alleged trial counsel was ineffective in eliciting information on cross-examination of Octavious Thomas (Thomas) about an unrelated incident where Thomas testified Applicant pointed a sawed-off shotgun at Thomas's cousin the week before the deadly shooting. (Trial Tr. p. 217). Prior to trial, counsel made a successful motion to exclude testimony about the prior incident in which Applicant pointed the weapon at Thomas's cousin and another teenager. (Trial Tr. pp. 71-77). However, during cross-examination, as counsel asked Thomas about a different incident in which words were exchanged, Thomas began to answer with details about the incident involving his cousin. (Trial Tr. p. 217). Counsel immediately interrupted

Thomas, and then moved on with his examination. (Trial Tr. p. 218).

At the evidentiary hearing, trial counsel testified Thomas "blurted that out" about the incident involving his cousin and that was not the information he intended to elicit from the witness. (PCR Tr. pp. 27-29). Counsel stated his strategy was to move on as quickly as possible once Thomas made the reference to the sawed-off shotgun rather than bring additional attention to it. (PCR Tr. p. 29; pp. 47-48).

This Court finds this claim of ineffective assistance of counsel is without merit. The record shows trial counsel made a successful pre-trial motion to suppress testimony about the earlier incident. Through no fault of counsel, Thomas made a single reference to the prior matter and counsel immediately stopped Thomas from going into greater detail. Counsel credibly testified he did not intentionally elicit the information and he quickly moved on with his cross-examination to avoid drawing unnecessary attention to the testimony, which he was within his discretion to do. This Court finds counsel articulated a valid strategy regarding his treatment of Thomas's cross-examination and counsel was not deficient. *See Stokes*, 308 S.C. at 548, 419 S.E.2d at 779 (holding it will not be deemed ineffective assistance of counsel where counsel articulates valid reasons for choosing a certain strategy). Applicant also cannot establish prejudice where the single reference to the incident involving Thomas's cousin could not have impacted the jury's verdict. This is particularly so where Applicant testified that he was involved in a prior event at a ballpark approximately two weeks before the shooting that caused him to carry a shotgun; (Trial Tr. pp. 463-465), and also admitted on cross-examination that "[p]eople have seen me with it..." (Trial Tr. p. 495; pp. 499-500). Therefore, this Court finds Applicant failed to meet his burden of proof pursuant to *Strickland* and this allegation must be denied and dismissed.

Failure to Object and Request Mistrial During Pathologist's Testimony

Applicant next alleged trial counsel was ineffective in failing to object and request a mistrial when the pathologist's testimony differed from the information received in discovery. (Trial Tr. pp. 279-80). During cross-examination at trial, the pathologist testified there was no gunshot residue (GSR) found on the victim's body. (Trial Tr. p. 279). Under questioning by defense counsel, the pathologist admitted the original report contained a typographical error and the word "no" was left out, and she provided the amended report to counsel prior to trial. (Trial Tr. pp. 279-80). The pathologist continued to testify she could not determine from the victim's wounds how far away the shooter was standing, but it was likely three or four feet given the spread of wounds and that a shotgun was used. (Trial Tr. p. 280).

At PCR, trial counsel noted there were two issues involving GSR evidence – one on discovery (a page was omitted but supplied before trial), and another regarding a typographical error in the report. (PCR Tr. pp. 31-33; pp. 49-50). Counsel testified his strategy involving the second¹ was to impeach the doctor's credibility by bringing to the jury's attention the fact that the report he received initially was incorrect and had to be amended later. (PCR Tr. pp. 49-52).

The Court finds this claim of ineffective assistance of counsel is without merit especially where Applicant cannot demonstrate the required deficiency. The mistake in the report was not critical to the theory of self-defense as it was not unreasonable that the pathologist would not find any GSR under the victim's clothes and on his body. This Court finds counsel's stated strategy of impeaching the pathologist about the mistake rather than taking the extreme measure of requesting a mistrial was valid given the circumstances. *See Stokes*, 308 S.C. at 548, 419

¹ Counsel made a pre-trial motion to exclude evidence of GSR found on the passenger side of Applicant's vehicle due to a problem with the investigator's report. (Trial Tr. pp. 62-66). The trial court found the State complied with discovery, and denied the motion. (Trial Tr. pp. 66-71). That GSR finding is not at issue in this action.

S.E.2d at 779 (holding it will not be deemed ineffective assistance of counsel where counsel articulates valid reasons for choosing a certain strategy).

Applicant also failed to demonstrate the required prejudice where he cannot show any mistrial motion would have been granted and his trial would have ended. *See State v. Beckham*, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999) (holding the granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way). Applicant never denied shooting the victim, so any GSR found on the victim would not have been surprising. Conversely, the lack of GSR did not prevent an assertion of self-defense. Of note, the weak link in self-defense, in defense counsel view, was that "nobody saw the Chandler boy with a gun...." (PCR Tr. p. 24). The mistake in the pathologist's report was clearly not so prejudicial to warrant a mistrial. Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

Failure to Sufficiently Argue and Present Theory of Self-Defense

Next, Applicant alleged trial counsel failed to sufficiently present self-defense to the jury. At the evidentiary hearing, Applicant testified he never denied shooting the victim, but claimed he stopped to ask a group of young men for directions at an apartment complex, heard "shoot now," so he fired his gun first, hitting the victim. (PCR Tr. pp. 9-10). (See also Trial Tr. pp. 465-469). Applicant further explained he knew the group and had been involved in at least one incident with some of them the week prior to the deadly shooting when one of the young men shot toward him. (PCR Tr. pp. 11-13). Applicant testified counsel did not ask the proper questions or get him to "go into detail" so that "it didn't come out in trial" that someone from the group shot at him prior to the deadly incident. (PCR Tr. pp. 13-14; pp. 17-18).

As previously noted, trial counsel testified his strategy was to present self-defense and let Applicant testify. (PCR Tr. p. 23). Counsel stated he thought Applicant's testimony went well because the jury heard from Applicant about the prior incident. (PCR Tr. pp. 34-35). (See also Trial Tr. pp. 461-462). Further, counsel presented evidence of self-defense through other witnesses, including Applicant's cousin who told the jury about previous incidents in which the young men tried to intimidate Applicant and testimony from State's witnesses who also heard someone in their group say "shoot now." (PCR Tr. pp. 37-40). Counsel also testified he got witnesses to admit how dark it was at the time of the shooting, the victim's pocket was turned inside out like he pulled something out, and pictures of the victim's hand looked "like a gun had been in it and been taken away," all of which supported self-defense. (PCR Tr. pp. 54-55). However, counsel admitted there was also evidence of Applicant's guilt, including other witnesses who never heard anyone say "shoot now," no one ever saw the victim with a gun, and Applicant admitted he shot the victim, so counsel also made the strategic decision to argue for the lesser-included offense of voluntary manslaughter. (PCR Tr. p. 24; pp. 40-41; p. 45).

This Court finds this claim of ineffective assistance of counsel is without merit. First, the Court finds trial counsel's performance was not deficient where counsel thoroughly and ably presented the theory of self-defense. Not only did Applicant testify, but counsel examined witnesses to present information to the jury to support the theory that the group of young men that included the victim antagonized Applicant to point that he felt he was in danger. Further, because counsel was concerned about the fact the victim was never seen with a weapon, counsel testified his strategy was to also argue for a lesser-included offense. The Court finds such a strategy was valid and objectively reasonable. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (holding there is a strong presumption counsel exercised reasonable professional judgment in

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making decisions in the case); *see also Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (holding where counsel articulates a valid strategy, it is measured under an objective standard of reasonableness).

Applicant also cannot demonstrate prejudice where the State presented overwhelming evidence of Applicant's guilt, including testimony from eyewitnesses, GSR on Applicant's vehicle, Applicant's statements to investigators in which he admitted shooting the victim, and details that included the fact that the victim never had a gun. *See Harris*, 377 S.C. at 79-80, 659 S.E.2d at 147 (holding overwhelming evidence of guilt negates claims that counsel's deficient performance could have reasonably affected the result of trial). The jury heard Applicant's version of events, was charged on self-defense and voluntary manslaughter, and ultimately did not believe Applicant was without fault as it found him guilty of the lesser-included offense, beyond a reasonable doubt. Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

Telling Jury About Applicant's Shackles

Finally, Applicant alleged counsel was ineffective for telling the jury he wore shackles at trial. (Trial Tr. pp. 452-54; p. 461). Before trial, counsel asked the court if the shackles could be removed because they were uncomfortable, though not noticeable. (Trial Tr. pp. 60-62). The court denied the motion. (Trial Tr. p. 62). Prior to Applicant's testimony, he demonstrated for the court how he walked in the shackles, and the court asked if Applicant should be seated on the stand when the jury returned "so the jury won't be exposed to the fact that he's got some sort of restrictive device on his legs." (Trial Tr. pp. 452-53). Counsel rejected the offer. (Trial Tr. pp. 453-54). When Applicant got to the stand, counsel asked him about the shackles in front of the jury. (Trial Tr. p. 460). Applicant admitted they were a security measure and said they were the

reason he was "walking funny." (Trial Tr. p. 461).

Before this Court, Applicant testified the shackles fit under his pants, but they locked up and affected the way he walked. (PCR Tr. pp. 15-16). Trial counsel testified he was surprised the trial judge did not allow the bailiffs to remove the shackles. (PCR Tr. pp. 35-36). Counsel stated he made a conscious decision not to take the judge up on his offer to put Applicant on the stand prior to the jury's return because counsel thought it might help their case and arouse the jury's sympathy to bring the shackles to its attention as they looked uncomfortable. (PCR Tr. pp. 36-37).

The Court finds this claim of ineffective assistance of counsel is without merit. This Court makes careful note the shackles were knee braces that could be fully concealed by Applicant's pants, rather than a more conventional set of shackles connected by a chain. Knowing this, trial counsel still elected to draw the jury's attention to the shackles in an attempt to invoke the sympathy of the jury. This decision was a strategic one, and counsel was well within his discretion to make that choice. See *Humbert v. State*, 345 S.C. 332, 337 n.4, 548 S.E.2d 862, 865 n.4 (2001) ("The defendant's appearance at trial dressed in jail clothing is not automatically reversible error. There may be situations where, as a matter of trial strategy, counsel decides jail attire benefits the defense."); see also *Strickland*, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). Because Applicant cannot demonstrate deficiency, he also cannot show counsel's performance prejudiced him under *Strickland*. Therefore, this Court finds Applicant failed to meet his burden of proof and this allegation must be denied and dismissed.

All Other Allegations

As to any and all allegations raised in the application or at the hearing in this action and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

Conclusion

Based on 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 post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his PCR attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. *Austin v. State*, 305 S.C. 453, 454-55, 409 S.E.2d 395, 396 (1991).

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

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2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 7th day of March, 2018.

R. Keith Kelly
R. Keith Kelly, Presiding Judge
Eleventh Judicial Circuit

Spartanburg, South Carolina.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael Watson, Appellant.

Appellate Case No. 2010-173126

Appeal From Saluda County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2013-UP-276
Heard June 4, 2013 – Filed June 26, 2013

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Deputy Attorney General David A. Spencer, all of
Columbia; and Solicitor Donald V. Myers, of Lexington,
for Respondent.

PER CURIAM: Michael Watson appeals his convictions for voluntary manslaughter, pointing and presenting a firearm, and possession of a firearm during the commission of a violent crime. Watson argues the trial court erred in (1) denying his motion to reconsider his sentence for voluntary manslaughter, and (2) refusing to suppress his statement to Officer Cockrell. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Watson's motion to reconsider his sentence for voluntary manslaughter: *State v. Warren*, 392 S.C. 235, 237-38, 708 S.E.2d 234, 235 (Ct. App. 2011) ("The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge."); *id.* at 238, 708 S.E.2d at 235 ("An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support.").

2. As to whether the trial court erred in refusing to suppress Watson's statement to Officer Cockrell: *State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007) ("The trial [court] determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence."); *id.* ("On appeal, the conclusion of the trial [court] as to the voluntariness of a statement will not be reversed unless so erroneous as to show an abuse of discretion."); *id.* at 378-79, 652 S.E.2d at 448 ("When reviewing a trial [court]'s ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial [court]'s ruling is supported by any evidence.").

AFFIRMED.

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

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WITNESSES

Holloway

SPD

ARREST WARRANT NUMBER

H 995309

ACTION OF GRAND JURY

Donald W. Booz
Foreperson of Grand Jury

Date:

OCT 17 2007

VERDICT

TRUE BILL

GUILTY

Elain Coleman
Foreperson of Petit Jury

Date: JULY 29, 2010

DOCKET NO. 2007-GS-41-

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The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

MICHAEL DURAN WATSON

CDR# 0122

Indictment for

POINTING AND PRESENTING A
FIREARM

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POINTING AND PRESENTING A FIREARM

At a Court of General Sessions, convened on October 17, 2007 the Grand Jurors of Saluda County present upon their oath:

That MICHAEL DURAN WATSON did in Saluda County on or about August 5, 2007, willfully and maliciously point and/or present a firearm, to wit: a shotgun at one Andrew Chandler, in violation of Section 16-23-0410 of the South Carolina Code of Laws, as amended.

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


ASSISTANT SOLICITOR

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SALUDA
STATE VS.
MICHAEL DURAN WATSON
AKA:
Race: B Sex: M Age:
DOB: SS#:
Address: HILL DRIVE
City, State, Zip SALUDA, SC 29138
DL# SID#

INDICTMENT/CASE#:
2007-GS-41-551
A/W#: H 995309
Date of Offense: 8/5/07
S.C. Code §: 16-23-0410
CDR Code #: 0122

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: PRINTING & PRESENTING A FIREARM

In violation of § 16-23-410 of the S.C. Code of Laws, bearing CDR Code # 0122
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs
and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina
Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Pay court costs w/in 1 yr. of
release from prison

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2042(A) (Vehicle Assessment) CJ \$10/ea \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

PRESIDING JUDGE

Judge Code: 2101510

Sentence Date: July 29, 2010

Court Reporter: Shay Sheppard

Clerk of Court/Deputy Clerk

WITNESSES

Holloway

SPD

ARREST WARRANT NUMBER

H 995311

ACTION OF GRAND JURY

Yonah Booz
Foreperson of Grand Jury

Date:

OCT 17 2007

VERDICT

TRUE BILL

GUILTY OF VOLUNTARY
MANSLAUGHTER

Elgin Coleman
Foreperson of Petit Jury

Date: JULY 29, 2010

DOCKET NO. 2007-GS-41- 552

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

MICHAEL DURAN WATSON

CDR# 0116

Indictment for

MURDER

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on October 17, 2007 the Grand Jurors of Saluda County present upon their oath:

That MICHAEL DURAN WATSON did in Saluda County on or about August 5, 2007, feloniously, wilfully and with malice aforethought, kill one Andrew Chandler by shooting him in the face with a shotgun and that the said victim, Andrew Chandler, died in Saluda County as a proximate result thereof, in violation of the Common Law and as defined in Section 16-3-10 of the Code of Laws of South Carolina, as amended, with punishment provided for in Section 16-3-20 of the Code of Laws of South Carolina, as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SALUDA

STATE VS.

MICHAEL DURAN WATSON

AKA:

Race: B

Sex: M

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address:

[REDACTED] HILL DRIVE

City, State, Zip

SALUDA, SC 29138

DL#

SID#

INDICTMENT/CASE#:

2007-GS-41-552

A/W#: H 995311

Date of Offense: 8/5/07

S.C. Code §: 16-3-20

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: ~~Voluntary~~ VOLUNTARY MANSLAUGHTER

In violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Centerfor a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs

and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina

Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT TIME FROM AUGUST 6, 2007. [Signature]☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☒ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$500	\$	
\$25	\$	25.00
\$100	\$	
\$50	\$	
\$40.00	\$	5.00
\$3.00	\$	3.00
	\$	133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Pay court costs w/in 10 days of release from prison

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

ATTEST: TRUE COPY

[Signature]

Clerk of Court
Saluda, S.C.

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

724

ARREST WARRANT

H- 995311

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SALUDA

THE STATE

against

WATSON, MICHAEL DURAN

Address: HILL DRIVE
SALUDA, SC 29138

Phone: _____ SSN: _____
 Sex: M Race: B Height: 5' 10" Weight: 137
 Date: _____ DL#: _____
 DOB: _____ Agency ORI#: SC0410100
 Prosecuting Agency: SALUDA POLICE DEPT.
 Prosecuting Officer: HOLLOWAY, CHARLES A II
 Offense: MURDER
 Offense Code: 266
 Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
 defendant WATSON, MICHAEL DURAN

on Aug 6, 2007

 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 TOWN OF SALUDA POLICE DEPARTMENT
 TOWN HALL
 100 SOUTH JEFFERSON ST.
 SALUDA, SC 29138

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SALUDA

Personally appeared before me the affiant DET. LT. CHARLES
 being duly sworn deposes and says that defendant WATSON, MICHAEL
 did within this county and state on 08/05/07
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of
 in the following particulars:

DESCRIPTION OF OFFENSE: MURDER
 16-3-10

I further state that there is probable cause to believe that the
 the crime set forth and that probable cause is based on the following facts:
 SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SALUDA

Affiant's Address 101 S JE
SALUDA,
 Affiant's Telephone 864 4

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR

It appearing from the above affidavit that there are
 on 08/05/07 defendant WATSON, MICHAEL
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of SALUDA

DESCRIPTION OF OFFENSE: MURDER
 16-3-10

Having found probable cause and the above affiant having sworn before me, you are emp
 defendant and bring him or her before me forthwith to be dealt with according to law. A c
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
AUGUST 06, 2007

 Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 808 801
JOHN B. SHULTS

Judge's Address 108 RUDD
SALUDA,

Judge's Telephone 864 4

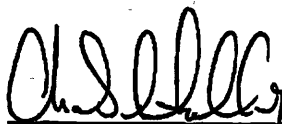
Issuing Court: ☐

ORIGINAL

AFFIDAVIT

(STATE OF SOUTH CAROLINA)
(COUNTY OF SALUDA)
(MUNICIPALITY OF SALUDA)

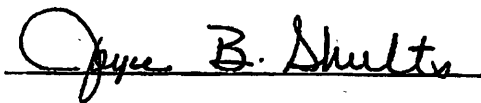
Personally appeared before me, Detective C.A. Holloway, who being duly sworn states that on August 5th, 2007 at approximately 2234 hrs. the defendant, Michael D. Watson, while seated in and operating a 1994 Toyota SC Tag # [REDACTED], did intentionally with malice and aforethought discharge a shotgun out the passenger window, firing it at the victim Andrew Chandler and striking the victim Andrew Chandler in the face, killing him. This offense occurred at the Saluda Terrace Apartments in the Town of Saluda, SC and is in violation of section 16-3-10 (Murder) SC code of Laws as amended.



C.A. Holloway - Detective

Sworn to and subscribed before me

This 6 Day of August 2007



726

WITNESSES

Holloway

SPD

ARREST WARRANT NUMBER

H 995312

ACTION OF GRAND JURY

Donald W. Boaz
Foreperson of Grand Jury

Date:

OCT 17 2007

VERDICT

TRUE BILL

GUILTY

Elvin Coleman
Foreperson of Petit Jury

Date:

JULY 29, 2010

DOCKET NO. 2007-GS-41- 553

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

MICHAEL DURAN WATSON

CDR# 0549

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on October 17, 2007 the Grand Jurors
of Saluda County present upon their oath:

That MICHAEL DURAN WATSON did in Saluda County on or about
August 5, 2007, unlawfully have in his possession a firearm, a loaded shotgun
during the commission of the violent crime of Murder, in violation of Section 16-
23-490 of the 1976 South Carolina Code of Laws, as amended.

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


ASSISTANT SOLICITOR

728

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SALUDA

STATE VS.

MICHAEL DURAN WATSON

AKA:

Race: B

Sex: M

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address:

HILL DRIVE

City, State, Zip

SALUDA, SC 29138

DL#

SID#

INDICTMENT/CASE#:

2007-GS-41-553

A/W#: H 995312

Date of Offense: 8/5/07

S.C. Code §: 16-23-490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIMEIn violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____, provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2042(B) (Vehicle Assessment)	\$500
3% to County (if paid in installments)	\$390
TOTAL	\$13390

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$_____ beginning _____ paid to Public Defender Fund

Other: Pay court costs w/in 1 yr. of release from prison☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/Deputy Clerk