

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Sumter County
Hon. W. Jeffrey Young, Circuit Court Judge

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SEP 27 2018
S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

JEFFREY DANA ANDREWS,

Respondent.

Opinion No. 5574 (S.C. Ct. App. filed July 18, 2018)

APPENDIX

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Jeffrey Andrews-Cross by Meadors

1 A. That was third time.

2 Q. So he didn't have this bottle.

3 A. Not went he came back in.

4 Q. So you didn't see this bottle again after
5 the second visit.

6 A. I didn't see that bottle until one of the
7 officers said, I found the bottle.

8 Q. So they told you we found a bottle in the
9 yard.

10 A. Yes.

11 Q. So that had nothing to do with this final
12 incident when you shot and killed the victim,
13 Shamar, did it? I mean, he didn't have that in
14 his hand, and wasn't coming at you with that
15 bottle.

16 A. He didn't have that in his hand when he
17 was -- I didn't know what he had in his hand or
18 what he was doing when he snatched the door open.
19 That's what I'm saying, he had this bottle before.

20 Q. And then he comes back the third time.

21 A. That's correct.

22 Q. Tell me again what happened the third
23 time.

24 A. The third time is when I had gotten Erika
25 trying to get her out; grabbed Shamar trying to

Jeffrey Andrews-Cross by Meadors

1 push him out. And that's when the flinging of the
2 hands. She flipped around going back. And he---

3 Q. When you say flinging of the hand's, it's
4 between you and who?

5 A. Me, Erika and Shamar. She is snatching
6 away from me. Shamar is snatching away. And
7 that's when I got hit about -- hit or whatever.

8 Q. That's when Erika hit you in the face?

9 A. No, sir. Hit in the face.

10 Q. She didn't hit you after you came over and
11 tried to touch Shamar, and say, it's nothing but a
12 bug bite. She started to -- you hear it on the
13 911 tape. Isn't that you she's hitting in the
14 head?

15 A. No, she never hit me in the head, sir.

16 Q. Well this isn't funny, is it?

17 A. She never hit me in the head, sir.

18 Q. She didn't hit you in the head out on the
19 porch? Screaming you shot her boyfriend.

20 A. No, sir. She never hit me in the head.

21 Q. Well did the victim, Shamar, hit you in
22 the head?

23 A. He hit me right here.

24 Q. Well you had a scratch on one of your --
25 above your eyes, right?

Jeffrey Andrews-Cross by Meadors

1 A. I had a knot right here.

2 Q. And you also had a -- on your other side
3 you had scratch. Showed a little blood, didn't
4 you?

5 A. Okay.

6 Q. I mean you did, didn't you?

7 A. Okay.

8 Q. I mean you did, didn't you?

9 A. Well your photographs say that, yes, sir.

10 Q. And the photographs of you.

11 A. Yes, sir.

12 Q. And that was from when -- what from
13 when -- well if the defendant was hitting you
14 about the face, because he hit you, didn't he?

15 A. When he was -- yes, when I was trying to
16 put him out, he swang back and hit me right here.
17 There was so -- during the confrontation or during
18 trying to get them out, there were a lot of hands
19 going so.

20 Q. And that was where?

21 A. That was in the doorway trying to put them
22 out. Trying to get them to leave.

23 Q. And that was what visit?

24 A. That would have been the third visit.

25 Q. So did Erika leave?

Jeffrey Andrews-Cross by Meadors

1 A. No.

2 Q. And you say at that point you closed the
3 door, a wooden door? You closed the wooden door.

4 A. I closed the screen door, put the lock on
5 it. Put the latch on it, and then I closed the
6 wooden door.

7 Q. And did you, you also locked the wooden
8 door, didn't you?

9 A. No, sir.

10 Q. And you didn't testify to that in a
11 hearing earlier this week, that you locked that
12 door too?

13 A. No, sir.

14 Q. And then you said you go into your dad's
15 room.

16 A. I didn't say I -- I said I went into my
17 dad's room. Correct.

18 Q. Yes, sir. You went to your dad's room.
19 And why did you do that?

20 A. I went there looking for the telephone to
21 call 911.

22 Q. And you couldn't find your phone.

23 A. I couldn't find my father's phone, the
24 house phone.

25 Q. And at that point, so you'd been back here

Jeffrey Andrews-Cross by Meadors

1 basically at your room, right? At your father's
2 room, going in and looking for the phone?

3 A. That's correct.

4 Q. And I think you said somewhere you thought
5 you heard somebody talking. You said you thought
6 you heard Erika, and it might have been Shamar
7 talking?

8 A. I heard Erika talking. Like I said, I
9 had the presence of mine, when I closed the door,
10 I was going to look for the phone, to see Erika
11 coming back to the door. At that point, the
12 screen door was closed, plus the wooden door was
13 closed.

14 Q. And you, I thought you said just a little
15 while ago that you thought you heard somebody
16 talking, and you assumed it was Erika and Shamar.

17 A. Yes, sir, that's correct.

18 Q. So you could hear him outside the closed
19 door?

20 A. I could hear Erika. At that point, I
21 don't know if the wooden door was open yet or not.

22 Q. Well why did you get the gun?

23 A. I didn't find the phone, and when Shamar
24 was snatching the door open, forcefully entering
25 the house, that's when I grabbed the weapon and

Jeffrey Andrews-Cross by Meadors

1 brandished it.

2 Q. Well when you're in here, you don't even
3 know if the door is open. The door is closed,
4 right? And you don't even know if the wooden door
5 is open or not.

6 A. Actually I don't. I don't know if it's
7 open when I'm in the room. That's correct.

8 Q. And you hear what you think is Erika and
9 Shamar talking.

10 A. That's correct.

11 Q. What's going through your mind then when
12 you hear that?

13 A. Well I mean, again, I am worried about him
14 coming back in the house. I'm worried about
15 getting the police out there now, because it's
16 gone too far.

17 Q. He was outside with the screen door locked
18 and other door closed, right?

19 A. I did lock the screen door while he was
20 outside, sir. Yes, sir.

21 Q. And you didn't call the police.

22 A. I was making an attempt to get a telephone
23 to call the police.

24 Q. And at that point, and you don't know who
25 opened the door, or how it got open. The wooden

Jeffrey Andrews-Cross by Meadors

1 door.

2 A. Well at that point, Shamar couldn't have
3 opened it. So...

4 Q. At that point what?

5 A. Shamar couldn't have opened it.

6 Q. Now brother is in there, isn't he?

7 A. Yeah.

8 Q. And brother is actually sitting right
9 here?

10 A. At that time, I am not sure where Virlyn
11 was.

12 Q. Mr. Gardner. Virlyn.

13 A. I'm not sure where he was at that time.

14 Q. Well he was in this living room, wasn't
15 he?

16 A. Oh, yeah, he was in that living room.

17 Q. And he sure could have seen you, right?
18 Where you were.

19 MS. COOKE: Judge, speculation.

20 Q. He was in this room. If you're standing
21 right over here, back here in this room, can you
22 see who's in that room? You.

23 A. It depends on where I'm located at, yes.

24 Q. Depending on locating, you can see right
25 in the living room. You're right there, aren't

Jeffrey Andrews-Cross by Meadors

1 you?

2 A. Yeah, if I'm in -- please explain the
3 question.

4 Q. Let me show you a picture.

5 A. Yeah, explain that for me.

6 Q. I mean, we're just talking about, this is
7 Defendant's 12. That's the bedroom you're talking
8 about, isn't it?

9 A. That's correct.

10 Q. So if you're standing right there, can't
11 you just see right in front of you?

12 A. Yeah.

13 Q. So if Virlyn's sitting in that room, would
14 you be able to see him?

15 A. Yes.

16 Q. And he'd be able to see you, wouldn't he?

17 A. Yes.

18 Q. And Virlyn is your brother, your friend.

19 A. Yes, he's a childhood friend.

20 Q. Would you mind coming down?

21 (Witness steps down from the witness
22 stand.)

23 Q. I want to go back to visit number one.

24 Okay. Show me where you were when Shamar first
25 got there.

VOLUME II OF II

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Honorable William Jeffrey Young, Circuit Court Judge

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APPELLANT

APPELLATE CASE NO 2015-001679

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

EXHIBIT D-31 (INTERVIEW OF ERIKA ANDREWS)

EXHIBIT D-32 (DASHCAM)

EXHIBIT D-33 (PHOTO OF PORCH)

Jeffrey Andrews-Cross by Meadors

1 was closer to here at that time.

2 Q. And you're where?

3 A. I am sitting right here.

4 Q. And where is Shamar?

5 A. Shamar is standing right here.

6 Q. And this is the first visit.

7 A. Yes.

8 Q. Then he leaves.

9 A. That's correct.

10 Q. The second visit, where does Shamar go on
11 the second visit?

12 A. Shamar came right back to this position
13 right here. Right back here.

14 Q. And you all starting arguing then?

15 A. Yes, sir, on this -- yes, sir.

16 Q. And you're arguing over the brandy.

17 A. Actually we were -- yes, sir.

18 Q. Because somebody brought that up again.
19 You're still mad about the brandy.

20 A. No, sir. Like I said, I wasn't mad. I
21 was just a little disappointed.

22 Q. But you're still talking about it.

23 A. Actually we wasn't talking about it. We
24 brought it up and tried to leave it alone.

25 Q. But you were getting angry.

Jeffrey Andrews-Cross by Meadors

1 A. No, sir, I wasn't getting angry.

2 Q. When you said that y'all were arguing,
3 that means you are getting angry on each side,
4 isn't it?

5 A. Not necessarily agree with that. If
6 you're arguing with somebody, you're angry---

7 Q. I'm asking you a question.

8 A. You're making an argument, but you're not
9 angry.

10 Q. I am not through yet. Now the second
11 time, where did he leave?

12 A. Excuse me?

13 Q. The second visit, you said he's got a what
14 in his hand? The bottle?

15 A. Yes, when he came back in he had that,
16 what appeared to be that 40-ounce bottle you
17 showed me on the tape. It is right here.

18 Q. Did he put it down when you were all were
19 arguing?

20 A. No, he had it in his hand.

21 Q. And that's when you all started scuffling
22 with him when you go to the door?

23 A. No, sir.

24 Q. Tell me, Monday you testified -- or the
25 other day you testified under oath you did like-

Jeffrey Andrews-Cross by Meadors

1 this to him, do you remember?

2 A. Yes.

3 Q. You squared up to him.

4 A. Yes, sir.

5 Q. Where were you when that happened?

6 A. Right here. Right there.

7 Q. What trip was that, the second or third?

8 A. That was when we got into the -- when
9 Shamar asked, are you all talking about me. Then
10 the argument escalated and escalated. And that's
11 when he was advancing towards me.

12 Q. So he didn't have the bottle in his hand
13 then.

14 A. Yes, he did.

15 Q. So you're doing this.

16 A. That's why I did that.

17 Q. And that's the second visit.

18 A. That is, that's correct.

19 Q. Now the third visit, come show me what
20 happened then.

21 A. On the third visit Shamar never made it in
22 the door. He never made it. He never made it in
23 the door. On the third visit, that's when I had
24 Erika. Shamar was entering the house, I grabbed
25 him.

Jeffrey Andrews-Cross by Meadors

1 Q. So you were outside?

2 A. I was in -- I was, no, I am sorry. That's
3 the front door. I had Erika here. Shamar is
4 there. I'm trying to get him out. Trying to get
5 Erika.

6 Q. So had he already entered then?

7 A. Yes.

8 Q. And you were trying to get her out then?

9 A. That's correct.

10 Q. And did you get them out? You got him
11 out.

12 A. I got him out.

13 Q. That's when you go to your room. Your
14 dad's room.

15 A. That's correct. When I -- that's correct.

16 Q. And closed the door. Locked the screen
17 door and closed the wooden door.

18 A. That's correct.

19 Q. Go to his room. Shamar, you don't know
20 where he is.

21 A. Shamar is on the porch.

22 Q. You don't know that.

23 A. When I locked the screen door that's where
24 he was.

25 Q. Because the door is closed, you can't see

Jeffrey Andrews-Cross by Meadors

1 outside.

2 A. That's correct.

3 Q. You're inside there. You say you are
4 looking for your phone. Where does your dad
5 usually keep his phone?

6 A. In his room. There is a night stand right
7 by the dresser. Between the dresser and the bed.

8 Q. And it wasn't there then.

9 A. No, sir.

10 Q. Where did Erika find it, if you know?

11 A. She actually took it from my dad. My dad
12 had it on him. My dad, like I said during the
13 wintertime, he usually keeps the phone in his
14 jacket pocket.

15 Q. So at this point, Shamar is out the door.

16 A. Correct.

17 Q. You're looking for the phone.

18 A. Correct.

19 Q. The gun? Where was the gun?

20 A. On the dresser drawer by the TV right as
21 you enter the room right, it would be, this is the
22 room right here. Could I see the picture? I can
23 show you if you've got it.

24 Q. This is Defendant's 12.

25 A. I can't show you from this picture. But

Jeffrey Andrews-Cross by Meadors

1 you have some more.

2 Q. But that's the door we're talking about to
3 the bedroom, right?

4 A. Yeah.

5 Q. And inside there on the left is a little
6 dresser.

7 A. There is a dresser is right there, yeah.

8 Q. You go looking for the phone, and you
9 can't find it, but you grab the gun.

10 A. When I heard the door opening, the screen
11 door, when I heard the screen door being snatched
12 open, that's when I got the gun.

13 Q. Show us how that happened.

14 A. Grabbed it, brandished the weapon, walked
15 right here. You can see right here. My body is
16 right here.

17 Q. You didn't know if the door was opened or
18 closed, the wooden door. I know, I could see the
19 wooden door open.

20 A. I know, I can see the wooden door open.

21 Q. So you did see it open?

22 A. That's correct.

23 Q. Well who opened it?

24 A. I believe it appeared that Erika opened
25 the door.

Jeffrey Andrews-Cross by Meadors

1 Q. Where did she do that?

2 A. As I was going to the room, looking for
3 the telephone.

4 Q. And then what happened?

5 A. Excuse me?

6 Q. Then what happened?

7 A. I couldn't find the phone. I was on my
8 way out, I heard the screen door being snatched
9 open. I was right here, I grabbed the weapon.

10 Q. You were right where? Show us in here.

11 Put that down, and show us, please, sir. You were
12 right where? If this is the door and this is your
13 turn, please.

14 A. There is the door right here.

15 MS. COOKE: Your Honor, I just want to
16 note for the record that that was moved.

17 MR. MEADORS: Your Honor, that's
18 approximate.

19 THE COURT: That's just approximate.
20 That's not exactly.

21 A. I was right here.

22 Q. I guess what I'm saying, how long did it
23 take you to come out before you fired?

24 Mr. Mathews, would you come up here, please?

25 A. It happened so quick, sir.

Jeffrey Andrews-Cross by Meadors

1 Q. Where was -- if Mr. Mathews is Shamar,
2 where was -- when is the first time you saw him
3 when you came in that room?

4 A. When he snatched the door open, Shamar was
5 in, right here.

6 Q. Would you get up here, please. Well put
7 him in the position Shamar was, please.

8 A. Entering the house like so.

9 Q. Like that. Would you go back where you
10 were please?

11 A. Yes, sir.

12 (Whereupon, the witness resumes the
13 witness stand.)

14 Q. You come out, and show us how you shot
15 him.

16 A. I grabbed him, like I said. I grabbed the
17 weapon and shot him. And I swung around here, and
18 shot him.

19 Q. So he was at your front door. But he
20 wasn't in your door.

21 A. Yes, he was in the door, on the threshold.

22 Q. So was the glass door open?

23 A. Yes.

24 Q. So it was behind him, correct?

25 A. Yes.

Jeffrey Andrews-Cross by Meadors

1 Q. So it had been behind him this way.

2 A. On the side of him.

3 Q. And where was he hit, do you know?

4 A. According to your records and when I saw
5 him, he appeared to have a shot.

6 Q. Over here?

7 A. Nah, right here.

8 Q. Over here?

9 A. On this side.

10 Q. Over here?

11 A. On this side. The right side.

12 Q. Over here.

13 A. That's correct.

14 Q. And how tall are you?

15 A. I'm 5-foot 5.

16 Q. And how tall is he?

17 A. 6-foot tall.

18 Q. And point again how you'd shoot him. And
19 what did he have in his hands?

20 A. It appeared that he had nothing in his
21 hands, because he just snatched the door open. So
22 he had nothing in his hands.

23 Q. And didn't have a gun.

24 A. Not that I know of. I wasn't aware of it.

25 Q. And that's where you shot him.

Jeffrey Andrews-Cross by Meadors

1 A. That's correct.

2 Q. And Mr. Virlyn Gardner was where? Was he
3 over here on this side?

4 A. Again, at that time, I'm not quite sure
5 where Virlyn was.

6 Q. Well let me show you this picture again.
7 State's No. 10, where did you put Mr. Virlyn the
8 last time you put him there?

9 A. Well this is when we all started. When we
10 all started, this chair was here. Virlyn was
11 sitting here. I was sitting here. Erika. This
12 is was early on.

13 Q. Well Virlyn was still in the room, wasn't
14 he?

15 A. Oh, yes, he was still in the room, but I
16 couldn't tell you where he was.

17 Q. But if he was still sitting right here,
18 he'd be able to see you, wouldn't he?

19 A. Sure.

20 Q. I mean, from here to here, Mr. Virlyn
21 Darryl Gardner would be able to see you.

22 A. He should be able to see me.

23 Q. Or you could see him, couldn't you?

24 A. When I grabbed the weapon, sir, and I shot
25 Shamar, peripheral vision and all that, I just

Jeffrey Andrews-Cross by Meadors

1 couldn't tell. So I can't testify and swear that
2 under oath.

3 Q. Swear to what?

4 A. Where he was at the time. I cannot do
5 that.

6 Q. When did you become in fear of suffering
7 serious bodily injury or death, Mr. Andrews?

8 A. When Shamar advanced towards me with the
9 bottle during the course of the argument. When he
10 advanced towards me with a bottle. When Shamar
11 came back it the house.

12 Q. Wait a minute. So that's when you were in
13 fear of your life. No, sir, let me clear it. Was
14 that when you were in fear of your life?

15 A. That's correct.

16 Q. And that was one or two visits before that
17 or the visit before that. That was the second
18 visits before that. That was the second visit,
19 wasn't it?

20 A. Shamar and I got -- Shamar went to the
21 restroom. And I'll slow down. I'll slow down for
22 you.

23 Q. You'll slow down. Thank you.

24 A. I'll slow down. Shamar went to the
25 restroom. Came back. And we argued. Now repeat

Jeffrey Andrews-Cross by Meadors

1 the question again, sir.

2 Q. I think you said that when he came at you
3 with the bottle is when you thought you were in
4 fear of suffering serious bodily injury or death.
5 You said when he came with the bottle at you.

6 A. Yes, sir. We started the argument on the
7 second visit in the house, when he came back in,
8 when he appeared to have 40-ounce bottle. That's
9 correct.

10 Q. And you didn't call the police then when
11 you were in fear of suffering serious bodily
12 injury or death.

13 A. Actually what happened is, I wasn't going
14 to turn my back on him. I was not going to turn
15 my back on him with a bottle. That's what
16 happened. So when I got him outside, that's when
17 I...

18 Q. That's when you what?

19 A. That's when I made the attempt to go and
20 call the police.

21 Q. And what was it he said to you outside
22 here before he came in this last time?

23 A. The last time.

24 Q. You said he was cussing a bunch of times.

25 A. Yeah, when I got out him out with the

Jeffrey Andrews-Cross by Meadors

1 bottle in his hand, you're a punk mother fucker,
2 I'll kill you. You are a punk mother -- you are a
3 punk ass nigger.

4 Q. And that ticked you off, didn't it?

5 A. Of course that made me a little upset.

6 Q. Lost your brandy. Stole your brandy. Was
7 cussing at you. That made you mad.

8 A. That made me upset.

9 Q. That made you angry.

10 A. Made me upset.

11 Q. Well you weren't in fear of suffering
12 seriously bodily injury or death then, were you?

13 A. Of course I wasn't. Like I told you, when
14 he advanced towards me during the course the
15 argument, that made me scared and in fear of my
16 life.

17 Q. I was talking about the time before that.
18 But this last time, what did you say he said right
19 before he came in according to your testimony, on
20 the fourth visit? When he cussed you again, did
21 he say, 'I'm going to kill you, and use the N word?
22 I'm certainly not going to say that.

23 A. That's not the fourth visit, sir.

24 Q. Oh, that wasn't the fourth visit? When
25 did he say that?

Jeffrey Andrews-Cross by Meadors

1 A. That's when I put him out. That's when
2 we got him out. That's when I Got Shamar out.
3 He came back in the second time, I got him out.
4 He had the bottle in his hand. That's when that
5 happened.

6 Q. And he said he was going to kill you.

7 A. Yeah, I'll kill you, punk mother fucker.
8 He was pretty ticked off, because we were arguing.

9 MR. MEADORS: Thank you. I appreciate you
10 coming down here.

11 (Whereupon, the witness resumes the
12 witness stand.)

13 Q. Okay. So you had replaced the liquor?

14 A. That's correct.

15 Q. Is that, where was that?

16 A. Where was?

17 Q. The picture of the liquor. I mean were
18 was the liquor in the house?

19 A. We probably had tossed it, because we only
20 got, I think, like 2 half a pints from the
21 bootlegger.

22 Q. Now after you shot Shamar Howell, and that
23 was a last minute decision you're saying to grab
24 the gun right before he came in the fourth time,
25 where the wooden door was closed. And you don't

Jeffrey Andrews-Cross by Meadors

1 know how it came open. You just came out, and the
2 gun was right there and you shot him?

3 A. Can you repeat the question, again, sir?
4 Can you explain to me? Can you repeat the
5 question again, because---

6 Q. Well the wooden door is closed. You've
7 locked the glass door. You're inside looking for
8 a phone.

9 A. Yes.

10 Q. You hear, I don't know if -- when did you
11 become aware the wooden door was open?

12 A. Well like I told you, I had the presence
13 of mind of knowing that Erika was walking towards
14 the door.

15 Q. You didn't see her?

16 A. I saw her. Actually I had the presence of
17 mind of knowing that she walked towards the door.
18 And it appeared, and Shamar could have opened the
19 door, because I had screen door locked. So
20 Erika---

21 Q. So that's when you grabbed the gun?

22 A. Excuse me?

23 Q. Is that when you grabbed the gun?

24 A. No, I grabbed the gun after I couldn't
25 find the phone. I was on my way out, and I heard

Jeffrey Andrews-Cross by Meadors

1 the screen doors being snatched open.

2 Q. So you're inside the room here. So you
3 don't see the screen door being snatched open.

4 A. Yes, sir. Yes, sir, I did.

5 Q. So you grabbed the gun. You hear the
6 screen door being snatched open, and you just turn
7 and shoot him.

8 A. That's when I brandished the weapon and
9 shot. I see him coming in.

10 Q. After the -- after you had shot Shamar,
11 and you heard Erika out there. She was screaming,
12 upset, mad at you, cussing, correct?

13 A. Yes, sir.

14 Q. And do you remember Corporal Kelly coming?

15 A. Yes, I do.

16 Q. And do you remember him reading your
17 miranda rights?

18 A. Yes, sir.

19 Q. And you told him, I would be happy to talk
20 to you Kelly. Do you remember saying that,
21 because his name was on there. I'll be glad to
22 talk to you?

23 A. Well I didn't see that on the record, and
24 that was a year ago. So I can't exactly what I
25 said, that was a year ago. But I do remember

Jeffrey Andrews-Cross by Meadors

1 making contact with Kelly. Officer Kelly.

2 Q. But you can't remember what, I'm sorry.

3 A. It's not on record that I said I'll talk
4 to you Kelly. So I don't remember that. But I do
5 remember telling me Kelly, come to the house.

6 Q. It's not on record?

7 A. It's not -- I haven't seen anything where
8 it was written down in a statement that I said,
9 I'll talk to you Kelly.

10 Q. So you're denying you talked to Kelly.

11 A. I'm not denying that I talked to him.
12 What I'm denying is I'm saying that, I don't know
13 if I made that statement, I'll talk to you Kelly.

14 Q. Did you talk to him?

15 A. That's correct, I talked to him.

16 Q. And that would be logical that you told
17 him, you remember him reading you your rights,
18 don't you?

19 A. Yes, correct.

20 Q. And you understood those rights.

21 A. Yes, sir.

22 Q. You told him you understood those rights.

23 A. Yes, sir.

24 Q. And so you remember conversating or
25 talking with Kelly?

Jeffrey Andrews-Cross by Meadors

1 A. I remember talking with him, yeah.

2 Q. And do you remember when he asked you, who
3 is that on the porch? Who is that lady? Do you
4 remember he asked you who is that lady screaming,
5 and you said that was your cousin?

6 A. I don't know if we had that on record,
7 and I don't know. And I don't know, I possibly
8 could have said it. She's my cousin, so I
9 possibly could have said that.

10 Q. He didn't know you, did he? Corporal
11 Kelly. He didn't know you. I mean, you don't
12 know him. He didn't know you. He didn't know who
13 was up there. And he asked you, who is up there.
14 And you told him, that's my cousin.

15 A. Okay. Again, sir, that was a year ago.

16 Q. Well you can remember everything else.

17 A. I can remember one or two things. But...

18 Q. And then do you remember when he said, who
19 is the person up there. And you said, because you
20 told him you shot him, didn't you? I mean you
21 told him you shot him.

22 A. I told him I was the man he was looking
23 for when he came into the house. I said, I'm the
24 person you're looking for. And it's possible,
25 because I didn't run from anyone. I did admit

Jeffrey Andrews-Cross by Meadors

1 that I shot Shamar.

2 Q. You shot Shamar Howell and killed him,
3 didn't you?

4 A. I did shoot Shamar.

5 Q. And Corporal Kelly asked you who that was
6 on there and you said, that's her boyfriend?

7 A. Okay.

8 Q. And that's a yes. And he wouldn't have
9 known that.

10 A. Yeah, he wouldn't known that.

11 Q. He wouldn't have known that. And then he
12 asked you, do you remember this? He asked you,
13 why did you shoot him. Do you remember that?

14 A. No, sir, I don't remember that.

15 Q. You don't remember Corporal Kelly, because
16 there is a dead person up there, that you just
17 said, I shot. He asked you, it's not really take
18 a smart -- it doesn't take a genius, not that he
19 isn't a genius, I don't mean that, but why did
20 you do it. You don't remember him asking you
21 that?

22 A. I may have made a statement, telling him I
23 did it. Or I think I made a statement, the
24 altercation took place over some missing brandy.

25 Q. You told him, he took something from me,

Jeffrey Andrews-Cross by Meadors

1 didn't you?

2 A. Okay if I did, I haven't seen any
3 statements saying that I said that. But if I said
4 that, I said it.

5 Q. The first words out of your mouth to law
6 enforcement after you put a bullet in Shamar
7 Howell's head was, he took something from me.
8 That's what you first told law enforcement. He
9 took something from me. He took the brandy from
10 me. And you were pissed off about it, and I
11 apologize. And you were angry, weren't you?

12 A. No, sir.

13 Q. And do you remember what Corporal Kelly
14 said to you? You killed him over liquor? Do you
15 remember when he said that?

16 A. No, sir, I do not remember when Corporal
17 Kelly said that I killed him over liquor. I
18 remember, I have a statement to remind me that
19 Corporal -- I said the altercation started over a
20 missing bottle of brandy. I have that on record.

21 Q. But you didn't tell him you were in fear
22 of your life, did you?

23 A. Actually I was trying to ask the questions
24 that they were -- as in context, as they were
25 asked to me.

Jeffrey Andrews-Cross by Meadors

1 Q. And he asked you why you did it. And you
2 said he took something from you.

3 A. If I said that, I said it. But all I
4 remember is saying an altercation started over a
5 missing bottle of brandy. That's on record.

6 Q. You did not tell him that he cussed at you
7 and said, I'm going to kill you. You didn't tell
8 him that. Isn't that true? You didn't tell him
9 that he had come at you with the beer bottle, and
10 that you were in fear of your life, did you?
11 Corporal Kelly?

12 A. I don't have that on record where I said
13 that to him so.

14 Q. And when did you tell him at the scene,
15 that he busted into your door, pulled the door
16 open, and you had to shoot him?

17 A. Well I think what I said to---

18 Q. When did you tell Corporal Kelly that?

19 A. When did I tell Corporal Kelly?

20 Q. Yes, that the man had come in to your
21 home, busted the door open, and you had to shoot
22 him. When did you tell him that?

23 A. I don't think I ever said that.

24 Q. You've never told him that.

25 A. I don't think I ever did. I think what I

Jeffrey Andrews-Cross by Meadors

1 told him is, and if this is on record that a man
2 has a right to protect himself in his home,
3 something to that effect. I did say that. When
4 you tell someone to leave your home, and they
5 don't leave, you have the right to protect
6 yourself. That's what I said to Corporal Kelly.
7 And after that, Corporal Kelly took me to the
8 vehicle in cuffs, and I didn't have any more
9 interaction with him so.

10 Q. When you tell a man to leave your home,
11 you don't have a right to put a bullet in his
12 head.

13 A. Sir, when a man forcefully and unlawfully
14 enters your house and scares you, there's no
15 telling how you will react in your own home.

16 Q. I agree with that.

17 A. I was not -- I was at my home.

18 Q. I agree with that, but you never told
19 anybody that. You didn't tell Corporal Kelly on
20 the scene that. You didn't tell him that. You
21 didn't say, man, this guy busted into my home, my
22 castle, I had a right to shoot him. Here's the
23 gun, take it. You damn right I shot him, he was
24 breaking into my house. You said, he took
25 something from me, didn't you?

Jeffrey Andrews-Cross by Meadors

1 A. Again I don't have that on record where I
2 said he took something from me. I don't have that
3 on record. But all I know that I have on record
4 is, there is an altercation about a missing bottle
5 of brandy. That's what I said to Officer Kelly.
6 That's what I remember. It's been a year. I
7 don't remember everything. But I have what I said
8 on record in Motion of Discovery.

9 Q. Why didn't you give law enforcement the
10 gun. Why didn't you just turn it over to him?

11 A. Because my dad told me to give him the
12 gun. I think during that time, it was just,
13 again, sir, it was just a heat of the moment,
14 things are moving too fast. My dad asked me for
15 the gun. I gave it to him. Give me gun, son.

16 Q. Where were you when you gave him the gun?

17 A. We were in the living room.

18 Q. And how did you fire the gun?

19 A. Excuse me?

20 Q. How did you fire the gun?

21 A. I grabbed the weapon, as I was saying,
22 from the dresser drawer. May I ask to have our
23 picture, please? Picture of the -- that big one
24 would be sufficient.

25 Q. 10?

Jeffrey Andrews-Cross by Meadors

1 A. No, not that one. There is a big one
2 similar to that one I can show the jury.

3 Q. Can you come down? I don't know which one
4 you are talking about.

5 A. I'll do that.

6 (Whereupon, the witness steps down from
7 the witness stand.)

8 A. Just let me see. This is where I was when
9 I grabbed the weapon. My body is actually facing
10 the door right here. And I grabbed and reached,
11 and I grabbed the weapon and shot him.

12 Q. Tell me where you were standing.

13 A. It's right here.

14 Q. So you were at that door and you reached
15 in and got the gun?

16 A. That's right.

17 Q. So you weren't in -- did you go inside the
18 room?

19 A. Yes, I was in there looking for the
20 telephone.

21 Q. So your full body went in to start with.

22 A. Correct, and I was on my way out.

23 Q. My question was, can you show me, how did
24 you shoot the gun?

25 A. Did I shot the gun?

Jeffrey Andrews-Cross by Meadors

1 Q. Yes, sir. I mean how did you shoot it?
2 Did you just pull the trigger?

3 A. Yes, sir.

4 Q. Or did you cock it first, and then shoot
5 the gun?

6 A. I just pulled the trigger.

7 Q. And when you got through with it, because
8 this is the gun you used to kill Shamar.

9 A. I think so.

10 Q. When you got through with it, why did you
11 cock it again?

12 A. I don't know if I did that by mistake or
13 by accident, I do not know. I gave it to my
14 father.

15 Q. Was it cocked when you gave it to him?

16 A. I am not sure. I can't promise you that.
17 Again, things were moving so fast. I cannot
18 promise you that I cocked it. And if I did, it
19 was probably by accident.

20 MR. MEADORS: I beg the court's
21 indulgence.

22 THE COURT: Yes, sir.

23 Q. And you said or I think you said today or
24 it was Monday, that he called you outside?

25 A. During the altercation that we had in the

Jeffrey Andrews-Cross by Meadors

1 house, when Shamar asked, I am not sure that I can
2 repeat what he said.

3 THE COURT: She's going to object, go
4 ahead.

5 MR. MEADORS: Go ahead.

6 A. And Shamar said, are you calling me a
7 liar, I'm going to have to take you outside.

8 Q. So he was saying, let's go outside.

9 A. That's correct.

10 Q. And what incident was that?

11 A. Excuse me?

12 Q. What time was that when he was there?

13 A. What time do you mean?

14 Q. Well I'm asking you.

15 A. On which visit?

16 Q. Yes, sir.

17 A. Because I don't know the actual time.

18 Q. Well you know what I meant, which visit?

19 A. That was when he came in with the 40-ounce
20 bottle.

21 Q. And when your dad---

22 A. And then the altercation took place.

23 Q. That's not when the killing took place.

24 A. No, sir. The killing didn't take place.

25 Q. That was when you were in fear of

Jeffrey Andrews-Cross by Meadors

1 suffering serious bodily injury or death on that
2 incident, correct?

3 A. On the second when we were arguing, and he
4 advanced towards me with the bottle.

5 Q. And he never hit you with the bottle.

6 A. No, sir.

7 Q. And your dad, when you dad said there was
8 arguing, you all just leave, do you remember him
9 saying that?

10 A. I remember my dad saying Erika, Erika,
11 Erika, you and Shamar go now, Jeffrey done told
12 you all to leave.

13 Q. And he told you to go to your room.

14 A. My dad didn't tell me to go to my room.
15 He might have been -- he might be mistaken, but he
16 didn't tell me to go to the room, sir. My dad is
17 a little old now.

18 Q. So he might be mistaken about several
19 parts of his testimony then.

20 A. You know, Mr. Meadors---

21 Q. And you said that, I didn't.

22 A. Mr. Meadors, I'll tell you like this. I
23 didn't want my father on the stand to start with.
24 I didn't run and hide from this. I felt in fear
25 of my life. I was in home, and I shot Shamar. I

Jeffrey Andrews-Cross by Meadors

1 didn't want him involved.

2 Q. I didn't either. You brought us here.

3 A. Yes, I did bring you here.

4 MR. MEADORS: I being the court's
5 indulgence.

6 THE COURT: Yes, sir.

7 Q. Did you say earlier in your testimony the
8 screen door was open? His feet was -- he had --
9 his feet had the screen door open when he was
10 shot?

11 A. Yeah. Shamar one of his feet had the
12 screen door open. That's correct. After he was
13 shot.

14 Q. Your testimony when he was shot, his feet
15 had the screen door open.

16 A. Yeah, part of his foot was, part of one of
17 on his feet had the screen door open.

18 Q. And that would have put his head closer to
19 the door, wouldn't it?

20 A. No, that would have put his -- can I show
21 you?

22 Q. Sure.

23 (Whereupon, the witness steps down from
24 the witness stand.)

25 A. This is where Shamar fell at. The screen

Jeffrey Andrews-Cross by Meadors

1 door is here. This is where he fell at. The
2 screen door is right there. Right there.

3 MR. MEADORS: Thank you.

4 A. So that would be his body.

5 (Whereupon, the witness resumes the
6 witness stand.)

7 Q. Finally you said you had a criminal
8 domestic violence. That was an aggravated
9 criminal domestic violence conviction, wasn't it?
10 And also an aggravated assault conviction one
11 2010, and one in 2005. In addition to that a
12 shoplifting conviction.

13 A. 2004.

14 Q. You were convicted in 2005.

15 A. That's correct. Yes, sir. I did have.

16 MR. MEADORS: Thank you. That's all.

17 THE COURT: Any redirect?

18 MS. COOKE: No, Your Honor.

19 THE COURT: Thank you. You may step down.

20 MS. COOKE: Your Honor, the State rests
21 at this time.

22 THE COURT: The defense rests.

23 MS. COOKE: The defense rests, I'm sorry.

24 MR. MEADORS: May we approach?

25 THE COURT: You may.

1 (Whereupon, attorneys approach and confer
2 with judge.)

3 THE COURT: Ladies and gentlemen, it
4 appears to be a good time to break for the day. So
5 I am going to send you home with strict instructions
6 not to speak to anyone or each other about this
7 case. And do not look in newspaper. It's
8 anticipated that we will argue and charge tomorrow
9 morning, and then you will have the case after that.
10 Thank you, Ladies and gentlemen, be back here at
11 9:30.

12 (Whereupon, the jury is dismissed at
13 5:08 p.m.)

14 THE COURT: Anything before we break for
15 the evening?

16 MR. MEADORS: No, sir.

17 MS. COOKE: No, Your Honor.

18 THE COURT: If you have any proposed
19 charges, please send them to David tonight after he
20 sends you the draft charge and the verdict form.
21 The court is adjourned until 9:30 tomorrow morning.

22 (Whereupon, the trial commences on
23 Friday, July 24th 2015 at 9:30 a.m.)

24 (Whereupon, the following takes place
25 outside the presence of the jury.)

1 happens all over the State; that jurors think they
2 have assigned seats. You all can sit anywhere you
3 want to. So but, Ladies and gentlemen, all of the
4 testimony and evidence has now been presented in
5 this case. Now is the time where the parties will
6 give their closing arguments. After that, I will
7 charge you the law, and give you the task of
8 deliberating in this matter.

9 So is the State ready to proceed?

10 MR. MATHEWS: We are, Your Honor.

11 THE COURT: Is the defense ready to
12 proceed?

13 MS. COOKE: Yes, Your Honor.

14 MR. MATHEWS: May it please the court.

15 THE COURT: Yes, sir.

16 MR. MATHEWS: Good morning, Ladies and
17 gentlemen. Let me explain a little bit about what
18 my role is here today. I'm going to do what's
19 called the closing on the law. I'm going to tell
20 you a little bit about the law as it exists in our
21 State, what the law is specifically in regards to
22 this case. And I'm going to sit down. And
23 Ms. Cooke is going to get up and give her argument
24 to you on behalf of the defendant, and then
25 Mr. Meadors is going to close on the facts. He's

1 going to tell you how the facts that have been
2 presented in this case and apply it to law as I give
3 it to you.

4 Now of course His Honor, the judge, is the
5 ultimate giver of the law. He decides the law. He
6 will tell you what the law is. And I am going to
7 summarize what the State believes the law is, and
8 what the law is that applies to this case. We're
9 here today because the defendant, Jeffrey Dana
10 Andrews has been charged with murder. And I will
11 tell you a little bit about what murder is, and what
12 we have to prove. Now that seems kind of intuitive,
13 common sense tells you what murder is. But as
14 Mr. Meadors said in his opening, murder is the
15 killing -- the unlawful killing of another human
16 being with malice aforethought.

17 I think we all know what it means to kill
18 somebody. The one thing that may not be as
19 intuitive as malice aforethought. And what does
20 that even mean. Aforethought is really one of those
21 fancy lawyer words, that nobody actually uses in
22 every day life. We use it in the courtroom for
23 whatever reason. So I'll start out by telling you
24 what malice is. Malice is ill will, hatred, spite,
25 an evil intent.

1 Now malice can be shown in two ways. It
 2 doesn't have to be shown in both ways, one or two
 3 ways: Express or implied. Express malice would be
 4 saying something like, threatening somebody saying,
 5 I hate you. I want to kill you. It could also mean
 6 as in this case, confronting somebody about stealing
 7 your liquor. Inviting them over, arguing with them
 8 about stealing the liquor. And then shooting them
 9 because you think they stole your liquor.

10 Malice can also be implied. It can
 11 implied from words, deeds, actions. An example of
 12 that would be after you shot somebody in the head,
 13 and say, awe, that ain't nothing but a little bug
 14 bite. That's just a mosquito bite. That's showing
 15 a disregard for human life. And that can be implied
 16 malice. Now to the aforethought. It's that fancy
 17 lawyer word. What does mean. Mr. Meadors gave a
 18 pretty good idea of what it means in opening. He
 19 said, it doesn't have to be premeditation. You
 20 don't have to sit and plan, and say, I am going kill
 21 Shamar Howell in this date and this time. And this
 22 is how I am going to do it. It just has to exist
 23 for an instant right before the action it committed.

24 So right before Jeffrey Andrews pointed
 25 that gun with his right hand, shot Shamar Howell, he

1 has to have malice and the intent to kill Shamar
2 Howell at that moment. The intent to kill Shamar
3 Howell with malice combined at one point, that's
4 malice aforethought. And that's what we have to
5 prove for murder. Mr. Meadors will tell you a
6 little bit about how we've proven that, and what the
7 facts will show you in this case. Now the second
8 crime that Mr. Andrews is charged with, is
9 possession or use of a weapon in the commission of a
10 violent crime.

11 Now to find Mr. Andrews guilty of this
12 charge, you're going to have to determine that a
13 crime was committed. So you're going to have to
14 find that he murdered Shamar Howell. It is not in
15 dispute that he killed Shamar Howell, you'll have to
16 find that he did it with malice aforethought. And
17 that when he did it, he utilized, used a weapon in
18 the commission of that crime. You have to find that
19 he used this weapon, State's No. 21, in the
20 commission of that crime. We argue there is no
21 dispute to that. He shot Shamar Howell in the
22 head, that's how he committed the murder.

23 Now Ms. Cooke got up here opening and told
24 you that this was a self defense case. So I'm going
25 to tell you a little bit about the law of self

1 defense. There are four elements to self defense in
2 South Carolina. One of those elements, the State is
3 willing to concede has been met already; that you
4 have no duty to retreat in your own home. The State
5 is willing to acknowledge that Mr. Andrews was in
6 his home on the night of March 25th 2014. So we're
7 not really concerned with that here.

8 Now they're an additional three elements,
9 and all three of them have to be met. You can think
10 about like, sitting on a three legged chair, sitting
11 on a bar stool. If you take out one of those legs,
12 you're going to fall over backwards. If you take
13 out the other one side, you fall over sideways. The
14 defense can't stand without all three legs. Now the
15 first element of self defense is the defendant has
16 to be without fault. So what does that mean. That
17 means the defendant can't have brought this on
18 himself. He can't have done something that would
19 reasonably provoke a deadly assault.

20 Now, Ladies and gentlemen, we contend that
21 Mr. Andrews invited Shamar Howell over to his house
22 that night. He invited him over there specifically
23 to confront him about the stolen jug of liquor. He
24 wanted to start a fight that night, and he invited
25 Shamar Howell over to do that. Mr. Andrews is not

1 without fault in this situation. And that's one
2 element you have to have for self defense.

3 Now the second element is that you have to
4 be in imminent danger of serious bodily injury or
5 death. And you have to have a belief that you were
6 in serious danger -- danger of seriously bodily
7 injury or death. Now the second element and the
8 third element kind of go along together. Because
9 the third element is a reasonable person standard.
10 So if you're in reasonable danger or serious injury
11 or death, a reasonable ordinary prudent person, it's
12 kind of like every man standard, an average person
13 would feel so threatened in that situation, that
14 they would strike the fatal blow. An every day
15 person would feel so threatened by what the victim
16 was doing, that they would decide to shoot him in
17 the face out on the porch.

18 If you have a belief of a serious danger,
19 so you're not in actual danger, but you believe that
20 you are, a reasonable person would also have to
21 share that belief. Now Mr. Meadors will tell you in
22 more detail about why Jeffrey Andrews wasn't in
23 reasonable apprehension of serious bodily injury or
24 death. But suffice it to say for my purposes here,
25 when you shoot someone out on the porch when they're

1 attempting to leave your house, that's not a
2 reasonable apprehension of serious bodily injury or
3 death. And thus the elements of self defense have
4 not been meet.

5 As I mentioned before, the State has to
6 disprove all -- one out of three of those elements.
7 Not all three of them. The chair cannot stand only
8 one of two legs. If one element is gone, the
9 defense is gone. Now I'm also going to talk to you
10 about something the judge is going to charge called
11 voluntary manslaughter. Now some of you might have
12 heard this on TV, heard it, watched some Law and
13 Order, it's not as intuitive as what murder means.
14 But I'll tell you that voluntary manslaughter means
15 the unlawful killing of a person without malice, in
16 the heat of passion if there is sufficient legal
17 provocation.

18 Now I'm going to have to break this down.
19 What does all that mean. If you kill another
20 person, and you don't have that element of malice,
21 you don't have that element of ill will or hatred,
22 but you do in the heat of passion without sufficient
23 legal provocation. So what does sufficient legal
24 provocation mean. That's really the point of
25 contention here, the heart of the matter. Legal

1 provocation is something that the victim does to
2 enrage your passions enough, the defendant, get the
3 defendant angry enough, passionate enough, have so
4 much exasperation and anger that he is incapable of
5 calm, collective thought.

6 So in order for something to be in the
7 heat of passion, the defendant would have to do
8 something -- I'm sorry, the victim would have to do
9 something to the defendant that he got him so angry,
10 so riled up, that he couldn't possibly be clam, cool
11 and collected, and he had to shoot the victim at
12 that point.

13 Now, Ladies and gentlemen, we believe that
14 Mr. Andrews killed Shamar Howell with malice
15 aforethought. But voluntary manslaughter is another
16 charge to consider, and the judge will instruct you
17 on. Now you've heard evidence from the witness
18 stand over these last 3 days. And Mr. Meadors told
19 you a little about in the opening statements about
20 direct and circumstantial evidence. Now direct
21 evidence is something that you can see, feel, hear,
22 touch. It's physical items taken from the scene.
23 This gun, you can feel, hear, see and touch. This
24 bullet that killed Shamar Howell, you can feel it,
25 see it, touch it. It's also eye witness testimony.

1 Individuals that were on the scene that night. It's
2 a statement of Jeffrey Andrews saying, I shot Shamar
3 Howell. That's direct evidence. He's saying he
4 shot him. There's also direct evidence to say
5 Corporal Kelly said, he took something from me. He
6 took a bottle of liquor from me. That's direct
7 evidence that Corporal Kelly heard Shamar -- I'm
8 sorry, Jeffrey Andrews say.

9 Then you have circumstantial evidence.
10 And the classic example that Mr. Meadors used was,
11 you go inside tonight. The ground is dry outside.
12 No moisture. When you wake up in the morning,
13 there's snow all over the place. You didn't see it
14 snow last night, but you know that it snowed,
15 because there's snow everywhere. That's similar to
16 the way Erika Andrews got on the stand and she said,
17 I didn't see the shot happen. I didn't see the
18 bullet leave the barrel of the gun and go into
19 Shamar Howell's head. But she knows it happened,
20 because she saw Mr. Andrews in the doorway out on
21 the porch, pointing the gun, and she heard a
22 gunshot.

23 Then when she gets out there, Shamar
24 Howell is laying dead on the ground. That's a good
25 example of circumstantial evidence. That shows she

1 didn't directly see it happen, but it's a chain of
2 events that leaves her to believe that's what
3 happened. In a similar way, Chad Smith from sled,
4 didn't see this bullet leave that gun. He didn't
5 see State's 23 leave State's 21, but he knows it
6 happened. How does he know? Because he performed
7 tests on it. He looked for distinctive markings on
8 this bullet to show that that bullet came from that
9 gun. That's an example of circumstantial evidence.

10 Finally, the real heart of the matter
11 today, what does the State have to prove to you.
12 What are we tasked for showing you. We have to
13 prove the elements of these crimes beyond a
14 reasonable doubt. And that can be sometimes tough
15 concept to visualize and understand. What does it
16 mean to have reasonable doubt. I can tell you what
17 it doesn't mean. It doesn't mean beyond all doubt.
18 It doesn't mean beyond a shadow of a doubt. There
19 are very few things in life we can be absolutely
20 certain of. And that's not the standard of
21 criminal court. It's beyond a reasonable doubt.
22 It's a doubt based on reason and common sense.

23 Another way to put it is, if you are
24 firmly convinced by the State's evidence, then it
25 would be your duty to find Jeffrey Dana Andrews

1 guilty of murder. If you are firmly convinced that
2 he shot Shamar Howell in the head with malice
3 aforethought, it would be your duty to find him
4 guilty of murder. If you're firmly convinced that
5 the State has disproved one of the elements of self
6 defense without fault, immediate fear, or imminent
7 fear of bodily injury or death, and a reasonable
8 person would act the same way, if we've disproved
9 one of those, that has you firmly convinced that we
10 disproved one of those, then it would be your
11 guilty -- then it would be your duty to find Jeffrey
12 Andrews guilty of murdering Shamar Howell.

13 Ladies and gentlemen, we have embrace that
14 standard. We understand that is our burden, and we
15 embrace it. And we believe with all the evidence
16 that's been presented to you over the last few days,
17 we've done that. We've presented enough evidence to
18 have you firmly convinced of the guilt of the
19 defendant. Now, as I said before, we'll allow
20 Mr. Meadors. So first Ms. Cooke will speak on of
21 her client. And then Mr. Meadors will come up here
22 and instruct you, argue to you about what's been
23 shown at this trial. What the State has proven, and
24 what we disproven. And at that time, we'll ask you
25 to return a verdict of guilty. Thank you.

1 THE COURT: . Thank you, Mr. Mathews. Ms.
2 Cooke.

3 MS. COOKE: Where was Shamar when he was
4 shot? There are no pictures of the body where it
5 was laying then the police first arrived on the
6 scene. There are countless crime scene photos, but
7 there is not one photo where he was laying when the
8 police arrived. We know that EMS testified that EMS
9 had been waiting until the scene was clear and that
10 gun was found, which by that video alone took a long
11 time. And all these scene pictures were taken, but
12 no picture was taken of where the body was. There
13 was no crime scene sketch done. And there was no
14 first responder put up on the stand to say exactly
15 the position the body was in. No first policer that
16 showed up on the scene before EMS got there.

17 At a much later time after the scene was
18 cleared and the gun was found, to say where the body
19 was. So how do we know where it was. Well the EMT
20 said that she feels like he was dropped where he was
21 shot. Well and she never really explained what she
22 meant by that, or where exactly he fell. But if she
23 was saying that he fell over here where the blood
24 was, he didn't crumple up into a ball. He fell
25 backwards. And remember she also didn't know the

1 bullet didn't exit the brain or the head. She
2 didn't know the bullet stayed in the brain.

3 The pathologist with 38 years of
4 experience and 3,000 autopsies in a controlled
5 environment with a specific reason of forensics, and
6 law enforcement purposes, and with the intention of
7 testifying, said that she with a medical degree and
8 all that experience in doing this for 38 years for
9 law enforcement and too testifying in the courtroom,
10 couldn't say with any degree of scientific certainty
11 exactly how and where he fell. But what she did
12 agree to was when I posed the hypothetical to her of
13 how Jeffrey said this happened, and she agreed and
14 said yes, it could have happened that way. That's
15 consistent.

16 John Davis' measurement, we have testimony
17 about here the blood pool was. He measured the
18 porch. He measured all of this. He put a lot of
19 work in to this. He cut this. With EMS's testimony
20 that the head was over here at the blood pool, and
21 the body was this way with the feet towards the
22 door. His measurements put Shamar's feet at the
23 threshold of the door with the pathologist's
24 testimony that he was 6-foot tall. And don't get
25 confused about that. The pathologist said that his

1 height was measured. His weight was estimated.

2 His height was measured at 6-foot.

3 And then the State questioned John Davis.
4 about well isn't this an estimate. Isn't this an
5 estimate. Well he testified on my redirect about
6 the painstaking efforts he took, and showed you on
7 the picture of how he went about-getting this
8 estimate. So it may be an estimate, but it's a
9 very close estimate. And also what he did is he
10 measured the edge that gives the State the benefit
11 of the doubt, not the defense. So if his
12 measurements are off, they're off to the State's
13 benefit.

14 The GSR expert testified. Yes, the small
15 amount, a small amount of GSR on Shamar is
16 consistent with Erika holding on to him and EMS and
17 law enforcement having to pull her off of him. Or
18 it's consistent with him being shot 3 feet away from
19 the barrel of the gun, three feet from the barrel of
20 the gun, at a minimum. The pathologist said at a
21 minimum, he was 2 feet away from the barrel. So
22 that is a minimum distance; not the distance, a
23 minimum distance. And then we've got the length of
24 the gun, and the length of Jeffrey's arm to add to
25 that, which is also consistent with Jeffrey's

1 version of what happened.

2 The GSR expert also testified that the GSR
3 on the dad's hands are consistent with him hiding
4 the gun, which is consistent with both Jeffrey and
5 Robert, the dad's testimony. Dubose testified that
6 Jeffrey told him, he came at me with a 40-ounce
7 bottle. And he also told Dubose yeah, that's it in
8 the yard and we saw a picture that you'll see back
9 in the jury room, with a 40-ounce bottle in a bag
10 out in the yard. Now the State inferred that
11 Jeffrey was telling Dubose, he was coming at me
12 through the door with a 40-ounce bottle when I shot
13 him. That's not what he said.

14 He said two different things to Dubose.
15 He said he came at me with a bottle. And he also
16 said yeah, there's the bottle there in the yard. We
17 find out later in testimony that the coming at him
18 with a bottle was earlier. He wasn't putting those
19 two statements together. He told Dubose both those
20 things; that he -- just because he told Dubose both
21 of those things doesn't mean that he was saying that
22 Shamar was coming through the door with a bottle,
23 when he shot him. He very clearly told Dubose
24 through his testimony, and that the bottle -- yeah,
25 that's the bottle out in the yard in the bag. So

1 let me give you a plausible version of events that
2 Jeffrey -- is consistent with Jeffrey's testimony
3 about what happened this evening.

4 Jeffrey goes over, finds the bottle of
5 brandy missing, and goes over to Erika and Shamar's
6 house and asks them about the brandy. Comes back to
7 the house. Shamar comes over. Shamar leaves.
8 Shamar goes to the bathroom. Shamar comes back with
9 a 40-ounce bottle. They get into an altercation,
10 an argument, a physical confrontation, Shamar, Erika
11 and Jeffrey. At some point during that time,
12 Shamar comes at him with a bottle. And he's afraid
13 for his life. Jeffrey says that he finally gets
14 Shamar out of the house, that Erika stays and is
15 over in the corner drinking. He shuts the screen
16 door. He latches it. Shamar is outside. Erika his
17 girlfriend, who lives with him, and who he has a
18 child with, is inside.

19 Shamar is walking home, heading towards
20 the gate, right out in front of the front yard,
21 because they live a lot over. And thinks oh, no,
22 no, no, no. This ain't over. Sits the bottle down
23 in the yard. Goes back. Yells to Erika, Jeffrey
24 ain't coming out here, I'm going to beat his ass.
25 Snatches the locked scene door open, telling

1 Jeffrey, I'm going to kill you mother fucker. And
2 Jeffrey raises the gun and fires it at him. And
3 just as I posed to the pathologist, when Jeffrey, as
4 Jeffrey sees the gun raised, if he in the very
5 slightest leans backwards, he falls backwards when
6 he is shot in the head; is what the pathologist
7 said, because of the initial inertia of him leaning
8 backwards; and he falls backwards. He didn't
9 crumple into a ball and fall exactly where he was
10 shot. He wasn't in a ball. He was laid out. You
11 fall backwards. He was laid out. His feet were
12 pointing towards the door. And his arms were back
13 like this. There was testimony of it. He fell
14 backwards when he was shot.

15 Ladies and gentlemen, we don't have to
16 prove that happened. Jeffrey and the defense does
17 not have to prove anything in this case. The State
18 has the complete burden of proof. They not only
19 have to prove murder or voluntary manslaughter, they
20 have to go a step further in this case and disprove
21 that Jeffrey acted in self defense. We don't have
22 to prove that he acted in self defense. The State
23 has to disprove that he acted in self defense.

24 Now Robert's testimony, he said Shamar
25 started yelling. He asked Jeffrey to leave. Excuse

1 me, he asked Shamar to leave. Jeffrey asked Shamar
2 to leave. He admitted he hid the gun to protect his
3 son. He said the gun was on the dresser. He got
4 dripped up for a minute during cross examination and
5 said once that it was in the drawer, and then he
6 changed his story and said no, no, no, it was on the
7 dresser. But it was on the dresser. Sometimes it's
8 on the dresser when the kids aren't there, and it
9 was on the dresser.

10 He said that Shamar was shot in the
11 doorway between the screen door and the wooden door.
12 He said those words, in the doorway between the
13 screen door and the wooden door. Not inside, in the
14 doorway, in the threshold. Now I asked Robert about
15 the latch. And I asked Jeffrey about the latch.
16 And you saw pictures of the latch. You will see
17 pictures of the latch. The latch was broken. And
18 the State asked, well these pictures were taken last
19 week. And it's been a year. And John Davis
20 readily, yes, I took those last week. Absolutely, I
21 took these last week. I did not take these the
22 night of the crime scene. I was not there. I took
23 these last week.

24 But Robert and Jeffrey both testified the
25 latch was not like that before that evening. The

1 latch was not like that before Jeffrey snatched the
2 door open. And there was -- and the latch had not
3 been fixed in the meantime and rebroken. Now at one
4 point Robert said, Oh, I pushed it back in the wall.
5 And then so the State is saying, well it was fixed.
6 That's not fixed, Ladies and gentlemen. That's two
7 different definitions of the word fixed. Robert
8 Andrews said, I pushed it back in the wall, but it's
9 still loose and it still jiggles. All he did -- it
10 is still loose and it still jiggles and it still
11 hanging out. It wasn't fixed and rebroken by
12 somebody else. They testified that it was in same
13 condition as it was on night in that picture.

14 Now let's talk about Erika, the State's
15 most important and only eye witness. How many
16 inconsistent stories did she tell. I think the
17 biggest and most obvious one was when she absolutely
18 insisted over and over and over that Jeffrey did not
19 live at _____, until I made her read her
20 own statement, where she wrote down last year, we
21 went back over to my uncle Robert's house where Jeff
22 lived also, at _____. She said that he
23 was shot in the house four times. And on the porch,
24 she said he was shot on the porch four times.

25 Now she tried to explain that

1 inconsistency away by saying oh on those times when
2 I said that, I mean I just saw Jeff raise the gun.
3 That is not what she said on the tape. She said on
4 the tape when we were all outside, they were
5 standing face to face, Jeff just reach out and shoot
6 him in the head. So she can try to explain the
7 inconsistency away, but it was on the tape what she
8 said. She said that she came to the house with
9 Shamar two times. But four times she admitted that
10 they came separate. Now this is all over 4
11 different things. This is one, a written statement
12 she made to Officer Trip Mays. One is the dashcam
13 video on -- where they can hear everything she says
14 on the evening of the incident. One is an interview
15 that she gave to Dubose that we heard. And another
16 is her testimony. And all these inconsistencies in
17 her testimony, she can't get her story straight.

18 Now let's talk a little bit more about
19 cross examination of Erika, the State's most
20 important and only eye witness. I've been a lawyer
21 for 15 years, and half of it was as a prosecutor.
22 And I never in my career seen a witness especially
23 as important as Erika, interrupted to take another
24 witness' testimony in the middle of it.

25 MR. MEADORS: Your Honor, I'm going to

1 object to that. She consented to that.

2 THE COURT: Basically you did the same
3 thing. Overruled. Or sustained, excuse me.
4 Sustained, because she did the same thing.

5 MS. COOKE: Let's talk about the tapes.
6 There were inconsistencies on the audiotapes that
7 Erika said. Very specific things she said that are
8 completely contradictory on different tapes, that I
9 was going to play for you, but the State wanted the
10 whole tape played. Why do you think that is. Were
11 you able to listen and concentrate to the whole tape
12 and pick out the inconsistencies that I wanted you
13 to hear. I think there was reason for that. And
14 then they played the 911 tape, that very disturbing
15 emotional 911 tape. They told us nothing that
16 wasn't already testified to.

17 Now I read a story about Norman Rockwell
18 one time that said, and I don't know if it's true or
19 not, but I read it; that when he is doing a painting
20 and he doesn't think it is going quite well, he puts
21 a little dog with a bandaged paw to distract the
22 jury. Ladies and gentlemen, I think that's what is
23 happening here. I think you are trying to be
24 distracted from the defense and Jeffrey's side of
25 the story.

1 Erika said at point that Shamar was
2 leaving, and Jeffrey walked out and shot him. Well
3 then why isn't he shot in the back or on the steps
4 or in the yard. That's just one of her inconsistent
5 stories. Which one is it, was he shot face to face
6 on the porch? Was he shot as Jeffrey was following
7 him out the door? None of that is consistent with
8 Jeffrey's account. What is consistent with
9 Jeffrey's account is the pathologist's hypothetical,
10 EMS's testimony about the position of the body, the
11 GSR expert, and John Davis' measurements. You know
12 who could have told them, a blood spatter analysis
13 at sled. Three other experts were employed for this
14 case, but a blood spatter analysis wasn't.

15 And I'll talk about Jeffrey and his
16 testimony. Jeffrey, and this is in common sense.
17 You can make this decision completely on your own or
18 not, of what you observed of Jeffrey. But he was
19 visibly and obviously and very reasonably nervous.
20 And I would think under conditions of public
21 speaking is hard on its own. When you're in the
22 spotlight and you're on trial for murder, it's easy
23 to see how somebody could get really nervous. And
24 he was visibly nervous and mixed up a little bit on
25 the time line.

1 The first thing he said, the State says
2 was, he took something from me. This very first
3 thing, he took something from me to the officer. He
4 took something from me. Now I want to give you an
5 analogy to try to explain that. And it's going to
6 be disturbing analogy, this whole trial had been
7 disturbing and tragic. And this example is going to be
8 a little bit disturbing too. But I have to use an
9 analogy that matches the trial. Let's say a mother
10 is with her child, and the child is screaming to the
11 mother, I want ice cream from McDonald's. And the
12 mother finally says, okay, let's go. Let's go get
13 ice cream from McDonald's. And the mother takes the
14 child to get ice cream from McDonald's. And on the
15 way, a car runs a red light and crashes into the
16 car, and kills the child. Can you imagine the
17 mother at that point sitting in a police car, saying
18 I took my child to get ice cream. Well I'm
19 analogizing that to Jeffrey saying, he took brandy
20 from me. Because we were never told the tone or
21 demeanor he said it in was that, he took brandy from
22 me. Was it, he took brandy from me? We don't know.
23 We don't know if it was a hateful, wicked, with ill
24 heart tone, or whether it was remorseful, oh, my
25 God, I can't believe this was over brandy. He take

1 brandy from me. We don't know. After he shot
2 Shamar, he checked for his pulse. He tried to do
3 CPR, but Erika wouldn't let him. He knew 911 was
4 called. He knew the police were on the way. He
5 said, it's me. It's me you're looking for. I shot
6 him. He asked about his condition. What's wrong
7 with him. What's wrong. Is he gone. He asked
8 about his condition. He said I gave the gun to my
9 father. I'll help you look for it. I'll talk to my
10 dad if you want me to.

11 He also told Dubose that he was in fear
12 for his life. That he was in fear for life. And he
13 said during cross examination, he didn't know when
14 Shamar came through the door if he still had that
15 bottle or not. All he knew is that he had come in
16 with it earlier, and he had gone outside. And he
17 was busting through a locked door saying, I'll kill
18 you mother fucker. He didn't know if he had that
19 bottle or not. He was afraid he had the bottle. He
20 was afraid for his life.

21 Reasonable doubt. The State has the
22 burden not only of disproving self defense, we do
23 not have to prove self defense. They have to
24 disprove self defense. They have to prove murder or
25 voluntary manslaughter. Let's talk about reasonable

1 doubt. Reasonable doubt is a doubt that causes a
2 reasonable person to hesitate to act. If you are
3 firmly convinced of his guilt, then they have met
4 their burden.

5 Another analogy that I like to use in
6 trials is, I'm a huge baseball fan. I haven't
7 watched in a few years, so I don't even know who the
8 players are anymore. But I used to be huge
9 baseball fan. And in baseball when the pitcher
10 throws the ball, and the batter hits the ball and
11 runs to first base, if the runner makes it to first
12 base before the ball, the runner is safe. And if
13 the ball makes it to be first base before the
14 runner, the runner is out.

15 Well sometimes there is a tie. In
16 baseball the tie goes to the runner. And in this
17 courtroom Jeffrey Andrews is the runner. He gets
18 the benefit of any doubt that you have. The judge
19 is going to charge you that he gets the benefit of
20 any doubt that you have. He is the runner. If
21 there is a tie here, he gets the benefit of the
22 doubt, and he is safe. Is it reasonable that a
23 52-year-old man with three charges on his record,
24 from 04, 08 and a shoplifting from 2010, and we
25 don't have any idea. The State made a big deal

1 about, it was aggravated. We don't know what
2 aggravated assault or aggravated criminal domestic
3 violence means in Arizona.

4 Is a reasonable that a 52-year-old man
5 with three charges on his record, would just all of
6 a sudden up and shoot his niece's boyfriend in the
7 head over a stolen bottle of brandy for no reason
8 whatsoever. I don't think that's reasonable. I
9 don't think that makes any sense at all. Yes, he
10 got a little confused on the stand. Yes, he mixed
11 some things up. It's perfectly reasonable in the
12 situation that he's in. What's more reasonable is
13 that Shamar was leaving, after being kicked out and
14 the door was shut and locked said, oh, no. Set the
15 bottle down in the yard where it was found. Came
16 back, yelled at Erika, Jeffrey ain't coming outside,
17 he knows I'll bet his ass. Busts through the locked
18 screen door yelling, I'll kill you mother fucker.
19 Jeffrey knew he just had the bottle earlier when he
20 was walking out.

21 He couldn't see the phone. He grabbed the
22 gun and he shot him in self defense. Here's another
23 thing about the State's burden of proof. The
24 pathologist, the MD, with 38 years of experience, in
25 3,000 autopsies for law enforcement purposes and the

1 purposes of testifying said, yes, it can happen the
2 way you've said. It's possible. It's consistent.

3 The GSR was consistent with Jeffrey's
4 story. The painstaking measurements that John Davis
5 did are consistent with Jeffrey's story. If the
6 experts can't ruled out that it happened that way,
7 then the State can't rule out that it happened that
8 way. And you can't rule out that it happened that
9 way. And then if you can't rule out that it
10 happened that way, you have to find him not guilty.
11 Or do we believe one of the many of Erika's story
12 that are not consistent with the evidence, and are
13 completely inconsistent with each other.

14 She didn't even know how tall her
15 boyfriend was. She said he was 5'9. And the
16 pathologist measured at him 6-foot or either she was
17 flat out lying on the stand. Yes, there was an
18 altercation over brandy. But Shamar ended the
19 altercation when he busted through a locked door
20 after being force out by Jeffrey. Totally by
21 Jeffrey. Totally by Robert, who both live at that
22 address, screaming I will kill you mother fucker,
23 after just having a 40-ounce bottle of beer in his
24 hand, even though he didn't have it at the moment,
25 Jeffrey didn't know that. And after coming at him

1 earlier, and almost hitting him with it. If the
2 experts can't rule out his version of events, and
3 also say, they go even further to say that the
4 evidence is consistent with his version of events,
5 then the State can't rule it out, and you can't rule
6 it out. And you must find him not guilty. Thank
7 you.

8 THE COURT: Thank you, Ms. Cooke.
9 Mr. Meadors.

10 MR. MEADORS: May it please the court..

11 THE COURT: Yes, sir.

12 MR. MEADORS: Mr. Mathews, Ms. Cooke,
13 Mr. Foreman, Ladies and gentlemen, good morning.
14 What's a life worth? Shamar Howell's life was only
15 worth a bottle of brandy to the defendant. He took
16 something from me. This case really is about the
17 defendant getting mad because he stole his liquor.

18 I think he was still mad yesterday. The
19 way he talked about it. He hid it when he and
20 brother, who brother is best friend, who was sitting
21 there; saw everything and watched it. They talked.
22 Been drinking together. And this investigator just
23 talked to him 2 days ago. But brother and those hid
24 it. They went to go get something to eat, and they
25 come back and it's gone. Do you think he's mad

1 about this? What does he do to start with? Well to
2 start with, he calls some other person we don't
3 know, and said well I think she might have taken. I
4 mean he's mad that somebody took his liquor. And
5 she said, no, I didn't take it.

6 Well then what does he do, let it go.

7 Well it's just a, no. He gets out of the house, and
8 walks with his legs, and energy with his friend down
9 to Erika's and Shamar's and said, did you all take
10 my liquor. Do you think he is not angry about this?
11 This is sad, all over a bottle of liquor. I mean
12 there is no other explanation for it. No, sir, we
13 didn't take it. I don't know if they did or not.
14 She says they didn't. Did Shamar take it. I don't
15 know. But he certainly didn't need to be killed if
16 he did. And then he takes it a step further. He's
17 still mad about that. He said Shamar said some kind
18 of comment, and he said, yeah, well what size was
19 he. Do you remember that? He's upset about it. He
20 is angry about it.

21 Now at some point later, I don't know if
22 that's why he invited him down back to seek revenge
23 for that liquor or not, I don't know. But, Ladies
24 and gentlemen, this is not a classic invasion of
25 somebody's home, and you've got a right to blow them

1 away. If they come in trying to cause you harm,
2 trying to come into your house, which we all have a
3 right to protect our castle. I agree with that as
4 much or more than anybody. This isn't that case.
5 They're trying to make it that case, but it is not
6 that case. He was invited over there. She's over
7 there. They're drinking. Everybody is drinking.
8 Except Mr. Andrews, Robert Andrews, said he did not
9 drink. I respect that. He said he didn't allow
10 drinking in his house. Obviously there are beer in
11 the pictures, and everybody is drinking. Everybody
12 says they're drinking. Be that as it may, they were
13 all drinking.

14 Now how could this and why could this not
15 happened the way they said it did. Because it just
16 couldn't happen. It couldn't have happened that
17 way. It physically could have not happened that
18 way. If he was shot right here, number one, you
19 think the door -- the door would have broken then, I
20 guarantee you. That's when the door would have
21 broken, because it would have had to be opened. And
22 guess what, he would have fallen back in. He would
23 have been against this rail. There would have been
24 a blood stain back here. He physically could not
25 get here, turn and go back. It couldn't happen.

1 Well right there that's impossible. Now he gets him
2 right here. And I said so, he's outside. And he
3 said, no, he was actually on the threshold. Who
4 uses that word, threshold? That's kind of a legal
5 word, a legal term there, on the threshold. Is he
6 preparing for his defense, trying to get him exactly
7 coming into his house, it physically could not have
8 happened that way that he was shot.

9 In addition to that, he's got him
10 standing here. He's got 8 feet back there. I was
11 going to get this later, but I'll go ahead and do
12 it. He says, I may do it again, I'm sorry. He says
13 he's in here looking for the phone. Well you know
14 that don't make much sense either, does it? Because
15 he said earlier he had used the phone to call
16 somebody, and now they can't find the phone. Erika
17 sure didn't have any trouble finding it when she was
18 in that state of hers; went and found it and called
19 911. He wasn't looking for phone, he was looking
20 for the gun, which is in the drawer inside here.

21 Now he slips up there, well I got the
22 drawer. I mean, it was on the top. It was in the
23 drawer. People have habits. The same place
24 Mr. Robert put it back when he hid it. He went and
25 got that gun from the drawer. And he didn't have

1 time to do all that under his story. And then he
2 comes back, and he kind of feels. And I felt like
3 and kind of saw where Erika come and unlock the
4 wooden door. So then I reached up here and got it.
5 No, sir, you had already gotten that gun from inside
6 that drawer, and you were going to -- you already
7 had it in your mind that you were going to kill him;
8 that you were going to do him harm, and he was
9 outside.

10 Think about it, folks. He's inside.
11 There is a doorway right here. He thinks he hears
12 something. He gets inside, the gun comes up and
13 shooting him. It doesn't make sense. It's not
14 possible. The angle lever of the bullet, when the
15 pathologist says it went right to left. If he's
16 standing here, I'd have to be this way. The angle
17 from there won't work. He'd have to be shooting
18 from over here. It won't work from where he is.
19 It won't. He wants it to work. He's trying to get
20 him inside, but it won't. It physically is
21 impossible. It is consistent with him leaving this
22 way, and having a few particles on his fingers on
23 this way. You notice there are not any this way,
24 like he's coming in. No gunshot residue. He's
25 leaving this way. Close proximity. There would be

1 no gunshot residue from 8 feet -- 6 feet from where
2 there is on his palms. Now she's trying to say
3 well that Erika put those on there, when she was out
4 comforting him. No, sir. No, ma'am. That is
5 impossible. That's beyond all doubt. That's not
6 our burden.

7 You know she said something about the
8 position of the body and they're no pictures. When
9 law enforcement and EMS responds, first responders,
10 they don't start investigating if there's a chance
11 that life might be saved. You don't sit there and
12 take pictures. Get out of the way. I know he's
13 breathing a little bit. Before you all do that, let
14 me take a picture. That's not the way it works.
15 EMS doesn't go to a scene until it's secure. At
16 least somebody is on there just, because you don't
17 know what danger is out there. But they're going to
18 let EMS, life is first. Saving life is first. And
19 what does she say? No witnesses to where to the
20 body is.

21 What does Corporal Kelly, stand up
22 Corporal Kelly. That's a great American right here.
23 First responder. What does he tell you? I saw the
24 body where it was and saw the woman behind him.
25 That ain't evidence of where the body is. That's

1 not where it is. That's where the body was, and he
2 testified to it and he saw with his eyes.

3 What does Kim say when she comes up, EMS.
4 That's where the body was. It was over -- it wasn't
5 over here. It was here where the blood stain is.
6 That's where it is. Don't have a picture of the
7 body. That's a smoke screen. You rarely have a
8 picture of a body when somebody is killed. He still
9 had a pulse. Maybe there's still a chance. Don't
10 work in intent. She mentioned this. She forgot
11 this. This is no DNA. You know, when they, he says
12 they were fighting, and you're talking about getting
13 stories mixed up, no, sir, no, ma'am. When the
14 truth is there, you can tell it. Not -- so how many
15 times did you go over there? You can tell a lot
16 just from watching people. Well, he can't keep his
17 story straight. Well, 3, 4 times. Okay, take us
18 through the 4 times. She went through three times.
19 She didn't take you four there. It's a lie. He
20 can't keep it straight.

21 What happened the first time. Well he was
22 leaning on the heater, and I got mad. He actually
23 got mad about that a little bit. And the man's got
24 hips that were hurt in a car wreck. He leaves.
25 Comes back. What happens then. I think that's

1 when the bottle -- he says the bottle is the second
2 trip. And I think he said well I thought he might
3 throw it at my dad. I was scared about the bottle.
4 I think that's the second trip.

5 Well what happened then. Is that when you
6 got like this. Did you all start to fight. And I
7 think that's when he pushed him outside. Well where
8 you in fear of suffering serious bodily or death.
9 Because that's what we have to prove for
10 self-defense. Well it was then. Right then. Then.
11 So then he leaves.

12 MS. COOKE: Your Honor, I think he just
13 said we have to prove self defense.

14 MR. MEADORS: They have to establish self
15 defense. We have to prove beyond a reasonable
16 doubt that there isn't self defense. But they
17 establish and show those three little prongs. There
18 must be evidence of it. We have to disprove it
19 beyond a reasonable doubt. The judge will tell you
20 that law. There's got some showing that he was in
21 was in fear. There has to be. That's the law. Was
22 the defendant in fear of suffering immediate bodily
23 death or injury. This is no evidence whatever.
24 That's why there is no self defense, Ladies and
25 gentlemen. Oh, and by the way, she said well you'll

1 be able to consider voluntary. Voluntary, I thought
2 it self defense. And you'll be consider voluntary.
3 Well that's a lesser included. I'll tell you about
4 that. And I hope to go over that real quick and get
5 that out of the way. But we'll going over that in a
6 minute. Immediate danger of suffering seriously
7 bodily injury or death.

8 Well when did you have that. Well the
9 second time when he had the bottle. The second time
10 when he had the bottle. Well what happened then.
11 Well he left. What happens next. He comes back.
12 The words, I thought that's when he said was cussing
13 him outside, and said I'm going to kill you. Come
14 on outside and used the N word. I'm not sure quite
15 frankly, but I think that's what he said the third
16 time there. I don't think there was a fourth time
17 or a third time. I think there was one time. He's
18 trying to get at you all that all this happened. It
19 didn't happen.

20 And you know how you do it? You judge it
21 on his credibility, his believability. And by the
22 way, and I didn't say this. He said well you can
23 believe my opinion. You know he didn't -- he can't
24 see. So he even disproved his own witness right
25 after his dad testified. And I'm not, Mr. Andrew is

1 fine, I'm not saying one word about him bad or good.
2 But he brought that out. And on the tape, right at
3 the first of the tape, you hear Mr. Robert Andrews
4 saying, I didn't even know they were fighting. I
5 didn't see anything. And then he went and hid the
6 gun.

7 Even if somehow you believe it, but
8 please don't; that he was in danger of suffering
9 seriously bodily injury or death. Shamar left after
10 his story or second visit. Comes back, and I think
11 that's when he's cursing. And isn't it funny Shamar
12 is outside. If somehow he's yelling and said come
13 outside. He's not saying, I'm coming in. He said
14 well if you want to fight come on out. I don't
15 believe he said that. He sure didn't tell nobody
16 that until yesterday. Until yesterday. But if
17 somehow he's yelling, he's saying come out, he's not
18 acting like he's charging in.

19 MS. COOKE: objection, Your Honor.

20 THE COURT: The jury can listen to the
21 evidence. They heard the evidence.

22 MR. MEADORS: Your Honor, can we approach?
23 What was her objection?

24 (Whereupon, the attorneys approach the
25 bench and confer with judge.)

1 THE COURT: Overruled. Continue, counsel.

2 MR. MEADORS: He never said that to the
3 any of the officers at the scene. You first heard
4 it yesterday. He never said it. And then he says
5 he comes back, I guess, the fourth time. And at
6 that point is when he shuts the glass door, he says.
7 Locks it, and then closes then wooden door. Now if
8 it had been that bad, how come Mr. Robert,
9 Mr. Gardner, him, anybody hadn't called the police.
10 Just come over here, there's a disturbance. Come
11 over and get him. Maybe take him to jail. Maybe
12 lock him up for 30 days. God don't put him in the
13 ground for eternity. If it was that bad, why didn't
14 somebody call the police then. He shuts the door.
15 And that's where this incredible story comes in.
16 And he went back, saying he's looking for the phone.
17 He can't find it. Well he's the one who testified
18 he'd made a call earlier that day. He said his dad
19 had the phone. He comes back here and he's looking
20 for a gun. He's ticked off. He's mad. Robert's
21 outside. Robert is gone, under his story.

22 This ain't true. I'm trying to show you
23 how this can't make sense. And then he goes in and
24 gets a gun. I submit he gets it out of the drawer.
25 He says he gets it off the top. And then he says, I

1 believe I sense she's opening the door. And then
2 you remember he said he heard him yelling. He
3 thought he heard him yelling. Well he is outside.
4 He probably heard them talking. It doesn't make
5 sense. He's making it up as he goes. And he comes
6 out, and he sees him coming in and he shoots him.
7 There's no blood inside at all. Nothing. It
8 doesn't make sense. Why would she not just say,
9 yeah, it's happened right here. Who cares. She's
10 not just sitting thinking about the law. Does that
11 make sense. Erika said yeah, he shot him right
12 here. Why would you not say that. Why won't you
13 say it's out here instead of in here. You see her.
14 She's angry, frustrated. Why is she going to make
15 it up where he got shot. Do you think she's
16 thinking about that. Does that make any common
17 sense. If he was shot here, how would he get back
18 over here. Why doesn't she say that under her
19 condition. That doesn't make sense.

20 He's trying to explain blowing him away,
21 because he was either scared of him, or tired of him
22 or he was still angry about him outside his house,
23 and he's got to try to get him inside. Try to get
24 him on that threshold. Who uses that word
25 threshold. Trying to get him inside. Imminent fear

1 of suffering great bodily injury or death. You've
2 got to actually believe that. Or if you weren't
3 actually in fear, which he wasn't, a reasonable
4 person under the circumstances would believe they
5 were in imminent danger of suffering serious bodily
6 injury; such that, they had to pull the trigger and
7 protect themselves and kill him. That's not here.
8 Shamar was leaving. And you bring it down on
9 credibility, believability, that's what every case
10 comes down to.

11 They're fighting. They're arguing.

12 Mr. Robert says leave. Shamar starts to leave. He
13 says he tells Jeffrey to go into his room, and
14 Jeffrey says, well my dad didn't say that. That's
15 not true. Shamar is leaving. Erika is starting to
16 leave. Shamar is behind him. And that's when
17 Erika, and I'm not going to say bam again, but
18 that's how quick it happened. He's out the door.
19 Shamar is behind him. And she hears the shot, and
20 then sees his arm extended with this gun. And she's
21 going to make her whole case about the fact, well
22 she said she saw what she did. Well she didn't
23 actually see it, but she saw his arms extended. He
24 killed him. He's admitted to that. You all know
25 that. He's admitted to it.

1 She says they're going outside. She hears
2 and looks and there he is. I don't know if he had
3 it cocked first or not. It sure was cocked again
4 when he found it in that drawer. I don't know if he
5 was fixing to shoot it again, but he went down. He
6 didn't have to shoot it again. That's
7 circumstantial evidence. Mr. Scott said. Mr. Scott
8 Mathews said. That is great circumstantial
9 evidence. He shot him. She heard it, and then he's
10 standing there. And he's outside. He's outside,
11 which means the victim is outside. You know
12 otherwise, you know, he said he hears her fixing to
13 open the door. Erika is over here. Hell, she'd
14 been shot. Excuse me for cussing. He's got her
15 opening the door. He comes out just blasting away.
16 How come she ain't shot?

17 This does not make sense. This does not
18 fit the projection of the bullet. This does not fit
19 the angle. He had to shoot from over here. It
20 won't go in the head with this thing. Well the
21 bullet goes straight. I will not work. Please talk
22 about that. It couldn't have happened. I think
23 lost track a little bit. I do that every now and
24 then. But the DNA. Do you remember he said the
25 defendant was hitting on him at some point. Hitting

1 on his head. Trying to explain some injuries.
2 Erika was hitting. Erika was pounding him. It's on
3 that tape. She was hitting him about the head. She
4 was angry. She was hitting him where? Outside by
5 the body, after he said, awe, it ain't nothing but a
6 bug bite. He wasn't doing CPR. He's over there
7 saying it's a bug bite after he shot him in the
8 head. I mean, what kind of action is that. What
9 kind, what does that. He didn't have to plan it.
10 He didn't have to be thinking about it all day.

11 I tell what he was, he was thinking about
12 that liquor all day. When he got angry and they're
13 arguing about, and he comes outside. He didn't want
14 to fight him, but he was going to kill him. And he
15 did outside his home. You've got a right, if
16 you're there and somebody there voluntarily, if they
17 become a trespasser and you tell them to leave, they
18 can leave. You've got a right to tell them to
19 leave. But you ain't got a right to kill them.
20 You've got to be in danger of suffering serious
21 bodily injury or death, or believe you are. And a
22 reasonable person has got to believe that. A
23 reasonable person -- Shamar is gone. Let him go.
24 It's over. You said you've got another bottle of
25 liquor.

1 Shamar was the one in danger of suffering
2 immediate bodily injury or death. And he did. He's
3 the one that ought to claim self defense, but he's
4 dead. He didn't have time. He's the attacker.

5 Please, folks, this isn't like stranger,
6 burglary, coming in. These are family, visiting
7 each other. Knowing each other. This isn't like a
8 stranger coming into your home. And then
9 Mr. Andrews said, leave. You quit arguing. Shamar
10 leaves. Now she tries to tell you that all this
11 time when Erika was saying well he was shot right
12 here. She told you, right here. She's inside
13 pointing. Listen to that tape in the end. You even
14 hear Corporal Kelly at the end said, well he told me
15 he shot him right here, at the end of the tape. He
16 told me he shot him out here. This comes down to
17 what's real.

18 My mom gave me a book when I started
19 college called the Velveteen Rabbit. Maybe you've
20 all read it. Putting it inside there, always
21 remember what is real. And be real. And that's
22 what this case is about. You got to see the
23 defendant, he was lying. Trying to cover his
24 tracks. Not sure how many times things come up.
25 Setting up a scenario that doesn't make sense,

1. because he's got no excuse. This was an
2. unjustified. He wasn't in danger of dying or
3. suffering serious bodily injury or death. He has to
4. be without fault in bringing on the difficulty. The
5. went over there looking for him about the liquor to
6. start with you. You've got t decide on his
7. credibility. And you can't consider his prior
8. convictions. Not that he's more likely to do this,
9. but that's he not telling the truth that there were
10. 010, 08 and 05, with the last being an aggravated
11. assault in 010.

12. You can consider those for his
13. credibility, his believability. Please do. Well
14. what's real. What's raw. What's real and what's
15. raw. Erika is real and raw. It's real and raw as
16. you get. May too raw sometimes on it. But it's
17. real. And it's real reactions when you see a loved
18. one shot in the head. You walk there and see the
19. gun pointed. And you run to his body outside.
20. Jeffrey shot my boyfriend. Cussing. Yelling. You
21. all know it. He shot my -- that's real reactions to
22. something.

23. Did she get arrested? She got arrested.
24. They told her, you better calm down, you're going to
25. get arrested for breach of peace. One of my

1 favorite quotes of all time, there was no peach to
2 breach there. There was no peach there to. The
3 peace was gone. Ended by that man. Credibility.
4 Believability. She goes down that night and gives
5 an audio statement. You all have got it. And you
6 heard it. Tells what happened. And then says, I
7 heard it. Well I saw it. Dadgummit. That's the
8 exact on circumstantial evidence in her audio. I
9 saw it. Well I heard it. That's circumstantial
10 evidence. You can't say it any better.. Did she
11 really see him shoot him, I don't know, but by God
12 he did. He's admitted to it. I mean that's not an
13 issue.

14 She wants to take that which is incredibly
15 powerful, direct and circumstantial evidence and try
16 to make that look like she's not credible. Are you
17 kidding me. If her story was exactly the same, and
18 was about everything, then you would worry. When
19 she tells it raw and real at the scene, on that
20 dashcam, that night on her audio, he was leaving. I
21 was leaving. While they are warming this up, I
22 want to talk to you about voluntary manslaughter.
23 Voluntary manslaughter. You are going to have a
24 right to consider.

25 Voluntary manslaughter is the killing in

1 the sudden heat of passion, upon sufficient legal
2 provocation. It's without malice. The law says at
3 times if your passions are so riled, and you
4 temporarily lose your ability to think clearly. It
5 doesn't excuse a killing, but there are times it
6 might mitigate it to an extent, if you have
7 sufficient legal provocation. And you've got to
8 have both of those. You've got to have the sudden
9 heat of passion, and the sufficient legal
10 provocation existing the same time. I've got these
11 passions. I'm angry. I'm enthralled. And it's
12 based on sufficient legal provocation.

13 Now words alone are not enough no matter
14 how bad or vile or mean to cause sufficient or be a
15 sufficient legal reason to kill somebody. The judge
16 will tell you words with hostile acts, could be
17 under circumstances enough to be sufficient legal
18 provocation. That's not here. He's got that on the
19 second or third visit. She tried to make it look
20 like it was the last one. That ain't what it was.
21 You don't hear him saying he was cussing coming in.
22 He just saw him and blew him away. So that's
23 not here. But they've got to exist at the same
24 time.

25 The classic is if you come home and you

1 find your spouse in bed with somebody else, you
2 actually catch them, it doesn't justify it. You
3 shouldn't do it, but if you killed somebody in that
4 moment, the law would say you lost your cool
5 reflection, and there is this sufficient legal
6 provocation. Not to excuse you, but that would an
7 example of voluntary manslaughter. That's not here,
8 Ladies and gentlemen. I submit that's what they
9 want. It's not here. And I submit there's no issue
10 in this case. But if there is, that's the only
11 issue. But it's not an issue whether it's murder or
12 manslaughter. Clearly it's not self defense,
13 without fault in bringing on the difficulty. He
14 started it.

15 Immediate danger of suffering serious
16 bodily injury or death, no, ma'am, no, sir. A
17 reasonable person will believe it. No, sir. If
18 this happened, a reasonable person calls the police,
19 a reasonable person doesn't open -- closes and locks
20 both doors. He didn't close that second door. He
21 didn't do that. He didn't. Shamar didn't come back
22 in. Go ahead.

23 MR. MATHEWS: Judge, I think we have the
24 videos. The screen is turned on.

25 (Whereupon, Playing video.)

1 MR. MEADORS: That's real. The good and
2 the bad. All over a bottle of liquor. That's real
3 time. How else do we know that we've proved to you,
4 beyond a reasonable doubt this didn't happen?
5 Corporal Kelly arrives at the scene. The defendant
6 admits, read him his rights. Well conviction. And
7 any of that, you see the hesitations. And not sure
8 or exactly the story. And looking and hesitating
9 and pausing. Well did he read you your rights. And
10 finally, I think he agreed he did. He understood
11 him then. What's the first thing he told him. He
12 took something from me. And then he said well, I
13 think he said that's not in my record. Do you
14 remember that. It's not in my record. But then he
15 said well I could have said that. He didn't want to
16 admit that now.

17 And what did Corporal Kelly say. He got
18 up there, and he said, well who's that up there on
19 the porch. Well, that's my cousin. The girl. Who
20 does she extended on. You want to talk about real,
21 the first one on the scene who gets to see
22 everybody. Gets to see the body. Gets to see the
23 body of Ms. Cooke (sic) and where it was, and where
24 the lady was. Gets to talk to her. And gets to
25 talk to the defendant. You want to talk about real

1 right at the time when it's happening, and what
2 happened. Who's the girl. That's my cousin. Well
3 who is she standing over. That's her boyfriend.
4 And what officer do. He's read him his rights.
5 What happened. Why did you shoot him. He took
6 something from me. He what. He took something from
7 me. What did he take. He took some liquor. And
8 what does Kelly say? You shot him over liquor.

9 That's the first words out of his mouth.
10 And this is a reasonableness. What do you do? Your
11 home is broken into. You've been threatened. You
12 say you are in fear of suffering serious bodily
13 injury or death. If you don't call the police, what
14 do you do when they said, somebody came back in my
15 door. Pulled it open, came at me. I didn't have
16 any choice. Kill him. He came in to my house, he
17 charged in, I didn't have any choice but to shoot
18 him. Jerry Kelly, I didn't have any choice, but to
19 shoot him. I was in danger of my suffering, fears.
20 I was scared. I had to shoot him. No, sir, no,
21 ma'am. He took something from me.

22 Now that may be the most honest statements
23 the defendant made in this whole thing, when he
24 tells Kelly right there, he took something. And it
25 was in response. And this just isn't -- sometimes I

1 miss the forest for the tress. It was in response,
2 you all think about this. Don't forget this. It
3 was in response to the question, why did you shoot
4 him. And do you realize how simple that is. It
5 just knocked me down coming over here this morning.
6 That's why I shot him. He summed it up right
7 there. In real live time. I shot him because he
8 took my liquor. He said it then right after it
9 happened. If that's the case, that's the case.

10 And now it has become four times and he
11 busted in the door. No, ma'am, no, sir. That was
12 credibility. It's believability. And that night he
13 confessed to that man. He said, I did it because
14 he took something from me. And that's malice.
15 That's not heat of passion. You've got the right to
16 come back with voluntary manslaughter, and nobody
17 has got a right to question you, and we certainly
18 will. We submit not guilty is out the door. But
19 you've the right to come back with voluntary
20 manslaughter. I submit to you it's not there. It
21 is not a heat of passion. It is not a sufficient
22 legal provocation. He decided he would kill him,
23 because he was mad, because Shamar was leaving.

24 You'll have that option, and we
25 respectfully say it's not. This is murder. This is

1 malicious over liquor. And he told Corporal Kelly
2 that's why I killed him. I'm about through, and I
3 apologize. He took something from me. Took
4 something from me. You know what he took. He took
5 the 2nd, the 3rd, the 4th, the 5th, the 6th, the
6 8th birthdays of his son, for the rest of his son's
7 birthdays for the rest of his life. That's what he
8 took. He took a son's love and companionship from
9 his mama and his daddy.

10 He took an opportunity for families to
11 get together for Christmas, Thanksgiving, 4th of
12 July. That's what he took. And he took the
13 opportunity for that beautiful lady to be able to
14 have more children. He Took everything. And maybe
15 Shamar took a bottle of brandy, I don't know. But
16 he took it all, and he didn't need to, and he wasn't
17 justified in doing it. The final thing I want to
18 say is the presumption of innocence. Your Honor is
19 going to charge you that the defendant is presumed
20 innocent. As we all would be here on trial. It's
21 like a robe of righteousness. You're presumed
22 innocent unless and until the State proves you
23 guilty beyond a reasonable doubt.

24 And Your Honor is the law. After he gives
25 you the law, you're going to go back there and as

1 you were start listening to evidence or talking
2 about the evidence, viewing the documents, you will
3 start taking that robe of righteousness off the
4 defendant. We ask you do. Don't throw it away.
5 Keep it. Keep symbolically that robe back there.
6 Keep it. And when come back in here, respectfully
7 we believe when you decide that we've proved our
8 case beyond a reasonable doubt that he's guilty of
9 murder. Murder. Bring that robe of righteousness
10 back in here with you. Hand it to Mr. Bradley
11 today. Finish with that guilty verdict. And send
12 that robe to Erika, to his mamma, to his daddy, to
13 help warm for the rest of their life. Save at robe,
14 and give it to the true wisdom.

15 Ladies and gentlemen, thank you for being
16 here. Each and everyone of you. It don't get more
17 serious than this. But it is time. Our greatest
18 power in our power to choose. He chose on March
19 25th 2014, to end Shamar's life and he is dead.
20 Because he was mad. He chose to put a bullet in his
21 brain, and he told that man why he did it. And see
22 this smoke screen now. Hold him accountable.
23 Please make your choice. It's time for you to
24 choose. It's time please return a verdict of guilty
25 of murder. Thank you.

1 THE COURT: Do you need a break or are you
2 okay?

3 THE JURY: A break.

4 THE COURT: We'll take a 10 minute recess,
5 and right at 10 minutes and come back in and then I
6 will charge you the law. Do not discuss anything
7 about this case while you are back there. Thank
8 you.

9 (Whereupon, the Court Breaks.)

10 THE COURT: Let's bring our jury in.

11 (Whereupon, the following takes place
12 within the presence jury.)

13 THE COURT: Ladies and gentlemen, all the
14 testimony and the other evidence in this case has
15 been presented to you. The attorneys have given you
16 their summations. Now is the time where I will
17 charge you the law that is applicable to this
18 particular case.

19 Now, Ladies and gentlemen, I remind you
20 that during this trial you and I have certain duties
21 to perform. As the trial judge it is my
22 responsibility to preside over the trial of this
23 case. And I also have the duty to rule on the
24 admissibility of evidence that has been offered
25 during this trial. You are to consider only

1 competent evidence before you. If there was any
2 testimony ordered stricken from the record in this
3 case, and during this trial, you must disregard that
4 testimony. Ladies and gentlemen, you are you
5 consider only the testimony that has been presented
6 from this witness stand and any exhibits which have
7 been made a part of the record in this case, and any
8 stipulations of counsel.

9 Now, Ladies and gentlemen, I have the
10 additional duty to charge you the law that is
11 applicable to this case. As the presiding judge, I
12 am the only -- I am the judge of the law, and it is
13 your duty as jurors to accept and apply the law
14 exactly as I now state it to you. If you already
15 have some idea as what the law is or what the law
16 ought to be, and it does not agree with what I now
17 tell the law is, you must abandon that idea.
18 Because, Ladies and gentlemen, you are sworn to
19 accept and apply the law exactly as I state it to
20 you.

21 Now, Ladies and gentlemen, in every case
22 tried in this court before a jury, you the jury,
23 become the sole and exclusive judges of the facts.
24 As a trial judge I cannot intimate, state, comment
25 on or make any statement to a trial jury about the

1 facts in a case. You are, since you are the jury,
2 you are the sole judges of the facts. And you are
3 not to infer by anything that I've said during the
4 progress of this trial in ruling upon the
5 admissibility of evidence or otherwise or anything
6 that I say now during the course of this instruction
7 to you. Ladies and gentlemen, anything that I say
8 you should not infer that I have any opinion about
9 the facts of the case. The law simply does not
10 allow me to have an opinion about the facts in a
11 case. It's a matter solely for you as jurors to
12 determine. You are to determine the effect, the
13 value, the weight and the truth of the evidence that
14 has been presented during this trial.

15 Now, Ladies and gentlemen, the indictment
16 in this case, alleges two different offenses against
17 the defendant. The charges are under indictment
18 2014-GS-43-725 Count 1, is murder. And Count 2,
19 possession of a weapon during the commission of a
20 violent crime. And each indictment charges a
21 separate and distinct offense. And you must decide
22 each indictment separately on the evidence and the
23 law applicable to it, uninfluenced by your decision
24 as to any other charge in the indictment. However
25 if the defendant is found not guilty by you for the

1 murder or the voluntary manslaughter, he cannot be
2 found guilty for the possession of a weapon during
3 the commission of a violent crime, because there
4 would be no crime. You will be asked to write a
5 separate verdict of guilty or not guilty for each
6 charge in the indictment.

7 Now Ladies and gentlemen, I do remind you
8 the fact that the defendant was arrested, charged
9 and indicted, is not evidence in this case, and
10 cannot be considered by you as evidence of guilt nor
11 does it create any presumption or inference of
12 guilt. The indictment is simply the formal written
13 document which contains the charges made against the
14 defendant. It is the formal document by which this
15 case is brought into this court.

16 Now, Ladies and gentlemen, the defendant
17 has pled not guilty to the charges in the
18 indictment, and that plea puts the burden on the
19 State to prove the defendant guilty. A person
20 charged with committing a criminal offense in South
21 Carolina is never required to prove himself
22 innocent. And I charge you that is an important
23 rule of law that a defendant in a criminal trial no
24 matter trial no matter a serious charge might be,
25 will always be presumed to be innocent of the crime

1 for which the indictment was issued unless guilt has
2 been proven by evidence satisfying you of that guilt
3 beyond a reasonable doubt. And the presumption of
4 innocence does not end when you begin your
5 deliberations, but it accompanies the defendant
6 throughout the trial until you reach a verdict of
7 guilt based on evidence satisfying you of that guilt
8 beyond a reasonable doubt.

9 The presumption of innocence is like a
10 robe of righteousness that is placed about the
11 shoulders of the defendant which remain with the
12 defendant until it has been stripped from the
13 defendant by evidence again satisfying you of the
14 defendant's guilt beyond a reasonable doubt. The
15 presumption of innocence is not just a mere legal
16 theory. It's not just a legal phrase that we use,
17 but it is a substantial right to which every
18 defendant is entitled unless you the jury are
19 satisfied from the evidence that has been presented
20 of the defendant's guilt beyond a reasonable doubt.

21 Now, Ladies and gentlemen, the State has
22 the burden of proving the defendant guilty beyond a
23 reasonable doubt. Some of you may have served as
24 jurors in civil cases where you were told that it is
25 only necessary prove a fact more likely true than

1 not true; such as, by the greater weight or the
2 preponderance of the evidence. In criminal cases
3 however, the State's proof must be more powerful
4 than that. It just be beyond, as I said a
5 reasonable doubt. But proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced of
7 the defendant's guilt.

8 Ladies and gentlemen, there are very few
9 things in this world that we know with absolute
10 certainty. And in a criminal case the law does not
11 require proof that overcomes every possible doubt.
12 If based upon your consideration of the evidence
13 that's been presented, you are firmly convinced of
14 the defendant or the defendant is guilty of the
15 crimes charged, you must find the defendant guilty.
16 If on the other hand you think there is a
17 possibility that the defendant is not guilty, then
18 you must give the defendant the benefit of the doubt
19 and find him not guilty.

20 Now, Ladies and gentlemen, there are two
21 types of evidence, which are generally presented
22 during a trial. There is direct evidence and
23 circumstantial evidence. And direct evidence is the
24 testimony of a person who claims to have actual
25 knowledge of a fact such as an eye witness. It is

1 evidence which immediately establishes the main fact
2 to be proved. Circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the
4 existence of a fact. It is evidence which
5 immediately establishes collateral facts from which
6 the main fact may be inferred. Circumstantial
7 evidence is based on inference and not on personal
8 knowledge or observation. But the law makes
9 absolutely no distinction between the weight or
10 value given to either direct or circumstantial
11 evidence nor is a greater degree certainty required
12 of circumstantial evidence than of direct evidence.

13 Ladies and gentlemen, you should weigh all
14 the evidence in this case, and after weighing all
15 the evidence if are not convinced of the guilt of
16 the defendant beyond a reasonable doubt, you must
17 find the defendant not guilty.

18 Necessarily, Ladies and gentlemen, you
19 must determine the credibility of witnesses of who
20 have testified in this case. And credibility simply
21 means believability. And it becomes your duty as
22 jurors to analyze and to evaluate the and determine
23 which evidence convinces you of its truth. In
24 determining the believability of witnesses who have
25 testified in this case, you may believe one witness

1 over several witnesses or several witnesses over
2 one witness. You may believe a part of the
3 testimony of a witness and reject the remaining
4 parts of the testimony of that same witness. You
5 may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its
7 entirety. You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice or
9 other motive in this case. You may also consider
10 the appearance and manner of a witness while on the
11 witness stand.

12 Now, Ladies and gentlemen, rules of
13 evidence ordinarily do not permit witnesses to
14 testify to opinions or conclusions. There's an
15 exception to this rule however for witnesses we call
16 expert witnesses. A witness who by education and
17 experience, has become expert in some art, science,
18 or profession or calling may state an opinion as to
19 relevant and material matter in which the witness
20 claims to be an expert and may also state the reason
21 for the opinion.

22 Now, Ladies and gentlemen, you should
23 consider any expert opinion received in evidence in
24 this case, and like any other evidence give it the
25 weight that you think it deserves. If you decide

1 that the opinion of an expert witness is not based
2 on sufficient education and experience or if you
3 conclude that the reasons given in support of the
4 opinion are not sound, or that the opinion is
5 outweighed by other evidence, you may disregard the
6 opinion entirely. An expert witness' testimony is
7 to be given no greater weight than that of any other
8 witness simply because the witness is an expert.
9 Further you are not required to accept an expert's
10 opinion even though it is not contradicted.

11 Now, ladies and gentlemen, the defendant
12 is charged with murder. The State must prove beyond
13 a reasonable doubt, that the defendant killed
14 another person with malice aforethought. Malice is
15 hatred, ill will or hostility towards another
16 person. It is the intentional doing of a wrongful
17 act without just cause or excuse, and with an intent
18 to inflict an injury or under circumstances that the
19 law will infer an evil intent. Malice aforethought
20 does not require that malice exist for any
21 particular time before the act is committed, but
22 malice must exist in the mind of the defendant just
23 before and at the time the act is committed.
24 Therefore there must be a combination of the
25 previous evil intent and the act. And Malice

1 aforethought may be express or inferred. And these
2 terms express or inferred do not mean different
3 kinds of malice but merely the manner in which the
4 malice may be shown to exist; that is, either by
5 direct evidence or by inference from the facts and
6 circumstances which are proved. And express malice
7 is shown when a person speaks words which express or
8 ill will for another or when the person preparing
9 beforehand to do the act which was later
10 accomplished; for example, lying in wait for a
11 person, or any other act or preparation going to
12 show that the deed was within the defendant's mind
13 would be express malice. And malice may be inferred
14 from conduct showing a total disregard for human
15 life.

16 Now, Ladies and gentlemen, the defendant
17 is also charged with possession of a weapon during
18 the commission or attempt to commit a violent crime.
19 The State must proof beyond a reasonable doubt that
20 the defendant was in possession of a firearm or
21 visibly displayed what appeared to be a firearm
22 during the commission of a violent crime. A firearm
23 means a machine gun, automatic rifle, revolver,
24 pistol or other weapon which is designated or may be
25 readily converted to expel a projectile.

1 In order to find the defendant guilty of
2 possession of a weapon during the commission of a
3 violent crime, you must first find the defendant
4 guilty of either committing a violent crime, or
5 attempting to commit a violent crime. And murder
6 is a violent crime. The State must also prove
7 beyond a reasonable doubt that the weapon further
8 advanced or helped in the commission of the crime.
9 Now, Ladies and gentlemen, if you find the State has
10 failed to prove beyond a reasonable doubt that the
11 defendant committed murder, you may consider whether
12 the State has proven beyond a reasonable doubt that
13 the defendant committed voluntary manslaughter. To
14 prove voluntary manslaughter, the State must prove
15 beyond a reasonable doubt that the defendant took
16 the life of another in the sudden heat or passion
17 based on sufficient legal provocation both heat of
18 passion and sufficient legal provocation must be
19 present at the time of the killing to constitute
20 voluntary manslaughter. And sudden heat of passion
21 may for a time affect a person's self control and
22 temporarily disturb a person's reason. And 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 would produce an uncontrollable

1 impulse to do violence. Sufficient legal
2 provocation must be the type that would make a
3 person of ordinary reason and caution become enraged
4 to lose control temporarily, and the provocation
5 needed for voluntary manslaughter must come from
6 some act or other -- or related to the victim. And
7 words alone however vulgar or insulting are not
8 enough to be a legal provocation where death is
9 caused by the use of a deadly weapon. Words must be
10 accompanied by some overt act threatening act which
11 could produce the heat of passion.

12 And the exercise of a legal right no
13 matter how offensive it is to another is never
14 sufficient legal provocation for voluntary
15 manslaughter. If the heat of passion had cooled or
16 if there was enough time between the provocation if
17 any for the killing for the passion of a reasonable
18 person to cool, the killing would not be voluntary
19 manslaughter. And in deciding whether a reasonably
20 person would have had enough time to cool off, you
21 should consider all the situations surrounding the
22 killing. And you may consider the nature of the
23 provocation if any, the defendant's mental and
24 physical state and the circumstances and
25 relationships between the parties.

1 Now, Ladies and gentlemen, the defendant
2 has raised the defense of self-defense. Self
3 defense is a complete defense, and if established,
4 you must find the defendant not guilty. The State
5 has the burden of disproving the defense by proof
6 beyond a reasonable doubt. If you have a reasonable
7 doubt of the defendant's guilt after considering all
8 of the evidence, including the evidence of self
9 defense, then you must find the defendant not
10 guilty. On the other hand if you have no reasonable
11 doubt of defendant's guilt after considering all of
12 the evidence including the evidence of self-defense,
13 then you must find the defendant guilty.

14 And the following elements are required to
15 establish self defense. One, without fault. First
16 the defendant must be without fault in bringing on
17 the difficulty. If the defendant's conduct was the
18 type which was reasonably calculated to and did
19 provoke a deadly assault, the defendant would be at
20 fault in bringing on the difficulty, and would not
21 be entitled to an acquittal based on evidence self
22 defense. Two, is imminent danger. The second
23 element of self defense is that the defendant was
24 actually in imminent danger of death or serious
25 bodily injury, or that the defendant actually

1 believed he was in imminent danger of death or
2 serious bodily injury. And if the defendant was
3 actually in imminent danger it must be shown that
4 the circumstances would have warranted a person of
5 ordinary firmness and courage to strike the fatal
6 blow to prevent serious -- prevent death or serious
7 bodily injury. And if the defendant believed he was
8 in imminent danger of death or serious bodily
9 injury, it must be shown that a reasonable prudent
10 person of ordinary firmness and courage would have
11 had the same belief.

12 And in deciding whether the defendant
13 actually was or believed he was imminent danger of
14 death or serious bodily injury, you should consider
15 all the facts and circumstances surrounding the
16 crime, including the physical condition and
17 characteristics of the defendant and the victim.
18 And three, no other way to avoid danger. The final
19 element of self defense is that the defendant had no
20 other probable way to avoid the danger of death or
21 serious bodily injury other than to act as the
22 defendant did in this particular instance.

23 Now, Ladies and gentlemen, if the
24 defendant was on his own premises, the defendant had
25 no duty to retreat before acting in self defense.

1 The intoxication of the victim may be considered in
2 deciding whether the defendant's fear of death or
3 bodily injury was reasonable.

4 The defendant does not have to wait until
5 his adversary fires, aims, or gets to drop on him to
6 act in self defense. And a person cannot be
7 required to make an exact calculation as to the
8 degree of amount of force which may be needed to
9 avoid death or serious bodily harm. Therefore, in
10 self defense the defendant has a right to use the
11 force needed to avoid death or serious bodily injury
12 or bodily harm. And the force used in self defense
13 does not have to be limited to the degree or the
14 amount of force used by the victim. The defendant
15 has the right to use as much as force as appeared to
16 be necessary for complete self protection and in
17 which a person ordinary reason and firmness, would
18 have believed to be needed to prevent death or
19 serious body harm.

20 Now, Ladies and gentlemen, there are two
21 possible verdicts which you may consider in this
22 case on the charges under indictment 2014-GS-43-725.
23 On Count 1, of murder not guilty or guilty. And if
24 you find the State has not met the burden for
25 murder, you may charge, you may find the defendant

1 guilty of the lesser included charge of voluntary
2 manslaughter of being not guilty or guilty. And if
3 you find the defendant guilty for murder or
4 voluntary manslaughter, you may then decide on Count
5 2, possession of a weapon during the commission of a
6 violent crime, not guilty or guilty.

7 And, Ladies and gentlemen, there is no
8 significance whatsoever in the order which I state
9 the possible verdicts. It is simply that one must
10 be stated first. And, Ladies and gentlemen, your
11 verdict must be unanimous. And all 12 of you, of the
12 primary jurors must agree. And your verdict cannot
13 be based on sympathy, prejudice or any other
14 emotion, or any other consideration that is not in
15 evidence in this case. Mr. Foreman, when the jury
16 reaches the verdict, and as I have said, you've got
17 this verdict form and it says as to the charge of
18 murder, we find the -- the jury unanimously finds
19 the defendant not guilty or guilty. And then you
20 can go on if you find not guilty there, you can
21 consider the voluntary manslaughter. If you find
22 not guilty on both of those, then you would stop.
23 If you find him to be guilty on either one of those,
24 then you may go further down as to the charge of
25 possession of a weapon during the commission of a

1 violent crime.

2 But once the jury reaches a verdict,
3 please sign your name, knock on the jury room door,
4 and then you will let the bailiff know that you've
5 reached a verdict, and then you will received back
6 here in the courtroom for the publication of your
7 verdict.

8 Now, Ladies and gentlemen, I ask that you
9 return to your jury room, but please do not begin
10 your deliberations until you are told to do so by
11 the clerk or the bailiff. We still have some things
12 we need to take care of here in the court. Now I
13 have taking the liberty of going ahead and ordering
14 your lunch. It should be here shortly. And nothing
15 fancy. But it is pretty good pizza though. And we
16 also have some for he alternate jurors if you would
17 like to stay. But, Ladies and gentlemen, I am going
18 to ask that you now go to your jury room. But
19 again, please don't begin your deliberations until I
20 instruct to you to do so.

21 (Whereupon, the following takes place
22 outside the presence of the jury.)

23 THE COURT: Are there any other objections
24 to the charge that was made to the jury? From the
25 State?

1 MR. MEADORS: Nothing from the State.

2 MS. COOKE: No, Your Honor.

3 THE COURT: You all want to get together
4 and make sure the right evidence goes back. And you
5 can look at the verdict form and make sure that it's
6 correct in your mind. Other than that, the court
7 will be at ease pending the call of the case.

8 (Whereupon, at 12:04 p.m. jury
9 deliberates.)

10 THE COURT: Margaret, do you want to mark
11 this?

12 (Jury note marked Court's Exhibit No. 1
13 for Id.)

14 THE COURT: Court's 1, a question from the
15 jury, and I know how I'm going to resolve it over
16 your objections Mr. Meadors. It says we need the
17 law definition of murder and they write, involuntary
18 manslaughter and self-defense. So, Mr. Prince, if
19 you would please deliver to them a copy of
20 everything that I stated to them. It's verbatim, so
21 I am going to send a copy of the charge.

22 MR. MEADORS: Is that just those three
23 things and not the whole charge?

24 THE COURT: I am going to hand the whole
25 charge, because I don't want more questions down the

1 road.

2 MR. MEADORS: We respectfully do object.

3 THE COURT: That's fine.

4 (Whereupon, at 1:44 p.m. jury commences
5 deliberations.)

6 (Whereupon, at 3:21 p.m. jury reached
7 verdict.)

8 THE COURT: I have been informed that the
9 jury has reached a verdict. But before I bring the
10 jury out let me warn everyone in here that I will
11 not tolerate any emotional outburst that would make
12 this jury feel bad. So if anybody doesn't think
13 that they can hold their emotions in now is the time
14 to leave; otherwise they will be going through some
15 jail time for contempt of court. So let's bring our
16 jury in.

17 (Whereupon, the following takes place
18 within the presence of the jury.)

19 THE COURT: Has the jury reached a
20 verdict, Mr. Foreman?

21 THE FOREMAN: Yes, Your Honor, we have.

22 THE COURT: Is it unanimous?

23 THE FOREMAN: Yes, sir, it is.

24 THE COURT: Please pass it to, Mr. Prince.

25 Please publish the verdict. The defendant will

1 stand.

2 THE BAILIFF: State of South Carolina,
3 County of Sumter, in the Court of General Sessions,
4 Docket No. 2014-GS-43-0725, as to charge of murder,
5 we the jury unanimously find the defendant not
6 guilty. As to the charge of voluntary manslaughter,
7 we the jury unanimously find the defendant guilty.
8 As to charge of possession of a weapon during the
9 commission of a violent crime, we the jury
10 unanimously find the defendant guilty. Signed
11 foreperson James R. Glass, Jr.

12 Ladies and gentlemen of this jury, is this
13 your verdict, so say you all. Signify by raising
14 your right hand. Thank you.

15 THE COURT: Thank you. Does the defense
16 request polling of the jury?

17 MS. COOKE: No, sir Your Honor.

18 THE COURT: Then the verdict stands.
19 Ladies and gentlemen, let me take this opportunity
20 to thank you for your service as jurors. I think
21 you now see it's never easy holding the life of a
22 fellow citizen in your hands, but you take an oath
23 to listen to the evidence and apply the law. And
24 you have done that, you have reached a verdict.

25 Now I would say the same thing no matter

1 what your verdict was, because you came to a
2 verdict. It's not easy for my wife and I to agree
3 on things. And to take 12 people from the community
4 to come together and agree on something can be
5 difficult.

6 Now let me remind you that this counts as
7 your jury service. So you can't be a jury for the
8 next year. And you don't have to be a juror if you
9 don't want to for the next 3 years. And, Ladies and
10 gentlemen, throughout this trial, I told you, you
11 couldn't talk to anybody the trial. Well that
12 prohibition is lifted. You can talk to anybody for
13 as long as you want or as little as you want. You don't
14 have to justify your position to anybody. And what
15 went on in the jury room that's up to you all to
16 disclose, and if you don't want to, you certainly
17 don't have to.

18 Ladies and gentlemen, there were a lot of
19 important things going on in Sumter County over this
20 past week, but I can assure there was nothing more
21 important going on than basically having this trial
22 and letting justice be done. And you have spoken
23 what you believe to be the truth as far as your
24 verdict.

25 Ladies and gentlemen, we often wonder

1 what makes America great. It's not judges. It's
2 not politicians. It's people like you all who come
3 from your day to day activities and are willing to
4 sacrifice a week to come in here so that a situation
5 can be resolved. And I tell people I have the best
6 job in the world, because I get to sit between these
7 two flags. Now, Ladies and gentlemen, these flags
8 from are just pieces of cloth. But what they
9 represent is so much greater. People have died and
10 shed blood so that the ideas that we have as
11 Americans that only citizens can determine whether
12 another citizen is guilty or not.

13 Like I said, you didn't have to shed
14 blood. You didn't have to die, but you did all that
15 you could possibly do. So, Ladies and gentlemen,
16 let me commend you. Now you've done your job. Now
17 it's my turn to do my job. So in about in 15
18 minutes, I am going to sentence the defendant
19 according to you verdict. Ladies and gentlemen,
20 after I will dismiss you, you will be a regular
21 citizen. And you are welcome to come back into the
22 courtroom as your alternates did. So while you all
23 were back there working they've been sitting here
24 waiting to see what happened as well.

25 So, Ladies and gentlemen, thank you for

1 your service. You are now dismissed. You are
2 welcome to stay.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 THE COURT: Are there any post-trial
6 motions?

7 MS. COOKE: Judge, I would just like to
8 make a motion for a new trial on all the objections
9 that were overruled.

10 THE COURT: Okay. Anything from the
11 State?

12 MR. MEADORS: No, sir.

13 THE COURT: In approximately 15 minutes,
14 the officers will take the defendant and put him in
15 a position to be sentenced. That means shackled and
16 everything like that. Then in 15 minutes, I will
17 sentence the the defendant.

18 MS. COOKE: Can I have a few minutes to
19 speak to him about?

20 THE COURT: Yeah, you can speak to him,
21 but he needs to come back out dressed appropriately
22 for sentencing. Ms. Cooke, I'm respectfully denying
23 your motion for a new trial. Solicitor.

24 MR. MEADORS: May it please the court.

25 THE COURT: Yes, sir.

1 MR. MEADORS: Your Honor, obviously you've
2 heard his prior record of 2010 conviction for
3 aggravated domestic violence. A 2005 conviction for
4 aggravated assault. Both of those are out of
5 Arizona. And then a 2008 shoplifting conviction.

6 Judge, first I want to publicly thank the
7 Sumter County Sheriff's Office for their work on
8 this case, and how they handled the scene and
9 responded. And I Certainly want to thank them.
10 Obviously we would have felt strongly about the
11 case, what we presented to the jury. But we
12 certainly respect the jury's verdict and thank them
13 for their victim. Judge, I have some victims at the
14 appropriate time and they would like to address Your
15 Honor.

16 THE COURT: Now would be a good time.

17 MR. MEADORS: Judge, I don't know what
18 order we want to go in. We'll start with the father
19 Mr. Joseph Howell, who would like to address Your
20 Honor.

21 THE COURT: Good afternoon, sir.

22 MR. HOWELL: Good afternoon, Your Honor.
23 My name is Chief Master Sergeant Joseph A. Howell,
24 Jr. United States Air Force, retired. I want to
25 start off by thanking you for the opportunity to

1 speak to you and come before you today.

2 THE COURT: Yes, sir.

3 MR. HOWELL: I'd also like to thank the
4 jury for their service. And I truly understand that
5 they were given a very difficult task, and I along
6 with my family, greatly appreciate that. I want to
7 start off by saying the past 16 months since the
8 death of my son, have been truly tough for my family
9 and I. It has been -- it has not only been tough,
10 for me emotionally, but after Shamar's death, the
11 stress and everything has affected me physically. I
12 have developed a sleeping disorder. And I was just
13 recently diagnosed with depression. And I am taking
14 medication for both.

15 And I will tell you that over the past
16 16 months, the only thing that has kept me going on
17 on the days that it's really been tough is just
18 seeking justice for my son Shamar.

19 Shamar was many things to many people. He
20 was a father. He was a son. He was a good friend,
21 a boyfriend. Excuse me, I'm sorry.

22 THE COURT: Yes, sir. Take your time.

23 MR. HOWELL: And many people loved him,
24 including myself. My son's life was ended far too
25 early. My son just happened to die, was killed, 25

1 days after his 26th birthday, which happened to be
2 5 days before his older son's 7th birthday. And
3 before his younger son had turned 2 years old. Now
4 my two grandboys are faced with having to grow up
5 without their father. Also my son passed away
6 before he had an opportunity to see his niece, who
7 at the time was less than one years old. And now
8 that he's gone, he'll never have an opportunity to
9 hold her, which is truly ironic when I consider how
10 close he and my daughter were. They were truly like
11 peanut butter and jelly. They went together. And I
12 think you can see by her emotion what the loss is
13 doing to her.

14 During this trial, my family, people in
15 court, including the Andrews family, and I won't
16 forget them. My heart goes out to them, because
17 this impacted their lives greatly as well. We had
18 to listen to some very disturbing testimony, and my
19 prayers go out to them. And, Your Honor, I'd like
20 to say this respectfully, when accessing the
21 demeanor and the actions of the defendant and now
22 the convicted Mr. Jeffrey Andrews, all during this
23 trial, he never took responsibility for his actions.
24 During his testimony it was clear to me and I think
25 many others, that his testimony was full of lies,

1 mistruths and self indulgence. And at no time did I
2 ever see him show any remorse.

3 Shamar's family will never have an
4 opportunity to talk to him again. We'll never be
5 able to see my son smile. I'll never be able to
6 pick up the phone and call him. He'll never be able
7 to talk to me and get advice. I'll never be able to
8 take my son fishing again. These are all the
9 things we used to love to do. Once again, we've
10 heard about the violent past of Mr. Andrews. And he
11 definitely shouldn't be allowed to injure anyone
12 else. So therefore I ask you, Your Honor, I beg
13 you, to strongly consider the maximum penalty when
14 you make your judgment.

15 THE COURT: Thank you.

16 MR. HOWELL: Once again, Your Honor, I
17 thank you for the opportunity today, and God bless
18 you.

19 THE COURT: Does anyone else in the
20 family want to say anything?

21 MR. MEADORS: I don't believe that so that
22 Your Honor can see her, his sister that was
23 referred to, Ms. Kenyatta Howell, is in the back and
24 did not want---

25 THE COURT: Yes, sir.

1 MR. MEADORS: ---to address. I just want
2 to make sure. And, Judge, here is mom, Ms. Howell.
3 Katrina Howell wants to talk to the court,
4 respectfully.

5 THE COURT: Good afternoon, ma'am.

6 MS. HOWELL: Good afternoon. On this
7 week, I've had to live the really of the most
8 catastrophic moments of my life. The moment when I
9 received the devastating call that my child was
10 killed, I've had to sat and watch Mr. Andrews the
11 murderer, day in and day out in this courtroom. I
12 watch him live and I watch him breath, and even have
13 a right to a fair trial. I've watched him talk.
14 I've watched him drink. I've watched him even
15 smile. These are things that I don't get to see my
16 son do anymore, because Mr. Andrews decided to take
17 his life.

18 I sit and I listen to him say he took
19 something from him, but he took something from me.
20 I'm disgusted with the arrogance that he have no
21 regard for human life. And I as I sit and ponder in
22 my heart, the thoughts towards this man, the man
23 that take away one of the most important people in
24 my life, my son, Shamar O'Brien Howell. I think
25 about the joy he took and he replaced with sorrow.

1 The laughter is now replaced with mourning, the hurt
2 and the pain. And there is not a day that goes by
3 that I don't think of him. How I long to see him,
4 to hold him, to touch him, to call him, to tell him
5 I love him. But because of Mr. Andrews, I will
6 never get that opportunity again. I will never hear
7 him say, mommie, I love you. Mommie, I miss you.
8 Because he took that from me. See Mr. Andrews took
9 something away from me that was more valuable than a
10 liquor bottle.

11 Not only did he take away my oldest child,
12 my only son, he took a part of me. And I sit and I
13 fight back the tears, the tears of a mother who
14 loved her child more than life itself. Mr. Andrews
15 will never know the sleepless nights, the
16 loneliness, the emptiness, the heart pain that we
17 have to endure. And even though Shamar's life
18 didn't mean anything to him, it might a lot to us.
19 You see unlike Mr. Andrews, Shamar will never see
20 the age of 51. He will not see his sons go to
21 school. He will not see them play sports, nor go to
22 the prom, graduate high school or college. He won't
23 even live to see them get married. He'll never see
24 grandchildren, because Mr. Andrews took that away.
25 And I try hard to love this man. But honestly, I

1 don't like him. And I hate the act of what he did
2 to me and my family, and to my son. But God does
3 command me to like him but to love. And every day
4 that I rise, I ask God help me get through the day.
5 I am sorry. Because I miss him more and more each
6 day, which is why I pray that I can truly forgive
7 him despite of, so that I can live again and not
8 just exist. And even though I didn't pull the
9 trigger, I, we as his family was caught in the
10 crossfire. Our lives are forever changed. And my
11 prayer is that he goes to prison for life. And
12 honestly that's not enough. Because at the end of
13 the day, his family will see him. They can hold
14 him. They can talk to him. He can see the sun
15 shine again.

16 However, I have listened to him. No
17 remorse. No regret. And I feel behind bars he too
18 will think of Shamar, because he will know that's
19 why he is behind those bars. And maybe then he will
20 have some compassion for another person's life. An
21 hour before he took my son's life, I talked to my
22 son. And the last words that I ever will hear my
23 son say is that he knew that I loved him. And I
24 did. But I pray that on today, that on today,
25 because I have fought to the end, I did that; that

1 I can have some type of resolution. Thank you, Your
2 Honor.

3 THE COURT: Yes, ma'am.

4 MR. MEADORS: Your Honor, now Investigator
5 Wayne Dubose would like to have some comments --
6 have some comments to present to the court.

7 THE COURT: Yes, sir.

8 INVESTIGATOR DUBOSE: Judge, I will be
9 brief. Just on behalf of the State and of the
10 family, we're here today because a young man lost
11 his life for absolutely no reason. We lost another
12 citizen of Sumter County. Mr. Andrews took that
13 life. The justice system worked today. He was
14 allowed to pick a jury of his peers. That jury
15 found him guilty. Regardless of the sentence you
16 impose today, it is not going to bring Mr. Howle
17 back or the family or anyone else. But we would ask
18 that when you consider that sentence, Mr. Andrews
19 took Mr. Howle from his family. And we are asking
20 that you take Mr. Andrews' freedom for the next 30
21 years.

22 No matter what you impose is not going to
23 bring that young man back for his family. Okay.

24 MR. MEADORS: Very briefly, Your Honor,
25 Carol Miller. Doesn't want to speak. This is their

1 pastor and close friend who has helped them through
2 all of this. One other person who I think is here
3 in spirit, quite frankly, is not here right now.
4 But over my 30 years of prosecuting, I don't think
5 I've had more real and raw testimony that was
6 presented by Erika Andrews just quite frankly. For
7 the good and the bad, it to pure, and it was what
8 she was feeling at the time. And I want to think
9 that is one of the reasons the jury came back with
10 their victim. I got to know her just in preparation
11 for this, and she was truly hurting as you can tell
12 on the the 911 and the dashcam. But she was here
13 this morning; had to get back with her parents back
14 to where they live. But she too suffered a loss as
15 a victim, and I just wanted to acknowledge that and
16 thank her along with the Howell's for their patience
17 with us in dealing with this.

18 Judge, you heard how I feel in my closing.
19 I'm not going to do no it. And I truly think, and I
20 think he was mad yesterday. I think the defendant
21 killed him over a bottle of liquor. I just think he
22 was that mad. And that's what he told Corporal
23 Kelly. Judge, we just ask that you sentence
24 accordingly. Thank you.

25 THE COURT: Ms. Cooke.

1 MS. COOKE: Your Honor, Mr. Andrews is 51
2 years old. He's a mortician. He was in the
3 military, in the Marine Corps for a short time
4 before he was honorably discharged for a medical
5 reason.

6 His mother and father have been here all
7 week supporting him, and his aunt as well and some
8 other family members have been in and out. He is
9 married with a 23-year-old daughter; attends Jehovah
10 Baptist Church. He has been Involved in the
11 mentoring programs in Sumter. And he has told me
12 that he would like to address Your Honor.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: Your Honor, this is a very
15 difficult time You Honor. First, I am humbly bow, I
16 cannot bring Shamar back. We talked. We heard
17 statements that I didn't have any remorse.

18 Fortunately as a mortician sometimes I have to hold
19 it in and try not to get emotional. I have been
20 trained to do that. But no one is hurting more than
21 I hurt. I picked Shamar up from work. I had Shamar
22 working with me. Your Honor, it was just a heat of
23 the moment situation. And I regret -- I regret it
24 deeply. But again, I stand humbly by asking the
25 family, will you please just have a little talk with

1 Jesus. And maybe he can make everything all right.

2 I can't replace it.

3 Your Honor, that man lost a son. That
4 lady lost a son. I am not that cruel, vicious
5 person. I have ties to this family for the rest of
6 my life. The fourth generation Andrews for the rest
7 of my life is with these people. I can't explain to
8 you how hurt I am about this. I too had to get
9 psychiatric help. I too had to go and sit in Tuomey
10 Hospital, because I was hurting. I too was
11 diagnosed with depression. I can't bring him back.
12 But I promise you family, I will serve God. And I
13 will continue to pray. And I ask that you pray for
14 me, just as I pray for you.

15 Your Honor, this is my family. This is my
16 mother. This is my aunt. This is my two aunts. My
17 wife unfortunately couldn't be here. They're losing
18 me as well. Your Honor, again, I don't have the
19 words to say. But I ask in your sentencing, will
20 you please have mercy on me, just as I ask God to
21 have mercy on my soul. I have done some monitoring
22 work here in Sumter. I'm active in my church. I
23 can tell you the countless kids that I coached.
24 Kids that looked up to me. And I really want to
25 talk about the relationship that I had with Shamar,

1 but I wouldn't do that because that's not going to
2 be fair to the family. But no, I have stand up and
3 say I was not that angry. It was just a heat of the
4 moment situation.

5 Family again, please forgive me. I stand
6 humbly bow on my knees, asking you to please forgive
7 me, Regina. Please forgive me, Katrina. Thank you,
8 Your Honor.

9 THE COURT: Anything further from the
10 State---

11 MR. MEADORS: No, sir.

12 THE COURT: ---or the defendant? How much
13 time has he been in jail.

14 MS. COOKE: Your Honor, I can look it up
15 really quick. He's been in and out. He's been on
16 GPS monitoring the whole time, Your Honor.

17 THE COURT: That doesn't count. I'll just
18 give him credit. I have got to give him credit for
19 time served. The Department of Corrections will
20 compute that.

21 Let me commend the attorneys first of all,
22 on y'all's handling of the case. You certainly, both
23 side well represented by the solicitor's office, as
24 well as the public defender's office. I know it's
25 never going to go -- it can never go both of your

1 way. But you certainly have upheld civility oaths.
2 And again, even in a hard trial like this, it was an
3 honor to be in the courtroom serving with you all.

4 So you know again, I think this is my
5 probably my 35th to 40th murder trial. None of them
6 make sense. They're all tragedies. Somebody gets
7 angry. Somebody gets drunk. You know there seems
8 to be a commonality between voluntary intoxication
9 and guns around. And it just never ends well. And
10 it always ends with such finality. Be that as it
11 may, this is a very serious charge. And it warrants
12 a very serious sentence. Your lawyer did have a
13 very effective job for you, Mr. Andrews, by
14 requesting the lesser included offense of
15 manslaughter. Because very likely the jury could
16 have come back with a murder conviction, which would
17 have been 30 to life.

18 Now the maximum you can receive is 30,
19 which I certainly believe to be appropriate and
20 hereby the charge of voluntary manslaughter,
21 sentence you to 30 years in the State Department of
22 Corrections. Under the other mandatory charge of
23 possession of a weapon during the commission of a
24 violent crime, I sentence you to 5 years in the
25 State Department of Corrections. Because these two

1 events occurred at one time, I think it's only
2 appropriate that I run them concurrently. So
3 effectively you will serve 30 years in the State
4 Department of Corrections.

5 MR. MEADORS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 --End of Requested Transcript of Record--

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WITNESSES

W. Dubose Sumter County
Sheriff

DOCKET NO. 2014-GS-43-0725

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

August TERM 2014

THE STATE

vs.

JEFFERY DANA ANDREWS

ARREST WARRANT NUMBER

2014A4310100289 2014A4310100290

Indictment for

Murder

ACTION OF GRAND JURY

True Bill

Ernest A. Finney III

Foreperson of Grand Jury

Date: *8-21-14*

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

CLERK OF COURT INDICTMENT FOR
SUMTER COUNTY
SOUTH CAROLINA

Murder

At a Court of General Sessions, convened on August 21, 2014 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

MURDER

CDR: 0116. 16-03-0010,0020

That Jeffery Dana Andrews did in Sumter County, on or about March 25, 2014, willfully, feloniously, and intentionally kill the victim, Shamarr Howell, with malice aforethought, either express or implied, by means of shooting the said victim in the head with a handgun, and the victim did die as a proximate result thereof on or about March 25, 2014 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Jeffery Dana Andrews did in Sumter County, on or about March 25, 2014, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

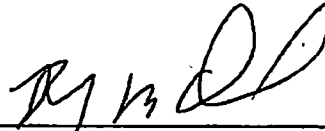
Solicitor

Edward A. Finley III

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

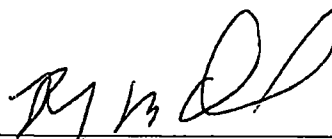
ATTORNEY FOR APPELLANT

This 10th day of March, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

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Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of March, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DANA ANDREWS

APPELLANT

APPELLATE CASE NO 2015-001679

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court abused its discretion in denying appellant immunity where appellant had ordered the decedent to leave his home, the decedent attempted to reenter the house without permission, and forcefully, as in State v. Duncan, and appellant shot him, since appellant was lawfully repelling an aggressor in his own home, he was acting lawfully, he was in fear of great bodily harm, and the judge erroneously abdicated his responsibility to make credibility determinations as a trier of fact to the jury?

2.

Whether the court abused its discretion by refusing to recognize Investigator Terry Gainey as an expert in interrogation and force science to explain how immediately interrogating someone after a shooting can lead to fragmented description of what occurred, since Gainey was qualified by experience and training to be an expert, his testimony on this subject was needed, particularly where the court used the lack of expert testimony on this issue to determine appellant had not proved he was entitled to immunity by a preponderance of the evidence?

3.

Whether the court erred by allowing an EMS paramedic to testify appellant was shot on the porch where the witness was not an expert in crime scene reconstruction, and this opinion was highly prejudicial given the disputed evidence of what the decedent was doing and exactly where he was when he was shot?

STATEMENT OF THE CASE

Appellant was indicted by the Sumter County Grand Jury for the crimes of murder and possession of a weapon during a violent crime. R. 620. His case was called to trial on July 20, 2015 before the Honorable W. Jeffrey Young, and a jury. Elaine Cooke represented appellant. John Meadors and Scott Matthews were the assistant solicitors. R. 1. After an immunity hearing, the judge ruled appellant was not entitled to immunity under the Castle Doctrine or the Stand Your Ground subsections of the statute.

The jury trial then began. On July 24, 2015 the jury found appellant guilty on both counts. R. 601, ll. 2-11. Judge Young sentenced appellant to thirty-year concurrent prison terms. R. 617, l. 21 – 619, l. 4. This appeal follows.

ARGUMENT

1.

The court abused its discretion in denying appellant immunity where appellant had ordered the decedent to leave his home, the decedent attempted to reenter the house without permission, and forcefully, as in State v. Duncan, and appellant shot him, since appellant was lawfully repelling an aggressor in his own home, he was acting lawfully, he was in fear of great bodily harm, and the judge erroneously abdicated his responsibility to make credibility determinations as a trier of fact to the jury.

Relevant Facts

Defense Counsel Cooke made a motion to find appellant immune from prosecution pursuant to South Carolina Code § 16-11-440 (a) & (c). She also specifically cited South Carolina Code § 16-11-440(c) and South Carolina Code § 16-11-450 on the common law provisions of self-defense and the defense of habitation. R. 2, ll. 8-14.

John Thomas Davis was a private investigator hired by the defense. He took photographs of the home where appellant lived. Appellant had told the police the decedent had come back into the home without permission after being told to leave because of his behavior. As will be seen infra, defense counsel would argue the facts of this case were very similar to those in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) where the Supreme Court held Duncan was entitled to immunity.

Davis testified that the latch on the door to the home was broken. Davis told the solicitor that Robert Andrews, appellant's father, informed him that the latch was broken on the day of the fatal encounter between the decedent and appellant. The latch on the door was not broken prior to that incident. R. 17, l. 20 – 18, l. 12.

Pathologist Dr. Janis Edwards Ross testified that the decedent was six feet tall and weighed about 180 lbs. He was 26 years old. He had a blood-alcohol content of .123, and had marijuana in his system when he was killed by a single gunshot. As will be seen infra, appellant was a much older, and smaller man. R. 32, l. 18 – 34, l. 25.

Dr. Ross testified that it was possible that the decedent could have seen a gun, stepped backwards, and fell backwards when he was shot in the head. R. 35, ll. 8-13. The decedent was shot just outside of his right eyebrow from two feet or more feet away. R. 36, ll. 2-19. The gunshot wound was consistent with a small caliber gun such as a .22. Dr. Ross opined that the gunshot wound would have caused “unconsciousness pretty immediately but death would take several minutes.”¹ R. 37, ll. 6-22.

Appellant testified during the immunity hearing that he lived at 12 Murphy Street in Sumter, the site of the fatal incident. He lived there with his wife and his father, Robert Andrews. R. 59, l. 12 – 60, l. 25. Appellant offered his driver’s license with the 12 Murphy Street address to prove that is where he lived. His father would also verify that fact. R. 60, ll. 21-25.

On the date of the incident appellant invited his cousin Virlyn over for a drink. They had a fifth of brandy. Appellant was celebrating because he had enrolled in school, “got some money back. And my wife and I were going to actually buy 1.5 acres of land. So we had some money, just kind of having fun and celebrating.” R. 61, ll. 1-20.

¹ The GSR testimony during the immunity hearing -- while necessary to paint a full picture for the trial court -- was largely irrelevant since appellant admitted he shot the decedent, but strongly asserted that he did so in self-defense. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)

Appellant's father eventually wanted to get something to eat so appellant recalled they took the bottle of brandy, and put on the recliner on the back porch when they left. "That back porch is also used as a laundry room." R. 61, l. 1 – 62, l. 3.

Appellant said when they returned he noticed that the washer and dryer were on. There were only three other people who used the washer and dryer. They were their friends Shamar (the decedent), Erika Andrews (the decedent's girlfriend) and Jenny Bell (a good friend). R. 62, ll. 4-20. Erika Andrews was also appellant's cousin "but I call her my niece, because her dad and I grew up as brothers, more or less, you know." R. 62, ll. 16-20. Again, Erika Andrews was Shamar's girlfriend. R. 62, ll. 21-23.

Appellant called Jenny Bell on the telephone, but Bell said she was the person using their washer and the dryer at the time. Appellant then noticed Shamar's "sneakers on top of the dryer. And his clothes, him and Erika's clothes in the dryer." R. 62, l. 24 – 63, l. 10.

Appellant also noticed that the bottle of brandy was missing. Appellant and Virlyn walked down to the nearby trailer where Shamar and Erika lived. They were renting that trailer from appellant's father, Robert Andrews. R. 63, ll. 1-16.

Appellant knocked on the door "and asked Shamar and Erika did you all come by and . . . take the jug [of Brandy] off the porch, you know." Appellant recalled that they both acted as if they did not know what he was talking about. "And I just chalked it as the kids just being mischievous, you know . . . Virlyn and I left . . ." R. 63, l. 11 – 64, l. 8. Shamar and Erika were "quite younger than I am." Appellant said he brushed the loss off, and "I went to the bootlegger's house. Me and Virlyn went to the bootlegger's house, and got some more liquor, because the liquor store was closed." Appellant said they had also purchased some more beer to

drink along with the liquor. Once they were back at appellant's house he remembered that Erika came over about 15-20 minutes later. R. 64, l. 5 – 65, l. 7.

Appellant remembered the mood at that time was light-hearted. Shamar showed up at some point, and Shamar and Erika left after a while. R. 65, l. 3 – 69, l. 9.

Erika and Shamar came back to appellant's house a little later. Appellant remembered that Erika "started drinking real good. Shamar showed back up at the house. Again he wanted to stand up [rather than sit down], and he had what appeared to be a 40-ounce bottle in his hand." R. 69, ll. 2-18. This was apparently a 40-ounce bottle of beer.

Appellant recalled that as they were all drinking appellant and his father started making lighthearted remarks about the bottle of brandy having disappeared. R. 69, l. 25 – 70, l. 18. Appellant said Shamar at some point apparently thought they were being sarcastic, and Shamar said: "You all motherfuckers talking about me?" R. 70, ll. 19-23. Appellant told Shamar "Don't talk like that in front of daddy. What's going on?" Appellant testified that Shamar responded that appellant was calling him a liar, and "we're going to have to go outside. I'm going to take you outside. I said, slow down Shamar." R. 71, ll. 1-16.

However, as Shamar continued, Appellant finally said: "You damn right. In fact, Shamar, in fact we are talking about you. We think you took the liquor. We think you took the liquor. *Now it's time for you to go. You need to leave now.*" Appellant told Shamar: "Go around the house and **get your clothes and go home.** And we'll talk about this another time. But that didn't work out. And then everything just started." R. 71, ll. 1-16. (emphasis added).

Appellant remembered that Shamar was very angry at this point, and Erika supported Shamar in his "right" to be angry. Sizing up the situation, Appellant's father, Robert, then told Erika that she also needed to go home with Shamar. R. 71, l. 1 – 72, l. 17. However, Shamar

continued to curse at appellant. Shamar refused to leave and "Shamar actually told me he would fuck me up, because he was ready to fight me." R. 73, l. 8 – 75, l. 10.

Appellant remembered that Shamar "appeared to be walking down the steps. I went back in." Appellant also told Erika "it was time to go." He grabbed Erika by her arm. Appellant remembered Shamar came "*back in the house. Everybody is raising hell right now.*" Appellant remembered he got hit in the face at that time. R. 75, l. 1 – 76, l. 15. (emphasis added). Appellant specifically recalled that Shamar's face hit him during the altercation. Once Shamar was back outside again he began threatening appellant and cursing at him: "I'll beat your punk ass. Motherfucker. You know, bad words. In my life, I've seen him act like this before. M.F. this. I'll kick your punk ass, this and that. He got the bottle again . . . like he's going to hit me with the bottle." Appellant testified he again told Shamar to go home. Shamar warned or promised: "I'll be back." Appellant went into the house, and "*I locked the screen door. Shamar did not comeShamar was outside on the porch I locked the screen door, and I closed the big door. ... I closed the big door. And I went . . . scrambling for the telephone in my dad's room.*" Appellant planned to call the police at this point. R. 76, l. 2 – 77, l. 24.

While appellant was looking for the phone he noticed "Erika walking towards this door right here now I hear the commotion outside, but I don't know, and I can't say Shamar opened that door. I can't say that ... and I know, I believe she [Erika] opened that door... the big door." R. 79, ll. 1-21. Appellant was still looking for the phone when he heard Shamar taunting: "Jeffrey won't come out here because he knows I'll beat his ass. *And he snatched the door open. And the weapon was right here on this dresser, on the dresser drawer right by the T.V.... when he snatched that door open to come in I thought Shamar was coming in there - - I thought Shamar was coming in there to hurt me, hurt us.*" R. 79, l. 8 – 80, l. 2. Appellant also recalled:

"When he snatched that door open, I was in fear of my life. But I was also in fear of my life when he came approaching me, when . . . he's advancing toward me with a bottle in his hand." Appellant said he feared Shamar because: *"He snatched the door open. He wouldn't leave. He was combative. He wanted to argue. He wanted to fight."* R. 82, l. 14 – 84, l. 1. (emphasis added).

The following occurred on direct-examination of appellant:

Q. And where were you at this point when he snatched the door open and is coming in?

A. When he was snatched the door open, I shot Shamar. I brandished that weapon. I picked that weapon up from by the TV, by the dresser drawer. By the TV right here.

Q. And you are pointing to?

A. Exhibit No. 6 again.

Q. Defendant's Exhibit No. 6. And where did you get the gun from, I'm sorry?

A. The weapon was by the TV right here on this dresser. On this dresser drawer right here. Right there.

Q. And what did you do?

A. I grabbed the weapon. I brandished it, and I shot Shamar.

Q. Why did you shoot him?

A. Because he was entering the house, and I didn't know what he was going to do. I was in fear of my life.

Q. When the police arrived, what did you tell them?

A. So many police was talking to me. I mean they had a bunch of them talking to me.

R. 83, l. 25 – 84, l. 23. (emphasis added).

Appellant said he touched Shamar to see if he had a pulse “because I was going to attempt to put CPR on him.” R. 85, ll. 3-9. Appellant also recalled that Corporal Kelly came into the house, and asked: “Who is Jeffrey, and who shot?” Appellant readily admitted to the police that he shot the decedent. R. 85, l. 15 – 87, l. 17. Appellant also remembered at this time Erika was outside screaming: “Jeffrey shot him in the head.” R. 87, l. 24 – 88, l. 12.

On cross-examination, appellant told the solicitor he did not remember telling the police that “you shot him over liquor.” As will be seen *infra*, that would be the solicitor’s theme. That although it was undisputed appellant told the police he shot Shamar in self-defense because he was afraid, the solicitor would attempt to recast the issue as an argument over stolen liquor from appellant’s house. R. 88, l. 25 – 110, l. 4.

Appellant testified that he had never shot a person before, and he was overwhelmed after the shooting. He had “a lot of different mixed emotions. Anxious, nervous, scared. All of the above.” R. 110, l. 20 – 112, l. 14.

Appellant said once he was at the police station that he requested a lawyer. He told the police: “I need to talk about this in the morning. My mind is all mixed up.” This is relevant to issue two, *infra*. R. 112, l. 8 – 113, l. 8.

Appellant also recalled that Shamar had a reputation around the neighborhood, and that he was unsure what Shamar had in his hand at the time of the fatal altercation. “That’s the thing, *I didn’t know what Shamar had in his hand. Did he have a bottle. You know, I know a little bit about him. But I didn’t know if he had a bottle. I didn’t know what he was going to do.*” R. 113,

l. 2 – 115, l. 1. (emphasis added). Appellant repeated that he felt overwhelmed at the time, and that he did not want to talk to anyone. R. 114, l. 13 – 115, l. 12. Appellant remembered he told Investigator Dubose that he was also protecting his father against Shamar. R. 115, ll. 19-21.

The need for expert testimony

The defense next called Terry Gainey. Gainey was a former police officer who was currently a private investigator. R. 116, l. 12- 117, l. 7. Gainey was also “a death investigator for the Darlington County Coroner’s Office.” He was the deputy coroner. R. 116, l. 22 – 117, l. 7.

Gainey confirmed that he was retained by the defense because he was certified through the Science Institute on various issues concerning police officers who were involved in shootings. The timeline and “when you should do interviews.” Gainey had attended a forty-hour class “consisting of bookwork and a lot of footwork there in a lab kind of environment.” That class was in November of 2014 at the Science Institute. R. 118, ll. 9-16.

The defense obviously maintained that the rules for when police officers should be interviewed after a shooting were also applicable to civilians such as appellant. Gainey testified that police officers should not be interviewed regarding shooting until forty eight hours “or two good sleep cycles before you gave an interview.” R. 118, ll. 1-21.

Gainey explained that “your mind just simply doesn’t rest. *It’s a type of event that causes memory fragmentation.* And after a couple of sleep cycles you’re usually able to consolidate your memories. *And it’s a little more of an event that you can somewhat remember more clearly.*” R. 118, l. 22 – 119, l. 3. (emphasis added).

Gainey testified that a person interviewed an hour and thirteen minutes after they shot someone would “**be completely fragmented. There would be things that make absolutely no**

sense to them. Some things they'll recall seemingly clearly. Some things they will have holes. They won't know exactly why they have holes. They'll have intrusive thoughts. They'll have things that just simply makes no sense whatsoever." R. 118, l. 17 – 120, l. 1. (emphasis added).

Gainey said that someone would "absolutely not" be able to "tell events in chronological order" if interviewed shortly after the incident. Gainey explained:

The mind itself, most people tend to think of it working in forms of a video camera. With an event starting at one end and ending in another. **When in reality, your memory tends to work as a still shot camera. It'll take a snap here and a snap here and a snap here, and snap throughout the entire event. So when you begin to try to recall what that event is, you may very well put those photographs in your mind in a different order. Then just simply you're not able to follow that chronological order at that moment until you've had that little bit of decompression time. You have an adrenaline issue. You have fear and anxiety. You have a lot of things going on in your own mind that are going to cause major, major problems for you to recall.**

R. 120, ll. 6-21. (emphasis added).

When Gainey went to explain gaps in a person's memory if interviewed too quickly, the solicitor asked if Gainey was going to be qualified as an expert. R. 120, l. 22- 121, l. 6.

Gainey then explained he had specialized training from the Force Science Institute that was "officially developed in 2004." Gainey told the judge that this institute "researched law enforcement related shootings to find out what is the general consensus of things that happen from a physiological standpoint what happens to the human body It's based on sport science. It's based on accident reconstruction. It's based on research throughout many, many years through a lot of areas of graduate level classes There's hundreds of different examples of where this type of science has been applied." R. 121, l. 9 – 122, l. 25.

The solicitor then did *voir dire* on Gainey. Gainey said he was an expert in the field of "Force Science on the use of force within law enforcement." R. 123, ll. 10-14. Gainey acknowledged that one aspect of Force Science was interviewing, and different techniques in interrogation. R. 123, l. 18 – 124, l. 6. Gainey testified the class he attended on this specialized subject was a week-long class. Gainey said that although the specialty involved police officer involved shooting, the expertise was broader than that. "You're dealing with the trauma of shooting as a whole." R. 124, l. 13 – 125, l. 24. Gainey acknowledged this was the first time he was being qualified as an expert in a courtroom. R. 124, ll. 13 -18.

The solicitor objected to Gainey being qualified as an expert. The judge noted that Gainey had a one-week course, and twenty years of experience as a police officer. The judge said he wanted to know about Gainey's college and post-graduate work. The judge observed: "It's almost like I stayed in the Holiday Inn Express last night. And so therefore, I mean one week, are you kidding me? I mean is that correct? . . . No way. He can step down. He's not an expert in this courtroom. He'll have to wait until next time to be an expert." R. 126, ll. 2-16.

When the judge was getting ready to rule whether appellant was entitled to immunity -- the subject of inconsistencies in some testimony was discussed. Defense Counsel Cooke explained that Erika had more inconsistent statements than could be attributed to appellant. Further, appellant's testimony was corroborated by his father. Counsel began to explain that **appellant was not telling different versions of what occurred. "I believe his was more of a fragmented telling different pieces in time than telling different stories."** The judge interrupted, and he told defense counsel that was her belief, *and that there was no evidence of that since "your expert was hardly an expert."* R. 200, l. 21 – 202, l. 9. (emphasis added).

Robert Andrews had also been a defense witness at the immunity hearing. Robert was appellant's father. He had lived at 12 Murphy Street for the last fifty-five years. R. 127, l. 6 – 128, l. 2. Robert remembered on the day of the fatal incident he was at home with appellant, Virlyn Gardner, Erika and Shamar. R. 127, l. 13 – 128, l. 5.

Robert testified that he told Shamar two times to go home that day. "The last time he left, and the next thing I know, he was back again . . . he just snatched the front door open." Shamar snatched the latch -- breaking it from the wall. R. 128, l. 13 – 130, l. 9.

On cross-examination, Robert told the solicitor that he did not recall exactly what he told the police on the day of the shooting. Robert said when appellant gave him the gun after he shot Shamar he put it back in the dresser. Robert said his gun was on top of the dresser at the time appellant grabbed it, and shot Shamar with his gun. R. 130, l. 20 – 131, l. 21.

EMS Paramedic Kimberly Graham responded to the 911 call on March 25, 2014. She remembered the decedent's body had his "feet facing the front door. His arms were outstretched. His head was facing the railing." R. 136, l. 25 – 137, l. 21. As will be seen infra in issue three, Graham would go much further before the jury, and opine, even though she was not a crime scene reconstruction expert, that the decedent was shot while he was seemingly outside on the porch.

Investigator John Davis was also a defense witness. Davis used a demonstrative exhibit to attempt to show where the decedent was shot. Davis told the solicitor on cross-examination that the decedent was "outside when he was shot." R. 140, ll. 23-24. "His legs were about in the door. And his head was in this area here." However, Davis acknowledged he was not shown any "crime scene photos where anybody took a picture of the position of the body on the porch." R. 140, l. 23 – 141, l. 21.

Corporal Jerry Kelly was called as a state's witness. Kelly also attempted to show where the decedent's body was after he was shot. R. 144, l. 16 – 146, l. 17. Kelly said he entered the house with his weapon drawn and appellant "he held his hands up, he told me, it's me. You're looking for me." R. 146, ll. 7-16. Kelly arrested appellant and put him in the backseat of his police cruiser. Kelly read appellant Miranda warnings. Kelly remembered appellant responding: "I'll talk to you Kelly." R. 145, l. 22 – 147, l. 25.

Kelly said he asked appellant "What happened?" He also asked who was the "young lady on the porch" screaming and crying. Appellant told Kelly that was his niece, and appellant acknowledged that he shot the decedent who was his niece's boyfriend. "I said, why you shot (sic) him and he said he took something." Kelly maintained that on follow-up questioning Appellant said: "He took my liquor." "I said you shot him over a bottle of liquor. And he kind of looked down, and then he said, well I asked him to leave. I asked him to leave and he wouldn't leave, you know. What's a man supposed to do when you ask somebody to leave. You know, I've got to protect my house. You know, what am I supposed to do. And then I said well you can call us, we can make him leave. And then I shut the door." R. 148, l. 17 – 149, l. 5. Kelly claimed that appellant did not tell him he was in fear for his life or that the decedent "tried to tear down the door." R. 150, ll. 2-12.

However, on cross-examination, Kelly now admitted that appellant told him there was a physical confrontation and he said "that's the first thing he told me. I wish I didn't actually go that night. But that's what I put in my report." Kelly also seemed confused about what were the first things that appellant actually told him. However, he admitted appellant told him the decedent was pushing and hitting him, and that **he told the decedent to leave "over and over."** R. 152, l. 5 – 153, l. 7. (emphasis added). However, Kelly claimed that appellant did not tell him

he shot the decedent as a result of a physical altercation but rather because of the liquor. The solicitor then interjected that defense counsel was questioning Corporal Kelly from another officer's report. Defense counsel noted that the report was written by Officer Monohan, but Monohan was not available for whatever reason as a witness. R. 153, l. 15 – 154, l. 2.

The solicitor then called the decedent's girlfriend, Erika Andrews. Andrews testified that she thought when appellant and Gardner came to the home where she lived with Shamar that they were insinuating that she and the decedent had taken the bottle of liquor. R. 157, l. 2 – 158, l. 15. Andrews remembered that appellant and Gardner then left. However, appellant came back to their home, and he invited her and the decedent over to his house. Andrews said she went with appellant to a convenience store to purchase a twelve-pack of Budweiser bottles. R. 159, l. 4 – 160, l. 8.

Andrews remembered that while over at appellant's home they were all drinking. Andrews claimed, however, at one point that the decedent said he did not want a beer when offered one. The decedent had obviously been drinking and smoking marijuana given the toxicology report discussed supra. Andrews maintained that appellant brought up the missing liquor bottle again, and "Shamar was like, man, I didn't take it. I'm looking at Jeffrey like, we didn't take your liquor." Andrews claimed that appellant "gets real loud, so Uncle Robert tells everybody to leave. Get out of his house." Andrews claimed that appellant was angry about the missing liquor.

Andrews said: "Shamar is getting ready to walk out the door. He said Erika come on, let's go. Right before that, Jeffrey had walked into my Uncle Robert's room . . . he was in there for about ten, fifteen seconds maybe. Then he came back out. Shamar tells everybody bye. He's walking out the door. Jeffrey is right behind him. I'm getting up walking right by the

Cario . . . it's like a little cario with pictures in it, that my uncle had by the door. That's when I heard the gunshot. And when I heard the gunshot, I started running out the door. And that's when I seen Jeffrey holding up the gun." R. 162, l. 8 – 163, l. 22.

A major dispute arose regarding exactly what Andrews told Officer Dubose after the shooting. She said she told Dubose that the incident was *her fault*. Andrews claimed she only meant "because I'm the reason Shamar was in South Carolina. Shamar doesn't have any family down in South Carolina. He came down here just to be with me." Andrews said she told Dubose she heard the shot *not that she saw appellant shoot the decedent*. R. 173, l. 3 – 174, l. 24.

Andrews claimed she told the police that she explained that the decedent would not hit appellant "because Shamar would not do something like that." Defense counsel impeached Andrews with the fact that she and the decedent beat up "Teresa Williams just a few weeks before this incident." R. 174, l. 15 – 175, l. 5. Andrews maintained that she "beat up" Teresa Williams at that time, and not the decedent. R. 174, l. 15 – 175, l. 5.

Legal arguments

Defense counsel argued that the defense had proved by a preponderance of the evidence that appellant was entitled to immunity pursuant to South Carolina Code § 16-11-440. Counsel said the evidence established that both appellant and his father told the decedent to leave and "at that point he was a trespasser. The door was shut and latched, and he forced himself in. Another element is that he was forcefully entering. Both Robert and Jeffrey testified he snatched the door and broke the lock that evening and that it has not been fixed since." Defense counsel also argued that appellant was entitled to the presumption of fear for his life or great bodily harm under Subsection (A) of 16-11-440. R. 182, l. 6 – 183, l. 13.

The solicitor claimed the evidence showed that the decedent was leaving on his own and that the evidence showed the decedent was starting to walk out when the decedent shot him. The solicitor noted there was conflicting evidence in this case, and inconsistencies about appellant's injuries. R. 190, l. 17 – 196, l. 16. The solicitor said that appellant's claim of self-defense should be decided by the jury and not the judge. R. 190, l. 17 – 197, l. 25.

Defense counsel responded that under the state's theory there would never be an immunity hearing, and that everything would be decided by the jury as to self-defense. The judge responded: "Well how am I supposed to resolved the inconsistencies and conflicting testimonies in this situation, Ms. Cooke?" Defense counsel responded that appellant's testimony had been corroborated by his father, Robert. Defense counsel also said that appellant did not say he shot the decedent "because he took my brandy. He said, many more time to the police officer right after this event happened, within two hours of this event happening, that he shot him because he was aggressive. That he shot him because he had a bottle; he shot him because he was fighting him in his house. He shot him because he snatched the door and was unlawfully entering the house." Defense counsel also said the solicitor mischaracterized the evidence as to the broken latch on the door. R. 198, l. 5 – 201, l. 18.

Defense counsel also noted that there was nothing to corroborate Erika Andrews' testimony, and there was evidence to corroborate appellant's testimony. Defense counsel again noted appellant's fragmented statements to the police about the order of events and, as seen supra, the judge responded that *there was no expert testimony on this subject* since he had refused to recognize Gainey as an expert. R. 201, l. 19 – 203, l. 18.

After a lunch break, the judge ruled: "[I]n this situation from the testimony, there's a lot of questions that are unanswered thus making a clear case of self-defense a question for the jury

to decide.” The judge said the testimony had been inconsistent and he found appellant had not proved by a preponderance of the evidence he was entitled to immunity, and that he would let the jury decide the issue. R. 351, 1. 22 – 353, 1. 3.

Discussion

In State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016), the Supreme Court held a person’s residence is “another place, within the meaning of South Carolina Code § 16-11-440 (C).” The Supreme Court agreed with the trial judge that the hold otherwise would result in a nonsensical result. In Jones, the defendant killed her live-in boyfriend when he attacked her. The Supreme Court found that even though the decedent had a right to be in the house where he also lived, Jones was entitled to immunity where she was defending herself, and repelling his attack inside the home they both shared.

Here, the decedent was an invited guest of the appellant. However, as in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), his status changed when he was ordered to leave by the appellant. The invited guest in Duncan left the house as requested, but attempted to return and Duncan, acting on appearances, shot and killed the decedent when he thought he was attempting to reenter his home.

Defense counsel correctly argued that the situation here was not distinguishable from Duncan in any material way. There was evidence that the decedent, who had a reputation for violence, “snatched the latch” off the door when returning to appellant’s home after he had been ordered to leave by appellant and his father. Appellant shot and killed him at the moment this occurred.

Further, the judge, as the trier of fact at the immunity hearing, had the duty to make credibility findings where he found the evidence was not consistent. Instead, the judge found

that inconsistent testimony made this a “quintessential jury question.” That was an abdication of the judge’s duty to exercise his discretion, and make credibility findings. That failure to exercise discretion was in itself an abuse of discretion that constituted reversible error because it was a refusal to exercise discretionary authority. See State v. Alexander, 309 S.C. 495, 424 S.E.2d 526 (1992).

The state’s attempted to distinguish State v. Duncan, supra, and State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2015). Those attempts should have been unavailing to the trial court given the facts of those two cases. Duncan has been discussed above.

In Douglas, the Court of Appeals correctly held that the events that happened in Douglas’ home entitled him to immunity where he ended up killing his golfing buddy after an altercation ensued after an otherwise relaxing day. In Douglas, as in Duncan, the decedent was ordered to leave. In Douglas, the decedent refused to leave and a physical altercation ensued. Douglas shot and killed the decedent. The Court of Appeals held that Douglas was entitled to immunity because he was in “another place” where he had a right to be - - his home - - and he was not acting unlawfully.

Again, the situation in this case was not in any way meaningfully different than the facts of Douglas and Duncan. The decedent here was ordered to leave, and he finally left. However, he returned, was cursing at appellant, and challenging him to a fight. He was reentering the house, and the broken latch was forensic evidence of that fact. That was the point at which appellant shot and killed the decedent. Defense counsel correctly stressed to the judge that the standard of the proof was only a “preponderance of the evidence.”

As this record clearly shows, the solicitor throughout the immunity hearing talked about the trial going forward, and evidence before the jury, as if it was a foregone conclusion immunity

would be denied. Again, the solicitor's attempts to distinguish Duncan and Douglass should have been totally unavailing to the trial court. For a final time, the trial court abdicated its responsibility as a trier of fact in this case by finding inconsistent testimony meant the immunity question was moot, and self-defense therefore was only a jury issue.

Most cases are obviously going to have inconsistent testimony. This Court should now issue an order granting appellant immunity from prosecution pursuant to South Carolina Code § 16-11-440 and 16-11-450 for the reasons above.

The court abused its discretion by refusing to qualify Investigator Terry Gainey as an expert in interrogation and force science to explain how immediately interrogating someone after a shooting can lead to fragmented description of what occurred, since Gainey was qualified by experience and training to be an expert, his testimony on this subject was needed, particularly where the court used the lack of expert testimony on this issue to determine appellant had not proved he was entitled to immunity by a preponderance of the evidence

Relevant Facts

As seen above at length, the judge refused to qualify Investigator Gainey as an expert witness on interviewing and interrogations after a shooting as a result of his training and education in Force Science. The judge then noted that lack of expert testimony on fragmented reporting during an interview following the shooting as a weakness in appellant's meeting his low burden of proving he had the right to immunity by a "preponderance of the evidence." The judge told defense counsel this "fragmented reporting" by appellant as a natural consequence of the police interview almost immediately after the shooting was now only counsel's *opinion* because there was not any expert testimony on the subject. Yet, it was the judge's erroneous refusal to qualify Gainey as an expert that led to the lack of expert testimony on the subject. The solicitor framed his whole case on the fact appellant allegedly told the police about the missing liquor bottle before he told them about fearing for his safety, and the safety of his father, and shooting the intruding decedent after he had been ordered out of his home.

Investigator Gainey had twenty-years in law enforcement experience. He had been to a forty-hour or one-week class or seminar on the subject of interviewing law enforcement officers following a shooting. The experiences of law enforcement officers were readily applicable to

civilians. In fact, it would appear common sense that since police officers know the possibility of having to shoot someone was a real danger when they go to work each day that the research of this “fragmented memory” reporting was equally if not more applicable to non-trained police officers. Unless someone is a hardened violent criminal shooting someone is a traumatic event. Investigator Gainey testified that is why the “golden rule” of this science was that the shooter should not be interviewed for forty-eight hours or two sleep cycles following the shooting.

Investigator Gainey also explained the problem of fragmentation if this rule was not followed. He explained, as seen supra, that the human mind does not remember events in chronological order. The mind was more snapshots of what occurred.

Yet, surely knowing this, the solicitor nonetheless framed his entire case around the fact that appellant talked to the police shortly after the shooting, and he allegedly mentioned the problem of the stolen liquor before discussing the fact that he ordered the decedent to leave his house, the decedent returned, and appellant feared for his life for the very reasons appellant articulated, and defense counsel argued in the court below.

Appellant was afraid of the decedent because the decedent was returning to forcefully enter. He had a forty-ounce beer bottle in his hands at a minimum, and appellant did not know if he also had a weapon. Appellant was in his home, where he had a right to be, and was acting lawfully. This was a case *that cried out for expert testimony on “fragmentation” caused by a traumatic shooting*, and the dangers inherent in interviewing or interrogating the shooter almost immediately after the shooting.

Yet, as seen above, the judge ridiculed Investigator Gainey as a “Holiday Inn Express” expert. It is cliché to say that every expert must be qualified as an expert for the first time at some point.

Instead of exercising his gatekeeper function under Watson v. Ford Motor Company, 389 S.C. 434, 699 S.E.2d 169 (2010), and State v. White, 382 S.C. 265, 376 S.E.2d 684 (2009), the judge would not qualify Gainey as an expert because it would be his first time in court, and he made fun of Gainey as the "Holiday Inn Express" expert.

Instead of addressing why he found Investigator Gainey's testimony insufficient or not sufficiently reliable - - if indeed the trial court did that - - the court instead ridiculed Investigator Gainey as a fake television expert. Investigator Gainey's testimony on fragmentation of memory following the declarant having experienced the traumatic act of having shot another person was necessary in this case.

Further, twenty years of experience in law enforcement, and a forty-hour, one-week course on this subject made Investigator Gainey a witness qualified as an expert by knowledge, skill, experience, training, or education where such scientific, technical or other specialized knowledge would have assisted the judge as a trier of fact in this case pursuant to Rule 702, SCRE.

The judge abused his discretion by refusing to qualify a qualified expert in this case. Investigator Gainey's expert testimony was badly needed in this case. Further, as seen above, the judge then used the lack of expert testimony against defense counsel as she argued why appellant's corroborated testimony should be accepted and found credible by the court.

Appellant respectfully submits that this court should reverse his convictions or, in the alternative, remand this case to the trial court for another immunity hearing where appellant will have the benefit of the expert testimony he should have had in this case.

The court erred by allowing an EMS paramedic to testify appellant was shot on the porch where the witness was not an expert in crime scene reconstruction, and this opinion was highly prejudicial given the disputed evidence of what the decedent was doing and exactly where he was when he was shot

Relevant Facts

In the presence of the jury, the solicitor called Kimberly Graham as a witness. Graham testified that a paramedic and an EMT both ride in the rescue squad car. The EMT is there to assist the paramedic. R. 247, l. 23 - 248, l. 23. Graham testified she had responded to thousands of emergencies such as traffic accidents and gunshots since she began working in this area in 1992. R. 248, l. 6 - 249, l. 5. The solicitor offered Graham as an expert in the field of "emergency medical services." Defense counsel did not object to her qualifications and the judge deemed her an expert in "emergency medical services." R. 249, l. 13 - 250, l. 8.

Graham testified EMS arrived at appellant's home at 10:35 in the evening on the night of the shooting. R. 250, ll. 5-21. When the ambulance arrived Graham remembered that she observed a police officer putting a man in his patrol car. She also remembered a woman "screaming and just yelling." Graham also noticed "a black male who was lying on his back on the porch." R. 251, ll. 8-18.

Graham remembered the decedent had a gunshot wound above his right eye. He was unconscious and unresponsive. He had no pulse. They started CPR and put an IV in his leg to administer drugs. Graham called the emergency room doctor to get permission to stop resuscitation. R. 253, ll. 2-17.

The solicitor asked Graham "excuse me if I am being ridiculous, but I mean could he have talked?" Graham responded that the decedent could not have talked, and that the amount of force from the bullet would lead him to drop to the ground wherever he was shot.

The solicitor asked if the "back of the head being mushy would be consistent with hitting the concrete." Graham answered that it could be from the concrete but it also could be from the bullet going into the head. The solicitor asked Graham based on her observations where she thought the decedent was when he got shot. When the witness responded: "*He was standing on the porch,*" defense counsel objected, as the solicitor sought to enforce that this meant the decedent was "outside." Counsel argued that "even as an expert, as an EMT, I don't think she's qualified with crime scene reconstruction." The judge overruled the objection. Thus, Graham was allowed to testify over objection that in her opinion the decedent was standing on the porch when he was shot. R. 255, l. 7 - 256, l. 8.

In the presence of the jury appellant largely reiterated his testimony this court has seen above during the immunity hearing. Appellant testified that he ordered the decedent out of the house. Appellant told the jurors he felt threatened by the decedent who had a forty ounce beer bottle. The decedent advanced towards appellant with the beer bottle "and we're about to fight. I ask him, it's time to go, buddy. It's time to go, and he kept cursing, kept cursing. Kept arguing. At that point Erica said something." Erica was then ordered to leave with the decedent. R. 470, l. 1 - 471, l. 22.

Appellant remembered the decedent did not leave the first time and he said he asked him multiple times to leave the house: "I know I asked him at least three or four times to leave." The decedent finally left and went out on the porch. The decedent continued to curse when he was

outside but “he appeared to be going. So my mind, I’m saying, one problem solved. I had to go back in. And I told Erica, Erica it’s time to go.” R. 472, ll. 4-25.

When Erica refused to leave appellant remembered the decedent was entering the house and there was a physical confrontation. Appellant went into his father’s room looking for a telephone to call the police. Appellant testified that the decedent “snatched the screen door open [and] was coming back into the house.” Appellant said he was wondering what the decedent was doing this time because it had seemed he had left twice “and I was thinking why is Shamar forcefully, unlawfully entering this house after I asked him to leave, you know.” Appellant testified he was afraid at the time and he grabbed the pistol that was sitting on the dresser by the TV and he shot the decedent. R. 475, l. 3 - 477, l. 2. Appellant said he shot the decedent because “I asked him to leave. I asked him to go home. He forcefully entered the house. I felt in fear of my life.” R. 476, l. 21 - 477, l. 2.

Discussion

In State v. Ellis, 345 S.C. 175, 547 S.E.2d. 490 (2001), our Supreme Court held that a police officer who was qualified as an expert in *crime scene processing* was not qualified to testify as an expert with respect to *crime scene reconstruction*. The same error occurred in this case.

In Ellis, the trial judge allowed the Sergeant to give his opinion on the position of the victim wherein he imparted his conclusion to the jury that the decedent was on the bicycle at the time he was shot. Our Supreme Court held that this, in effect, allowed the Sergeant to give his opinion on the ultimate issue: Whether the defendant was acting in self-defense when he shot and killed the victim. The Supreme Court also found the error could not be deemed harmless

where the defendant's defense was self-defense, and, in essence, the witness opined that the victim was not a threat to Ellis at the time of the shooting.

Here, similarly, Graham's opinion far her expertise on emergency responding. She was much less qualified than even the expert in State v. Ellis to testify on crime scene reconstruction. Her opinion that the decedent was outside on the porch when he was shot was at minimum was going to be confusing to the jury. Where the decedent fell, where his head was, were all ripe to be taken out of context for the jury. This would be used by the state in closing to urge that the decedent was shot outside, he was not a threat to appellant because he was outside, and that he was not breaking in or entering when he was shot. The solicitor argued that the decedent "was gone," and appellant shot him anyway. R. 567, l. 7- 572, l. 25. The improper crime scene reconstruction testimony in this case, as in Ellis, was also not harmless. Appellant should be granted a new trial.

CONCLUSION

By reason forgoing arguments, appellant should be granted immunity from prosecution by order of this Court. In the alternative, this case should be remanded for a new immunity hearing with instructions to allow the expert testimony. In the second alternative, appellant's conviction should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

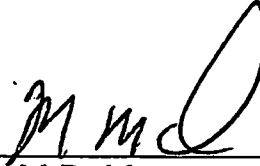
ATTORNEY FOR APPELLANT

This 16th day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 16th, 2017



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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-001679

THE STATE,

Respondent,

v.

JEFFREY DANA ANDREWS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly denied Appellant's request for immunity from prosecution pursuant to the Protection of Persons and Property Act because evidence was presented indicating Appellant brought about the difficulty and the victim was leaving the premises when he was shot.

II.

The trial court properly declined to qualify Terry Gainey as an expert based on his lack of experience and training.

III.

The trial court properly allowed Kimberly Graham to testify that the victim was on the porch when he was shot because it merely echoed her previous unobjected-to statements. Appellant never contended the victim was anywhere other than the porch when shot; therefore, Appellant suffered no prejudice from the alleged error.

STATEMENT OF THE CASE

Appellant was indicted for murder and possession of a weapon during the commission of a violent crime (2014-GS-43-0725) during the August 2014 term of the grand jury for Sumter County. (R.620-621.) The Honorable W. Jeffrey Young held an immunity hearing pursuant to the Protection of Persons and Property Act prior to trial, ultimately denying Appellant's request for immunity from prosecution. The case proceeded to trial by a jury and Appellant was convicted of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Judge Young sentenced him to an aggregate of thirty years' imprisonment.

STATEMENT OF FACTS

Corporal Jerry Kelly responded to a 911 call reporting a gunshot victim. (R.225–226.) Upon arriving at the scene, he observed the victim, Shamar Howell, prostrate on the porch with a woman, Erika Andrews, crying and screaming by his side. (R.226.) She yelled to Corporal Kelly that her uncle, Appellant, shot and killed her boyfriend. (R.226.) Erika informed him Appellant was in the house, and Corporal Kelly went inside where Appellant held up his hands and stated, “I’m the guy you’re looking for.” (R.227.) After placing Appellant under arrest and Mirandizing¹ him, Corporal Kelly asked Appellant what happened, and he responded that Shamar took his bottle of liquor off the back porch. (R.233.) Corporal Kelly asked whether Appellant had shot Shamar over a bottle of liquor, and Appellant responded he had asked Shamar to leave and he would not leave, so what was he supposed to do to get him to leave. (R.237.)

Appellant was subsequently charged with murder and possession of a weapon during the commission of a violent crime. (R.620-621.) Prior to trial, Appellant sought immunity from prosecution pursuant to the Protection of Persons and Property Act. At the hearing, Appellant testified that at the time of the incident he was living with his wife and his father. (R.60.) On that evening, he was enjoying a bottle of brandy to celebrate enrolling in Central Carolina College. (R.61, 65.) Appellant stated he went with his father and his cousin, Virlyn Gardner, to get some food, and left the bottle of brandy on a recliner on the porch. (R.61.) When he returned home, he noticed the bottle was missing, and he went down to the neighboring trailer where Erika lived with Shamar, to inquire whether they had taken the brandy.² (R.63.)

¹ Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

² Appellant claimed he noticed the dryer running and found Erika’s and Shamar’s clothes inside, so he knew they had been to the house. (R.63.)

Appellant testified they denied any knowledge of the bottle, so he left, assuming they were just “kids being mischievous.” (R.63–64.) Appellant then went to “the bootlegger’s house” to get more liquor. (R.64.) He returned home and began drinking again with Virlyn and his father when Erika came over, followed shortly thereafter by Shamar. (R.66.) Both of them eventually left and returned a little while later and began drinking with Appellant. (R.69.) At some point, Appellant’s father made a comment about “somebody” coming on the porch and absconding with a bottle of liquor, and how that was “not right,” to which Virlyn added that the liquor did not just get up and walk away. (R.70.) Appellant then said to Erika and Shamar that “it’s ironic that [their] clothes wind up in the dryer” and then somebody came behind them and took the liquor. (R.70.)

After a few moments, Shamar began to get upset and said, “You all mother fucker’s [sic] talking about me.” (R.70.) Appellant advised him not to use language like that and then informed Shamar that they were indeed talking about him because they thought he stole their liquor. (R.71.) Appellant testified he then told Shamar to leave and they would talk about it at a later time; when Shamar became angry, Appellant and Virlyn began to laugh. (R.71.) At this point, Appellant explained, Erika began to interject and she and Shamar became increasingly argumentative. (R.72.) Appellant’s father then asked the two of them to leave and the dispute escalated, with Shamar and Erika refusing to leave. (R.74.) Appellant finally got Shamar out the door and grabbed Erika, causing Shamar to come back in the house. (R.75.) Appellant then stated he pushed Erika and grabbed Shamar’s arm, who flung his arm back striking Appellant in the face. (R.75.) Erika also began hitting Appellant but eventually simply returned back inside and began drinking on the couch again. (R.76.) Appellant claimed that at this point Shamar was outside again swearing and “flinching” at him with a bottle in his hand as if he was going to hit Appellant. (R.77.) Appellant then told Shamar to go home and he locked the screened porch;

Shamar did not follow, and Appellant closed the other door. (R.77.) While Appellant looked for his phone, Erika opened the door and began talking to Shamar. (R.79.) At this point Appellant heard Shamar say Appellant would not “come out here because he knows I’ll beat his ass.” (R.80.) According to Appellant, Shamar then snatched the door open with bottle in hand, so Appellant shot him. (R.84.) Appellant stated he was in fear for his life because he did not know what Shamar would do. (R.84.) On cross-examination, Appellant admitted that the hearing was the first time he had ever mentioned Shamar snatching the door open or that he had closed and locked the door. (R.101.)

Appellant also called Terry Gainey to testify as an expert in interrogation and force science. Prior to qualification, Gainey testified as to his experience, and explained he had attended a course focused on shootings involving law enforcement, which included a discussion of the timeline that should be used when interviewing officers after they have shot and killed someone. (R.118, 125.) Gainey opined that after an incident, officers should be given forty-eight hours or two good sleep cycles prior to providing a statement. (R.118.) He stated this was because a traumatic event will cause “memory fragmentation” and sleep allows the brain to consolidate the memories so the officer can remember the event more clearly. (R.119.) He testified that if a person was interviewed thirteen minutes after he shot someone, his

memory would be completely fragmented. There would be things that make absolutely no sense to [him]. Some things [he’ll] recall seemingly clearly. Some things [he] will have holes. [He] won’t know why [he has] holes. [He’ll] have intrusive thoughts. [He’ll] have things that it just simply makes no sense whatsoever.

(R.119.) Gainey additionally asserted a person would “absolutely not” be able to tell events in chronological order if interviewed immediately after shooting someone. (R.120.) Appellant then offered Gainey as an expert. Gainey stated he had taken a forty-hour class at the Force Science Institute on force issues in law enforcement. (R.123.) He additionally indicated he had

been in law enforcement for over twenty years prior to becoming a private investigator. (R.123.) Gainey acknowledged he had never been qualified as an expert and admitted his knowledge on the trauma emanating from a shooting was limited to his class on shootings involving law enforcement. (R.125.) The State objected to his qualification, and the trial court, noting Gainey had only had a one-week course to recommend him, declined to qualify him as an expert. (R.126.)

In response, the State called Corporal Kelly to describe responding to the 911 call and his subsequent arrest of Appellant. (R.225–234.) The State then called Erika, who testified she and Shamar were at home when Appellant and Virlyn came over to ask them about the missing liquor. (R.158.) Erika stated she and Shamar had not taken the bottle and informed Appellant of that so he left. (R.158.) Later, when Shamar was over at another friend's house, Appellant returned and invited Erika to accompany him to procure more beer. (R.160.) Erika explained that after they got more beer, they went and drank for a while at Appellant's father's house until Appellant asked Erika to go get Shamar to join them. (R.160.) Erika testified Shamar was reticent to join them after the accusation he had stolen a bottle of liquor from Appellant, but after Erika suggested perhaps he wanted to apologize, Shamar acquiesced. (R.161.)

Erika explained that five or ten minutes after they returned, Appellant brought up the liquor again. (R.161.) Erika and Shamar repeatedly asserted they had not taken his bottle. (R.161.) Nevertheless, Appellant began yelling, and ultimately his father told all of them—including Appellant—to get out of his house. (R.163.) Erika and Shamar decided to leave, but Appellant walked into his father's room first. (R.162.) As Erika made her way out of the house, Shamar was already outside, with Appellant close behind. (R.162.) Erika explained she then heard a gunshot and ran to see whether Shamar was hurt. (R.164.) Realizing Shamar had been shot, Erika ran inside and called 911. (R.164.) In her testimony, Erika clarified Shamar was

never physically aggressive toward Appellant, and he never tried to reenter the house once he left. (R.165.)

At the close of the evidence, Appellant argued that he was entitled to immunity because he was in imminent fear of bodily harm with Shamar attempting to break into his home. The trial court disagreed, stating that Appellant had failed to meet his burden and the conflicting evidence created a jury question. (R.204.) The case proceeded to trial.

At trial, the State presented evidence articulating a similar version of the facts as presented at the immunity hearing. At the close of the State's evidence, Appellant moved for directed verdict, arguing the State failed to present evidence that he had killed Shamar with malice aforethought. (R.419.) The trial court denied the motion. (R.420.) Appellant called Kimberly Graham, the paramedic who responded to the scene, to testify as to the placement of the body upon her arrival. (R.431.) Based on the photographs in evidence, Graham explained Shamar's head was where a pool of blood was with his feet and body facing the door. (R.432.) John Davis, a private investigator, testified the pool of blood, where Shamar's head would have been, was six feet, four inches³ from the door jamb. (R.434.) Finally, Appellant testified in his own defense, recounting the story he had presented during the immunity hearing.

The trial court charged the jury on the elements of murder, voluntary manslaughter, and self-defense. (R.583-599.) Ultimately, the jury convicted Appellant of voluntary manslaughter and possession of a weapon during the commission of a violent crime. (R.602.) The trial court sentenced him to thirty years' imprisonment. (R.619.)

³ Evidence had been presented Shamar was roughly six-feet tall. (R.315.)

ARGUMENTS

I.

The trial court properly denied Appellant's request for immunity from prosecution pursuant to the Protection of Persons and Property Act because evidence was presented indicating Appellant brought about the difficulty and the victim was leaving the premises when he was shot.

Appellant contends the trial court abdicated its duty as fact finder in denying the motion for immunity. He accordingly asks this Court to issue an order granting him immunity under the Protection of Persons and Property Act. Appellant misapprehends both the trial court's ruling and the role of this appellate court in its review function.

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* The Court will "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." *State v. Mitchell*, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009).

"Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). This includes all elements of self-defense, save the duty to retreat. *Id.* To establish a case of self-defense, the defendant must first establish he is:

without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in

such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238–39 (Ct. App. 2014).

Appellant claims the trial court committed an error of law by failing to act as a fact finder in stating that the conflicting testimony created a jury question. However, Appellant confuses the nature of the trial court's inquiry as well of the import of its conclusion that Appellant failed to meet his burden of proof. Determining whether the evidence preponderates in favor of immunity requires the trial court to balance the weight of the evidence; if the scales tip in favor of immunity, it will be granted. Here, the trial court concluded the conflicting evidence set the balance either level or possibly tipped in favor of the State—thus holding Appellant failed to meet his burden. The trial court therefore appropriately left to the jury's discretion the ultimate question of whether the weight of the evidence disproved self-defense beyond a reasonable doubt. Further, far from ignoring its responsibility, the trial court also expressly mentioned its duty to consider credibility, explaining to defense counsel that its inquiry was not about counting the number of witnesses offered, but rather “listen[ing] to the testimony, [a]nd mak[ing] it more on credibility.” (R.201.) Moreover, this conclusion—that the presence of conflicting testimony may be better addressed by the jury—is consistent with our jurisprudence. See *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013) (upholding trial court's denial of immunity where there was conflicting testimony and noting “Appellant's claim of self-defense presents a

quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution”).

Appellant additionally requests the Court reweigh the evidence on its own accord and grant him immunity from prosecution in complete disregard of this Court’s standard of review. Even assuming arguendo the trial court failed to weigh the evidence, Appellant’s request that this Court usurp that discretion and grant immunity is improper. An abuse of discretion for failing to find facts would be a ground to reverse and remand, not an invitation for an appellate court to step in as a fact finder. Therefore, the sole remedy would be to remand and afford the trial court the opportunity to make those credibility determinations. Thus, Appellant’s lengthy iteration of his version of the facts ignores the actual legal question involved—whether there is *any* evidence supporting the trial court’s denial of immunity. Appellant’s discussion fails to acknowledge that Erika’s testimony presents an entirely different story indicating not only that Appellant brought about the struggle, but also that he shot Shamar after the altercation ended and Shamar left the house. That Appellant deems this testimony uncorroborated and therefore suspect is immaterial. The trial court properly considered all the evidence as it was offered and concluded Appellant failed to meet his burden. The evidence supports this conclusion. Accordingly, this Court should affirm that decision.

II.

The trial court properly declined to qualify Terry Gainey as an expert based on his lack of experience and training.

Appellant contends the trial court erred in refusing to qualify Gainey as an expert in interrogation and force science, arguing he possessed the requisite training and experience and his testimony was relevant. However, there was no abuse of discretion and further Appellant elicited his desired testimony before the court. The court simply chose not to give that evidence weight in exercising its function as fact finder.

Pursuant to Rule 702 of the South Carolina Rules of Evidence, “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” “Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). “Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.” *Id.* at 446–47, 699 S.E.2d at 175. “Whether a witness has qualified as an expert, and whether his opinion is admissible on a fact in issue, are matters resting largely in the discretion of the trial [court].” *Prince v. Associated Petroleum Carriers*, 262 S.C. 358, 365, 204 S.E.2d 575, 579 (1974) (per curiam).

In alleging Gainey possessed the requisite training and experience to be qualified as an expert in interrogation and force science, Appellant points to his twenty years in law enforcement and his attendance of a forty-hour seminar focused on shootings involving law

enforcement. However, Gainey admitted his seminar, which only dedicated one day to cognitive interviewing, did not address situations involving non-officers.⁴ (Tr.126.) Further, he did not present other relevant collegiate or post-graduate studies, nor had he ever testified as an expert previously. While often the defects in a witness's qualifications should be left to the jury to consider, the trial court retains the duty to make the threshold determination on the admissibility of the evidence. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009) (“The familiar evidentiary mantra that a challenge to evidence goes to ‘weight, not admissibility’ may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.”). As gatekeeper, the trial court must do more than simply hold the door open as suggested by Appellant. Accordingly, based on this dearth of relevant experience, the trial court did not abuse its discretion in declining to qualify Gainey as an expert.⁵

Further, Appellant suffered no prejudice because he was allowed to elicit the testimony he now complains about not being able to expound. Gainey testified that when interviewing an officer after a shooting, the “golden rule” is to allow “[forty-eight] hours or two good sleep cycles before [initiating the interview].” (R.118.) He further claimed this wait time was

⁴ Nevertheless, Appellant posits “it would appear common sense that since police officers know the possibility of having to shoot someone was a real danger . . . research of this ‘fragmented memory’ reporting [is] equally if not more applicable to [civilians].” (Appellant’s Br.23.) However, if this were so, it seems that the training would not be specifically tailored to law enforcement incidents but would represent broader training on how officers should also approach interviews with any suspects. Nothing in his testimony indicated that in his work as a police officer he waited forty-eight hours prior to obtaining a statement from the suspect in a shooting.

⁵ Although the trial court did not need to address the reliability of the science given its proper conclusion that Gainey did not have the experience or training required to be qualified as an expert, there was no evidence adduced tending to corroborate the validity of these studies. The basis of Gainey’s knowledge on fragmentation was confined to his studies at a seminar hosted by a single company, the Force Science Institute. There was no evidence presented as to the reliability of that research and whether it had been corroborated by other organizations. In fact, it is not an organization without staunch criticism. See Matt Apuzo, *Training Officers to Shoot First, and He Will Answer Questions Later*, N.Y. Times, Aug. 1, 2015.

necessary: “[b]ecause of the mind[, which] simply doesn’t rest.” (R.119.) Gainey stated “[a shooting is] a type of event that causes memory fragmentation[a]nd after a couple of sleep cycles you’re usually able to consolidate your memories.” (R.119.) Additionally, he opined that if a person was interviewed thirteen minutes after a shooting, “[his] memory would be completely fragmented” and that person would not be “able to follow that chronological order at that moment [until he has] had that little bit of decompression time.” (R.119–120.) Accordingly, even if this Court were to find error, no reason exists to remand the case for another immunity hearing, as requested by Appellant. The trial court was well-apprised of the substance of Gainey’s testimony and apparently gave it little weight in exercising its discretion to deny immunity.

Based on the foregoing, the trial court did not abuse its discretion in choosing not to qualify Gainey as an expert. Moreover, the trial court actually heard the testimony Appellant seeks to admit and nevertheless refused to grant immunity; therefore, any error was not reversible.

III.

The trial court properly allowed Kimberly Graham to testify that the victim was on the porch when he was shot because it merely echoed her previous unobjected-to statements. Appellant never contended the victim was anywhere other than the porch when shot, therefore Appellant suffered no prejudice from the alleged error.

At trial, Graham, the paramedic who arrived on the scene, testified about the crime scene as a witness for both the State and Appellant. She was qualified without objection as an expert in the field of emergency medical services. (R.249.) In discussing the night of the incident, she stated that when she arrived, Erika was on the front porch screaming over Shamar's body. (R.252.) When allowed to examine him, Graham observed Shamar was on his back with a gunshot wound above his right eye. (R.253.) She further explained his head was mushy and his pupils were nonreactive, which could be attributed to the bullet or his head striking the concrete. (R.255.) She stated that based on her observation of the body and the wound, Shamar was standing on the porch when he was shot. (R.255.) Appellant objected, stating Graham was not an expert in crime scene reconstruction. The trial court overruled the objection, noting that given the substance of her unobjected-to testimony, Graham could state he dropped right there. (R.255.)

Appellant now argues this was reversible error because Graham was not qualified to opine on crime scene reconstruction; therefore, he was prejudiced because "[h]er opinion that the decedent was outside on the porch when he was shot was at minimum [] going to be confusing to the jury." (Appellant's Br.29.) Appellant bases this conclusion on his claim that "[w]here decedent fell, where his head was, were all ripe to be taken out of context to the jury." (Appellant's Br.29.)

It is questionable how this conclusion would not be within the ken of a reasonable juror. Where a man is found on a porch on his back after being shot and no one has indicated he was anywhere different, deducing that the victim was on the porch at the time of the shooting does not require specialized knowledge. It is the logical next step of the facts in evidence. This scenario is therefore inapposite to the facts of the case relied on by Appellant, *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001). In *Ellis*, the defendant alleged the victim was off his bicycle and advancing toward him with a knife when the defendant shot the victim in self-defense. *Id.* at 177, 547 S.E.2d at 491. However, the State's expert in crime scene processing opined the victim was still astride his bicycle when he was shot, which the defendant objected to because the expert was not qualified in crime scene reconstruction. *Id.* The Supreme Court found it was error to admit the testimony as it went to the ultimate question of whether the defendant acted in self-defense and was inconsistent with the defendant's recount of the events. *Id.* at 178, 547 S.E.2d at 491.

Here, however, all testimony indicates Shamar was on the porch. It is unclear how Appellant can complain where his own testimony indicates that when he fired the gun, Shamar "was entering the house." (R.476.) He never states Shamar "entered" the house; instead, he clarifies that prior to killing him, Shamar was outside. (R.474.) Necessarily, if he was not inside the house—and no one claims he was—he must have been on the porch. Although Appellant argues the testimony would be "confusing to the jury" it is hard to fathom what other conclusion the jury could draw. Of course, this testimony could create the inference he had left and the threat was ended, or it could invite the jury to conclude that Shamar was in the act of attempting to unlawfully enter the home and Appellant killed him before he could cross the threshold. Certainly, all the facts, including "[w]here [Shamar] fell[and] where his head was" were all determinations for the jury; however, Appellant himself offered the testimony of Graham for the

purpose of indicating to the jury where Shamar's head was and how his body was oriented upon her arrival on the scene. Moreover, her testimony that Shamar was on the porch when shot is cumulative to the pathologist's testimony that given the nature of his injury, he would have "collapse[d]," which can only be interpreted as meaning he fell where he stood. (R.318.) Accordingly, there was nothing improper in Graham's testimony, and to the extent she went beyond the scope of her expertise, Appellant suffered no prejudice.

CONCLUSION

Based on the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 24, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

W. Jeffrey Young Circuit Court Judge

Appellate Case No. 2015-001679

THE STATE,

Respondent,

v.

JEFFREY DANA ANDREWS

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),

SCACR.

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ATTORNEYS FOR RESPONDENT

March 24, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jeffrey Dana Andrews, Appellant.

Appellate Case No. 2015-001679

Appeal From Sumter County
W. Jeffrey Young, Circuit Court Judge

Opinion No. 5574
Heard February 14, 2018 – Filed July 18, 2018

AFFIRMED IN PART AND REVERSED IN PART

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Ernest Adolphus Finney, III, of
Sumter, for Respondent.

WILLIAMS, J.: In this criminal appeal, Jeffrey Dana Andrews appeals his convictions of voluntary manslaughter and possession of a weapon during the commission of a violent crime. On appeal, Andrews argues the circuit court erred in (1) denying him immunity under the Protection of Persons and Property Act¹

¹ See S.C. Code Ann. §§ 16-11-410 through -450 (2015).

(the Act) due to inconsistent witness testimony, (2) refusing to qualify Investigator Terry Gainey as an expert in interrogation and force science when Gainey was qualified by experience and training, and (3) admitting the testimony of Emergency Medical Technician (EMT) paramedic Kimberly Graham when Graham was not an expert in crime scene investigation and her opinion was highly prejudicial. We affirm in part and reverse in part.

FACTS/PROCEDURAL HISTORY

On the evening of March 25, 2014, officers responded to a residential shooting in Sumter County, South Carolina. Corporal Jerry Kelly arrived first on the scene and found Shamar Howell (Victim) lying on Andrews's front porch with one bullet wound above his right eye. Erika Andrews, the mother of Victim's child and Andrews's cousin, sat screaming and crying on the porch holding Victim's head. She told Corporal Kelly that Andrews killed her boyfriend and was inside the residence. When Corporal Kelly entered the residence, Andrews willingly surrendered, stating "I'm the guy you're looking for." Corporal Kelly arrested Andrews and placed Andrews in his patrol car while he secured the scene.

Andrews was indicted for murder and possession of a weapon during the commission of a violent crime. Andrews filed a motion to dismiss the charges pursuant to the Act on the ground he acted in self-defense. Prior to trial, the circuit court conducted an immunity hearing on the matter. At the hearing, Andrews testified that at the time of the incident, he lived with his wife and his father, Robert Andrews, in one of Robert's trailers. On the night of the incident, Andrews was celebrating his re-enrollment in school, and he invited his cousin Virlyn Gardner over to enjoy a bottle of brandy. Andrews, Gardner, and Robert left to eat dinner and hid the brandy bottle on the back porch next to the washer and dryer. Upon returning, Andrews noticed the dryer was in use² and the bottle of brandy was missing. Andrews discovered Erika's and Victim's clothes in the dryer. Andrews walked to Erika and Victim's nearby trailer and asked them if they had taken the bottle, which they denied, and Andrews left to get more alcohol. Later that night, Andrews and Robert were socializing at their trailer with Gardner when Erika arrived, followed shortly by Victim. Erika and Victim left and returned to the trailer soon thereafter. Andrews testified that when Victim returned, he had one forty-ounce bottle of beer wrapped in a paper bag. Later that evening,

² Three people had permission to use the washer and dryer: Jenny Bell, Erika, and Victim.

Andrews again mentioned the missing brandy bottle, which Erika and Victim repeatedly denied taking.

Andrews testified that when he asked Erika and Victim to leave, verbal and physical altercations ensued; Victim advanced towards Andrews cursing and holding the forty-ounce beer bottle. Andrews testified he removed Victim to the front porch, while Erika was still inside, and he locked the screen door and closed the wooden front door. Andrews went to Robert's bedroom to retrieve the phone to call the police when he heard the wooden front door open and Erika and Victim talking. Unable to find the phone, Andrews began to exit Robert's room when he heard Victim insinuate Andrews was scared to come outside for fear of an altercation. Andrews, still at Robert's bedroom door, heard Victim "snatch" the locked screen door open and saw Victim crossing the threshold of the front doorway. Andrews grabbed a gun sitting on Robert's dresser, turned, and shot Victim as he came through the threshold of the doorway. Robert corroborated Andrews's testimony.

At this point in the hearing, the eyewitness testimony of Andrews and Robert varied substantially from Erika, the only other eyewitness to testify. Erika testified Victim chose to leave peacefully when Robert asked him to leave, and Victim never tried rushing back into the residence or pulling the screen door open after exiting. She testified Andrews went to Robert's bedroom as Victim peacefully said goodbye, and Andrews followed Victim closely behind as Victim exited the residence onto the front porch. Erika testified she was still inside the residence when she heard a gunshot, and she ran to the front door to see Andrews holding a gun. She also testified that, prior to the shooting, Victim never had a forty-ounce bottle of beer at the residence³ and he never threatened or hit Andrews.⁴

³ State's exhibit No. 7 was admitted at trial showing a forty-ounce beer bottle wrapped in a brown paper bag next to the front porch after the incident.

⁴ Erika explained Victim would never hit Andrews as that behavior was out of character for him. However, Andrews attacked Erika's credibility with a police report, stating Erika and Victim assaulted Teresa Williams a few weeks before Victim's death. Erika maintained Victim was not involved with the Williams incident.

Andrews proffered Investigator Gainey as an expert in interrogation and force science⁵ during the immunity hearing. No court had previously qualified Investigator Gainey as an expert in this field. However, Investigator Gainey had twenty years of law enforcement experience and previously attended one forty-hour, week-long force science course about officer-involved shootings and the timeline for interviewing officers after fatally shooting someone. Investigator Gainey testified the "golden rule" was to wait "[forty-eight] hours or two good sleep cycles" before interviewing an officer involved in a fatal shooting. He stated shootings typically caused "memory fragmentation[, a]nd after a couple of sleep cycles[,] you're able to consolidate your memories" and remember the event more clearly. Furthermore, Investigator Gainey testified that if a shooter was interviewed thirteen minutes after a shooting, he or she would have a "completely fragmented" memory and would need time to decompress to chronologically sort out the events. However, the circuit court declined to qualify Investigator Gainey as an expert, noting his one-week course was insufficient qualification.

In response, the State called Corporal Kelly. After he arrested, *Mirandized*,⁶ and placed Andrews in his patrol car, Corporal Kelly asked Andrews why he shot Victim. Corporal Kelly testified Andrews's initial answer was that Victim took the brandy bottle but later stated he shot Victim because Victim refused to leave when he was asked. At trial and during the immunity hearing, Corporal Kelly stated Andrews did not mention a physical altercation until his second or third conversation with Corporal Kelly, and Andrews did not mention fearing for his life until police interviewed him at the police station.⁷

At the end of the hearing, Andrews argued he was entitled to immunity under the Act because he was in imminent fear of bodily harm when Victim forcefully entered his residence. The circuit court rejected his argument, finding "very inconsistent" witness testimony created a jury question and finding Andrews failed to meet his burden of proof of a preponderance of the evidence. The case proceeded to trial.

⁵ Investigator Gainey described force science as the use of force issues within law enforcement.

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁷ At the station Andrews indicated, "I need to talk about this in the morning. I'm all twisted."

At trial, both parties presented evidence similar to the evidence presented at the immunity hearing.⁸ The State called Graham, the responding EMT paramedic. The circuit court qualified Graham as an expert in the field of Emergency Medical Services (EMS) without objection. Graham testified she received her Basic EMT certification in 1992; received her paramedic certification in 1998; and was certified in pediatric trauma life support, Hazmat, and cardiopulmonary resuscitation (CPR). Graham had responded to thousands of emergencies and was trained in taking vital signs, bandaging wounds, administering drugs and IVs, using a defibrillator, and intubating patients. Upon arriving on scene, Graham's job was to find the most critical patient and "begin life saving advances" on him or her. Graham testified that, when she arrived at Andrews's residence, Erika was screaming and lying on top of Victim on the front porch. She testified Victim was on his back with a gunshot wound above his right eye, his pupils were nonreactive, and the back of his head was "mushy," which she believed could have been attributed to the bullet or the back of his head hitting the concrete. The State further questioned Graham on direct examination:

[The State]: [C]ould [Victim] have talked?

[Graham]: No sir. When [Victim] was shot, the amount of force that it takes to go through and fracture the skull and then go through the brain, *my opinion is whenever [Victim] was shot, he dropped.*"

....

[The State]: So based on your observation of the body, and your observation of the injury, where was [Victim] when he got shot?

[Graham]: He was standing on the porch.

[The State]: Outside?

⁸ Andrews did not call Investigator Gainey to testify at trial.

[Andrews's Counsel]: Your Honor, I am going to object to that. Even as an expert, as an EMT, I don't think she's qualified with crime scene reconstruction work.

THE COURT: I think based upon her testimony that was not objected [to], that he dropped right there. I think she can say where he dropped. Overruled.

(emphasis added).

The State later called Dr. Janice Ross, who the court qualified as an expert in forensic pathology. Dr. Ross testified that Victim would have "collapsed" after he was shot due to his injuries, but she conceded "my findings don't exactly tell me the positions of the shooter and the victim." She acknowledged her findings were consistent with: (1) Victim entering the residence, seeing the gun, backing up, and turning, which led to Victim falling backwards onto the porch; or (2) Victim leaving the residence and looking back when he was shot.

After the State rested, Andrews called numerous witnesses and testified on his own behalf. Andrews called John Davis, a private investigator, who testified that, based on measurements he had taken of Andrews's front porch and crime scene photos, he calculated the pool of blood from Victim's head wound was six feet, four inches from the door jam.⁹ However, Davis testified he could not determine Andrews's and Victim's locations at the time of the shooting.

The jury found Andrews guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime. The circuit court denied Andrews's motion for a new trial and sentenced Andrews to thirty years' imprisonment. This appeal followed.

ISSUES ON APPEAL

- I. Did the circuit court err in denying Andrews immunity under the Act?
- II. Did the circuit court err in refusing to qualify Investigator Gainey as an expert in interrogation and force science?

⁹ Dr. Ross previously testified Victim was six feet tall.

III. Did the circuit court err in allowing opinion testimony from Graham regarding Victim's location at the time of the shooting?

STANDARD OF REVIEW

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate] court reviews under an abuse of discretion standard of review." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). "[T]he abuse of discretion standard of review does not allow [the appellate] court to reweigh the evidence or second-guess the [circuit] court's assessment of witness credibility." *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014). "A [circuit] court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

LAW/ANALYSIS

I. Protections of Persons and Property Act

First, Andrews argues the circuit court abused its discretion by denying him immunity from prosecution under the Act. We disagree.

Subsection 16-11-450(A) of the South Carolina Code (2015) provides immunity from criminal prosecution to a person using deadly force as permitted by the Act. Further, section 16-11-440 of the South Carolina Code (2015) sets forth the circumstances under which the Act allows deadly force:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling,

residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling[or] residence

....

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

To claim immunity under the Act, an accused must demonstrate the elements of self-defense, save the duty to retreat, to the satisfaction of the circuit court by the preponderance of the evidence. *Curry*, 406 S.C. at 370–71, 752 S.E.2d at 266.

Specifically, Andrews argues that like in *State v. Duncan*,¹⁰ after Andrews ordered Victim to leave his home, Victim attempted to reenter forcefully and without permission, which put Andrews in fear of great bodily harm, and caused him to lawfully shoot Victim in his residence. He further argues, the circuit court, "as the

¹⁰ 392 S.C. 404, 709 S.E.2d 662 (2011).

trier of fact at the immunity hearing, had the duty to make credibility findings whe[n] [the court] found the evidence was not consistent." Andrews maintains the court committed reversible error by finding the inconsistent testimony made Andrews's self-defense claim a "quintessential jury question."

In *Duncan*, the victim was a guest in the accused's residence when the accused asked him to leave. 392 S.C. at 407, 709 S.E.2d at 663. The victim left but returned a few minutes later. *Id.* The victim was opening the screen door when the accused exited the front door onto his porch with a gun. *Id.* The accused shot the victim as the victim continued to force his way onto the accused's porch. *Id.* Our supreme court found the accused was entitled to immunity under the Act because eyewitness testimony and statements were consistent and "showed by a preponderance of the evidence that the victim was in the process of unlawfully and forcefully entering [the accused's] home" when he was shot. *Id.* at 411, 709 S.E.2d at 665.

In *Curry*, our supreme court affirmed the circuit court's denial of immunity under the Act. 406 S.C. at 372, 752 S.E.2d at 267. The court noted the accused's testimony varied "substantially" from the State's eyewitness testimony as to whether the victim had attacked the accused. *Id.* at 369, 752 S.E.2d at 265. Thus, the accused's "claim of self-defense present[ed] a quintessential jury question, which, most assuredly, [was] not a situation warranting immunity from prosecution" under the Act. *Id.* at 372, 752 S.E.2d at 267.

Similarly, in *State v. Butler*, our supreme court affirmed the circuit court's denial of a motion for a directed verdict on self-defense, determining the evidence created a jury issue on the question of self-defense. 407 S.C. 376, 382, 755 S.E.2d 457, 460–61 (2014). The court noted the accused made various inconsistent statements about how the victim's stabbing occurred and also noted the accused's injuries were inconsistent with her testimony regarding how, and with what objects, the victim attacked the accused. *Id.* at 382, 755 S.E.2d at 460.

Unlike *Duncan*, in the instant case, witness accounts varied over whether Victim was in the process of unlawfully and forcefully entering Andrews's residence. Andrews's and Robert's testimonies—regarding whether Victim hit and threatened Andrews prior to the incident and whether Victim was peacefully leaving or forcefully entering the residence when Andrews shot him—varied substantially

from Erika's eyewitness testimony.¹¹ The accused is not entitled to immunity under the Act, when the accused's testimony is in direct conflict with eyewitness testimony as to whether the victim attacked the accused. *Curry*, 406 S.C. at 372, 752 S.E.2d at 267. "When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury." *Butler*, 407 S.C. at 382, 755 S.E.2d at 460 (quoting *State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968)); see also *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 (finding the accused's "claim of self-defense present[ed] a quintessential jury question, which, most assuredly, [was] not a situation warranting immunity from prosecution" when the defendant was in a prior altercation with the victim and later retrieved a gun and shot the victim). The conflicting eyewitness testimony created a self-defense issue for the jury; therefore, the circuit court properly submitted the case to the jury. We affirm this issue.

II. Expert Disqualification

Second, Andrews argues the circuit court abused its discretion during the immunity hearing by refusing to qualify Investigator Gainey as an expert in interrogation and force science. We disagree.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. However, "[b]efore a witness is qualified as an expert, the [circuit] court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable." *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). Moreover, "[a] [circuit] court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." *White*, 382 S.C. at 269, 676 S.E.2d at 686. "The familiar evidentiary mantra that a challenge to evidence goes to 'weight, not admissibility' may be invoked only after the [circuit] court has vetted the matters of qualifications and reliability and admitted the evidence." *Id.* at 274, 676 S.E.2d at 689.

¹¹ The circuit court found "[t]he testimony [was] conflicting as to what the different witnesses saw and what happened on the night in question," which created a question for the jury.

"To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience[,] or both[,] such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.'" *Nelson v. Taylor*, 347 S.C. 210, 214, 553 S.E.2d 488, 489 (Ct. App. 2001) (quoting *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997)). "Qualification depends on the particular witness' reference to the subject." *Id.* at 214, 553 S.E.2d at 490. "The party offering the expert has the burden of showing his witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony." *State v. Von Dohlen*, 322 S.C. 234, 248, 471 S.E.2d 689, 697 (1996). Despite Investigator Gainey's twenty years' experience in law enforcement, Andrews failed to demonstrate how Investigator Gainey was qualified to give expert testimony on fragmented post-shooting interrogation memory of a non-officer shooter. Investigator Gainey's one-week course on force issues in law enforcement did not address interviewing non-officer shooters and only dedicated one day to cognitive interviewing. We affirm the circuit court.

III. EMT Paramedic Testimony

Last, Andrews argues the circuit court erred in allowing opinion testimony from EMT paramedic Graham regarding Victim's location at the time of the shooting. We agree.

A. Qualification

Specifically, Andrews maintains Graham was not qualified as an expert in "crime scene reconstruction," and as a result, she was not qualified to offer opinion testimony on Victim's location at the time of the shooting.

"Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. However, an opinion may be offered on the ultimate issue of the case only when the witness is otherwise qualified. *State v. Wilkins*, 305 S.C. 272, 277, 407 S.E.2d 670, 672–73 (Ct. App. 1991). Likewise, an expert's testimony may not exceed the scope of his expertise. *State v. Ellis*, 345 S.C. 175, 177–78, 547 S.E.2d 490, 491 (2001).

In the instant case, the court qualified Graham as an expert in the field of EMS without objection. As such, Graham was qualified to testify, as she did, to

prehospital emergency care administered to Victim and to the resulting medical observations of his body and injuries. *See Gooding*, 326 S.C. at 253, 487 S.E.2d at 598 ("Qualification depends on the particular witness' reference to the subject."); S.C. Code Ann. Regs. 61-7 § 200(N)(1), (4) (Supp. 2017) (defining "paramedic" as a person "intended to provide leadership and to deliver prehospital emergency care and provide rapid on-scene treatment" and defining "EMT basic" as a person "specially trained and certified to administer basic emergency services to victims of trauma or acute illness before and during transportation to a hospital or other healthcare facility").

However, we find the circuit court abused its discretion in allowing opinion testimony from EMT paramedic Graham regarding Victim's location at the time of the shooting. Despite Graham's previous, un-objected to testimony—"whenever he was shot, he dropped"—we find Graham's subsequently challenged testimony—that Victim "was standing on the porch" when he was shot—exceeded the scope of her expertise in emergency medical services and was, therefore, inadmissible. In effect, by admitting into evidence Graham's challenged testimony that Victim was on the porch when he was shot, the circuit court allowed Graham to give her opinion on the ultimate issue: whether Andrews acted in self-defense when he shot and killed Victim. *See Wilkins*, 305 S.C. at 276, 407 S.E.2d at 672–73 (stating an opinion may be offered on the ultimate issue only when the witness is otherwise *qualified*); *see also Ellis*, at 178, 547 S.E.2d at 491 (stating that by admitting the officer's testimony regarding the location of the body at the time of the shooting, the circuit court, in effect, allowed the officer to give an unqualified opinion on the ultimate issue of whether the defendant had been acting in self-defense when he shot and killed the victim). We find the circuit court erred in admitting Graham's testimony regarding Victim's location at the time of the shooting.

B. Harmless Error

The State contends Graham's testimony was harmless. We disagree.

Graham's testimony improperly undermined Andrews's self-defense claim as it was beyond the scope of her expertise and went to the heart of Andrews's defense. *See Ellis*, at 178, 547 S.E.2d at 491 ("While the State was free to argue that the evidence supported an inference that the victim was astride the bicycle when shot, and while the jury could certainly have concluded that he was, [the officer] was not qualified to give such an 'expert' opinion. An officer's improper opinion which goes to the heart of the case is not harmless."); *State v. Huckabee*, 419 S.C. 414,

430, 798 S.E.2d 584, 592–93 (Ct. App. 2017) (finding improper testimony was not harmless, in part, because it went to the heart of the appellant's defense), *cert. denied*, S.C. Sup. Ct. Order dated May 24, 2018. Further, Victim's location was not a well-established fact because eyewitness and expert testimony was either inconclusive or conflicting regarding Victim's location at the time of the shooting. *See State v. Doctor*, 306 S.C. 527, 530, 413 S.E.2d 36, 38 (1992) ("When a witness' testimony is disputed or his credibility called into question, other testimony verifying the facts or opinions given by the witness is not merely cumulative."); *but see Douglas*, 411 S.C. at 326, 768 S.E.2d at 243 (finding improperly-admitted testimony harmless when the subject of the challenged testimony is well-established by properly admitted evidence prior to the admission of the improper testimony).

Graham's challenged testimony was not merely cumulative to Dr. Ross's testimony. Although Dr. Ross's testimony—that Victim would have "collapsed" after being shot—is comparable to Graham's testimony—that "whenever he was shot, he dropped"—Dr. Ross did not testify as to Victim's location at the time of the shooting. Rather, Dr. Ross conceded her findings were inconclusive as to the positions of Andrews and Victim at the time of the shooting, and that Victim could have been entering or exiting Andrews's residence when he was shot. Thus, Graham's testimony that Victim "was on the porch" was not merely cumulative to Dr. Ross's testimony that Victim collapsed.

We reverse and remand for a new trial on this issue. *See Ellis*, 345 S.C. at 180, 547 S.E.2d at 492 (reversing and remanding appellant's sentence and conviction because "an unqualified witness was permitted to offer an expert opinion on the ultimate issue").

CONCLUSION

Based on the foregoing analysis, the circuit court is

AFFIRMED IN PART and REVERSED IN PART.

LOCKEMY, C.J., and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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Appeal from Sumter County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2015-001679

The State,

Respondent,

vs.

Jeffrey Dana Andrews,

Appellant.

PETITION FOR REHEARING

On July 18, 2018, this Court reversed the conviction of Appellant by finding the trial judge abused his discretion in allowing the testimony of Kimberly Graham, an expert in emergency medical services, regarding the location of Shamar Howell's (Victim) body at the time of the shooting. This Court determined that error was not harmless. This Court misapprehended or overlooked relevant facts in the record and case law regarding the scope of expert witness testimony and what constitutes harmless error. Accordingly, pursuant to Rule 221(a), SCACR, this Court should grant the petition for rehearing and find Graham properly testified within the scope of her expertise, and even if her testimony exceeded the scope of her expertise, the error was entirely harmless under the facts of this case. This Court should affirm Appellant's convictions and sentences.

Expert Testimony

This Court found the trial judge abused his discretion by allowing Graham to testify regarding Victim's location at the time of the shooting. Specifically, although this Court

acknowledges Graham previously testified without objection that Victim would have dropped whenever he was shot, the Court found it was improper for Graham to testify that Victim was standing on the porch when he was shot. This testimony did not exceed Graham's scope of expertise. In fact, Graham's statement was a logical conclusion drawn from her previous testimony which was not objected to by Appellant.

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. "Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

Here, Graham's testimony did not fall outside the realm of ordinary lay knowledge. Graham properly testified within the scope of her expertise about the injuries suffered by Victim and the effects a gunshot wound to the brain would have on a person's body. Graham properly testified that a gunshot which fracture's the skull would cause a person to fall immediately. (R. 254). This testimony was not objected to by Appellant (R. 254). Neither Appellant nor the State made a claim that Victim's body had ever been moved. Therefore, both sides agreed that Victim was outside the house when he was shot. The opinion of Graham that this Court takes issue with, that Victim was on the porch when he was shot, is a common sense conclusion that does not fall outside the realm of ordinary lay knowledge. A juror does not need the opinion of an expert to

understand that if an individual is shot in the head, that person would fall in the same place they were standing when they were shot. This is especially true when both sides agree the body was never moved. This is a common sense conclusion which does not fall outside the realm of ordinary lay knowledge.

Harmless Error

Additionally, this Court's precedent supports a determination that the admission of the allegedly improper evidence is harmless. Further, this Court overlooked vast portions of the record in which cumulative testimony was admitted without any objection by Appellant and in which the same evidence was even offered by Appellant. In addition to being concerned with Graham exceeding the scope of her expertise, this Court is also concerned that Graham's testimony somehow undermined Appellant's claim of self-defense. Specifically, this Court found that "by admitting into evidence Graham's challenged testimony that Victim was on the porch when he was shot, the circuit court allowed Graham to give her opinion on the ultimate issue: Whether [Appellant] acted in self-defense when he shot and killed Victim." (State v. Andrews, Opinion No. 5574 (S.C. Ct. App. filed July 18, 2018) (Shearhouse Adv. Sh. No. 29 at 36-37). It is difficult to substantiate how Graham's testimony was related to the ultimate issue in this case or detracted from Appellant's self-defense claim. Appellant himself never claimed that Victim was inside his house, but rather that Victim was on the threshold and fell backwards after being shot. (R. 479, 482-83). Appellant maintained a theme and a theory of the case from opening statement through closing argument that Victim was attempting to enter his house and was shot while doing so. Appellant never maintained Victim's body was moved from inside Appellant's house to the porch. Therefore, Graham's testimony is consistent with Appellant's theory of the case and any error in its admission is harmless.

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). “The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.” State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008). In ruling on the admissibility of evidence, the trial judge has considerable latitude and his ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). An “error without prejudice does not warrant reversal.” State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). “Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.” State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). “Error is harmless when it could not reasonably have affected the result of the trial.” Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)).

Graham’s testimony was cumulative to other testimony in the record overlooked by this Court, and the same testimony was not only elicited by Appellant but used by Appellant in both his opening statement and closing argument to prove his theory of the case. Appellant never maintained that Victim was shot inside the house or that Victim’s body had ever been moved. Rather, Appellant argued from his opening statement through closing argument that Victim was in the process of entering Appellant’s home and Victim was shot while doing so. In opening statement Appellant said:

Ms. Cooke: As [Victim] *was entering the house* after the snatching the door and breaking the latch, [Appellant] grabbed, what he did see on the dresser was a gun.

[sic] And [Appellant] grabbed the gun, and he aimed it. And he fired it. And he shot [Victim] in the head to protect his life and his dad's life. This is a self-defense case. (emphasis added)

(R. 221, lines 14-20). Appellant continued to emphasize his theme of self-defense and his theory of shooting Victim while Victim was entering his house throughout trial. During trial, seven different witnesses, including Appellant, testified either that Victim's body was laying outside or that Victim would have fallen wherever he was shot. Appellant either did not object to testimony regarding where Victim's body was located or Appellant himself testified about the positioning of the body. Because this Court is concerned that Graham's testimony somehow undermined Appellant's claim of self-defense, it is instructive to review each witness who testified regarding the positioning of Victim's body.

Appellant

Perhaps most significantly, Appellant himself testified that Victim was not inside his house when he was shot. The following exchange took place on Appellant's direct examination:

Ms. Cooke: And one last question. Can you come down to the display and show the jury where [Victim] was when you shot him? And explain to them where he was standing when you shot him?

Appellant: This is my front porch. This is the screen door. When you enter the house, the screen door opens this way. It is big door (sic) right here, a wooden door. It goes this way when you open it. You walk straight. The TV here (sic). My dad's room is here. I grabbed the gun, brandished the weapon; shot [Victim] right there.

Ms. Cooke: You need to show where he was standing.

Appellant: Right there coming into the house.

Ms. Cooke: Is that inside or outside?

Appellant: In the threshold.

(R. 482-83, lines 22-13). Appellant also claimed that after he shot Victim, one of Victim's feet was holding the door open. (R. 479). Thus, even Appellant never claimed Victim was inside the house when he was shot. Graham's opinion of Victim being on the porch and not in the house is entirely consistent with Appellant's self-defense claim.

Kimberly Graham

Kimberly Graham was called as a witness by both the State and Appellant. (R. 247, 431). When Graham testified for the State, she said she arrived at the scene and observed "a black male who was laying on his back on the porch." (R. 251, lines 17-18). Graham proceeded to give an opinion that "whenever [Victim] was shot, he dropped." (R. 254, line 23). This answer was not objected to by Appellant. (R. 254). Graham also opined, without objection by Appellant, that the back of Victim's head was "mushy" either because of Victim's head hitting the concrete on the porch or because of the bullet wound. (R. 255). When Appellant called Graham in his case in chief, Appellant questioned Graham about the position of Victim's body on the porch. The following exchange took place between Appellant and Graham:

Ms. Cooke: And can you tell us which direction [Victim's] body and his feet where in?

Graham: This was his head. *His body and his feet were pointed towards the door.* (emphasis added)

(R. 489, lines 14-17). Thus, *Appellant* called Graham as his own witness to establish the positioning of Victim's body *on the porch*. Graham's testimony further enforced Appellant's theory that Victim was entering the house when he was shot and then he fell backwards and landed with his feet facing the door.

Dr. Ross

Like Graham, Dr. Ross testified Victim would have fallen wherever he was shot. (R. 318). Dr. Ross explained the bullet in Victim's brain would have caused him to lose consciousness immediately and lose control of his body. (R. 318). While Ross admitted she couldn't determine the exact locations of Appellant and Victim, she testified that Appellant's theory of the case was plausible:

Ms. Cooke: And just one more question. As a hypothetical question since you've been qualified as an expert, if [Victim] was entering the house and saw [Appellant] with a gun, and began to back up because of seeing that gun, and simultaneously turn away from [Appellant] as [Appellant] shot [Victim], that would be consistent with [Victim] falling backwards *on the porch* from the initial inertia of his beginning to back up, correct? (emphasis added)

Dr. Ross: If he had significant inertia, in other words, you were going in one direction, you might fall that way, yes.

(R. 324-25, lines 19-5). Four additional witnesses testified to their observation of Victim laying on the porch or their belief that the position of Victim's body was consistent with Appellant's theory of the case. Jerry Kelly of the Sumter County Sheriff's Office, the first law enforcement official to arrive at the scene, testified that Victim's body was laying on the porch when he arrived. (R. 226, 228). Appellant did not object to Kelly's testimony. (R. 226, 228). Erika Andrews, one of the few eyewitnesses to the shooting, testified that Victim was on the porch when he was shot, but she was inside the house when the actual shooting occurred. (R. 283-85). Appellant did not object to Andrew's testimony. Appellant called his father, Robert Andrews, as a witness in his case in chief. Like Appellant, Robert Andrews testified that Victim was "standing in the front doorway" when he was shot. (R. 451, line 17). Appellant also called Investigator John Davis to testify regarding his attempts to measure how far Victim's head was from the door of Appellant's house. In conjunction with Graham's testimony, Davis testified

Victim's head was approximately six feet four inches from the Appellant's door. (R. 433-34).

This roughly corresponded with Appellant's height. (R. 315).

Appellant summarized his theme of an attempted entering by Victim in his closing argument and used Graham's testimony to establish his theory of the case. Appellant made the following argument in closing:

Ms. Cooke: The pathologist with 38 years of experience and 3,000 autopsies in a controlled environment with a specific reason of forensics, and law enforcement purposes, and with the intention of testifying, said that she with a medical degree and all that experience in doing this for 38 years for law enforcement and too (sic) testifying in the courtroom, couldn't say with any degree of scientific certainty exactly how and where [Victim] fell. But what she did agree to was when I posed the hypothetical to her of how [Appellant] said this happened, and she agreed and said yes, it could have happened that way. That's consistent.

....

And just as I posed to the pathologist, when [Appellant] as [Appellant] sees the gun raised, if [Victim] in the very slightest leans backwards, [Victim] falls backwards when he is shot in the head; is what the pathologist said, because of the initial inertia of him leaning backwards, and he falls backwards. [Victim] didn't crumble into a ball and fall exactly where he was shot. He wasn't in a ball. He was laid out. You fall backwards. He was laid out. His feet were pointing towards the door. And his arms were back like this. There was testimony of it. [Victim] *fell backwards when he was shot.*

....

[Robert Andrews] said that [Victim] was shot in the doorway between the screen door and the wooden door. [Robert Andrews] said those words, in the doorway between the screen door and the wooden door. *Not inside the doorway, in the threshold.*

....

Erika said at point (sic) that [Victim] was leaving and [Appellant] walked out and shot him. Well then why isn't he shot in the back or on the steps or in the yard? That's just one of her inconsistent stories. Which one is it? Was [Victim] shot face to face on the porch? Was [Victim] shot as [Appellant] was following him out the door? None of that is consistent with [Appellant's] account. What is consistent with [Appellant's] account is the pathologist's hypothetical, *EMS's*

testimony about the position of the body, the GSR expert, and John Davis' measurements. (emphasis added)

(R. 543, lines 3-15, R. 547, lines 2-14, R 548, lines 10-14, R. 552, lines 1-11). Appellant's closing argument and his own testimony clearly demonstrate his theory of the case: Victim was asked to leave, Victim walked outside and attempted to re-enter the house, and as Victim was entering the house Appellant shot him in self-defense and Victim fell backwards onto the porch. Graham's testimony in no way contradicts Appellant's clearly articulated theory of the case or his self-defense claim. In fact, as Appellant argued in closing, Graham's testimony was actually consistent with his theory of the case. Not only is Graham's testimony cumulative to other witnesses, but it did not prejudice Appellant in any way. In fact, Graham's testimony benefitted Appellant. Therefore, if Graham's testimony was admitted in error, its admission could only be harmless error.

CONCLUSION

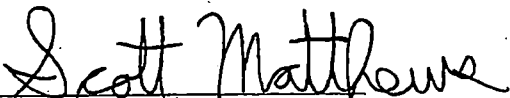
For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find that Graham did not exceed the scope of her expertise when she testified about the location of Victim's body at the time of the shooting, or in the alternative find that Graham's testimony was cumulative to other testimony and any error was harmless. This Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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July 23, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DANA ANDREWS

PETITIONER.

APPELLATE CASE NO. 2015-001679

Opinion No. 5574

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner¹ respectfully requests rehearing because this Court may have overlooked the fact that the circuit court had the duty to make credibility findings to the extent there was conflicting testimony -- which was actually only the companion of the decedent whose unbelievable testimony was that petitioner shot the decedent for no reason -- during the immunity hearing. For the circuit court to rule that because testimony was conflicting

¹ Petitioner was granted a new trial by this Court on the improper expert opinion testimony issue. He is called "petitioner in this petitioner for rehearing on the immunity issue for ease of reference.

it created a *jury question*, most respectfully, was an abdication of the lower court's obligation to the citizen defendant during the Protection of Persons and Property Act immunity hearing.

Further, the lower court and respectfully this Court may have overlooked the fact that the standard of proof for petitioner at the immunity hearing was proof by a "*preponderance of the evidence*." State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Again, to rule that conflicting evidence "created a question for the jury," was to ignore the standard of proof the circuit court was obligated to apply, and to rule for the citizen defendant – where the evidence by a preponderance of the evidence awarded him immunity from prosecution where he shot an intruder entering his home.

Petitioner respectfully proved he was entitled to immunity by a preponderance of the evidence. Petitioner had ordered the decedent to leave his home, the decedent attempted to reenter the house without permission, and forcefully, as in State v. Duncan, and Petitioner shot him. Petitioner was lawfully repelling an aggressor in his own home, he was acting lawfully, and he was in fear of great bodily harm. and the judge erroneously abdicated his responsibility to make credibility determinations as a trier of fact at the immunity hearing.

As this Court will recall, Defense Counsel Cooke made a motion to find Petitioner immune from prosecution pursuant to South Carolina Code § 16-11-440 (a) & (c). She also specifically cited South Carolina Code § 16-11-440(c) and South Carolina Code § 16-11-450 on the common law provisions of self-defense and the defense of habitation. R. 2, ll. 8-14.

This Court reiterated petitioner's testimony that the decedent "snatched" the door back open after being ordered to leave, and petitioner heard the decedent "crossing the threshold of the front doorway" when petitioner shot him. The testimony was corroborated by his father, Robert Andrews. State v. Jeffrey Dana Andrews, Op No. 5574, Shearouse's Adv. Sh. # 29 at 27.

Erica, the decedent's companion, conversely testified that the decedent "chose to leave peacefully," and "peacefully said goodbye," and as the decedent left the residence petitioner shot him for no apparent reason. The trial judge, and this Court, both found inconsistent testimony created a "jury question." State v. Jeffrey Dana Andrews, Op No. 5574, Shearouse's Adv. Sh. # 29 at 27-29.

When faced with "inconsistent testimony," the circuit court should make credibility findings, not simply conclude at an inconsistency creates "a jury question," and therefore rule the defendant had not carried his burden of proof. As the Supreme Court held in State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011):

"[W]e find that, by using the words "immune from criminal prosecution," *the legislature intended to create a true immunity, and not simply an affirmative defense*. We also look to the language of the statute that provides, "the General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of prosecution* or civil action for acting in defense of themselves and others." We agree with the circuit court that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial. Accordingly, we find the trial court properly made a pre-trial determination of respondent's immunity.

The following occurred on direct-examination of Petitioner :

Q. And where were you at this point when he snatched the door open and is coming in?

A. When he was snatched the door open, I shot Shamar. I brandished that weapon. I picked that weapon up from by the TV, by the dresser drawer. By the TV right here.

* * *

Q. Why did you shoot him?

A. Because he was entering the house, and I didn't know what he was going to do. I was in fear of my life.

R. 83, l. 25 – 84, l. 23. (emphasis added).

Defense counsel correctly argued that under the state's theory there would never be an immunity hearing resulting in the granting of immunity, and that everything would be decided by the jury as to self-defense. The judge responded: "Well how am I supposed to resolve the inconsistencies and conflicting testimonies in this situation, Ms. Cooke?" Defense counsel responded that Petitioner's testimony had been corroborated by his father, Robert, and other factors supported the facts given by petitioner and his father as being true and credible. R. 198, l. 5 – 201, l. 18.

Defense counsel also noted that there was nothing to corroborate Erika's testimony, and there was evidence to corroborate Petitioner's testimony. The judge ruled: "[I]n this situation from the testimony, there's a lot of questions that are unanswered thus making a clear case of self-defense a question for the jury to decide." R. 351, l. 22 – 353, l. 3.

The judge should have made credibility findings on what witnesses' and evidence he found credible. There are almost always going to be differences in eyewitness testimony. That was the case in State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). In Duncan, the state also pointed to "facts in dispute," and urged in its brief: "Many domestic situations among family and friends who know each other well could potentially give rise to the presumption, but be situations where given all the facts known to the actor, a fear of eminent death or bodily harm was not reasonable, or the actor simply was not really afraid of the victim or in actual danger." State's Brief of Appellant, p. 23, in State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011).

Facts were also in dispute in State v. Scott, 420 S.C. 108, 800 S.E.2d 793 (Ct. App. 2017)², and State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016). That did not relieve the trial court of its

² Certiorari granted, and the case argued in the Supreme Court, and pending resolution to date.

obligation to make credibility findings so the charged citizen was given a true immunity hearing as envisioned by the Legislature when it enacted the immunity law.

Here, the decedent was an invited guest of the petitioner. However, as in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), his status changed when he was ordered to leave by the Petitioner . The invited guest in Duncan left the house as requested, but attempted to return and Duncan, acting on appearances, shot and killed the decedent when he thought he was attempting to reenter his home.

Defense counsel here correctly argued that the situation here was not distinguishable from Duncan in any material way. There was evidence that the decedent, who had a reputation for violence, “snatched the latch” off the door when returning to Petitioner ’s home after he had been ordered to leave by Petitioner and his father. Petitioner shot and killed him at the moment this occurred.

Again, the judge, as the trier of fact at the immunity hearing, had the duty to make credibility findings where he found the evidence was not consistent. Instead, the judge found that inconsistent testimony made this a “quintessential jury question.” That was an abdication of the judge’s duty to exercise his discretion and make credibility findings. That failure to exercise discretion was in itself an abuse of discretion that constituted reversible error because it was a refusal to exercise discretionary authority. See State v. Alexander, 309 S.C. 495, 424 S.E.2d 526 (1992).

The state’s attempted to distinguish State v. Duncan, *supra*, and State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2015). Those attempts should have been unavailing to the trial court given the facts of those two cases. Duncan has been discussed above.

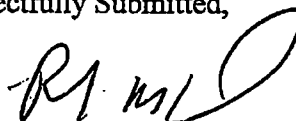
In Douglas, this Court correctly held that the events that happened in Douglas' home entitled him to immunity where he ended up killing his golfing buddy after an altercation ensued after an otherwise relaxing day. In Douglas, as in Duncan, the decedent was ordered to leave. In Douglas, the decedent refused to leave and a physical altercation ensued. Douglas shot and killed the decedent. This Court held that Douglas was entitled to immunity because he was in "another place" where he had a right to be - - his home - - and he was not acting unlawfully.

Again, the situation in this case was not in any way meaningfully different than the facts of Douglas and Duncan, and this Court should reconsider its holding especially given the fact the trial court failed to make credibility findings, and incorrectly reasoned that an inconsistent witness created a jury question, and a reason to deny immunity from prosecution under the Protection of Persons and Property Act; South Carolina Code § 16-11-440 and 16-11-450.

Defense counsel correctly stressed to the judge that the standard of the proof was only a "preponderance of the evidence." As this record clearly shows, the solicitor throughout the immunity hearing talked about the trial going forward, and evidence before the jury, as if it was a foregone conclusion immunity would be denied. Again, the solicitor's attempts to distinguish Duncan and Douglas should have been totally unavailing to the trial court.

Rehearing on this immunity issue should respectfully be granted for Petitioner Jeffrey Dana Andrews.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 2nd day of August, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 16 2018

Appeal from Sumter County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2015-001679

SC Court of Appeals

The State,

Respondent,

vs.

Jeffrey Dana Andrews,

Appellant.

RETURN TO PETITION FOR REHEARING

On July 18, 2018, this Court published an opinion which affirmed the first two issues raised on appeal by Appellant, but reversed Appellant's convictions as to the third issue. The State respectfully submits this Court incorrectly reversed Appellant's convictions based on the third issue raised on appeal. The State petitioned this Court for rehearing in regard to the third issue on July 23, 2018. Appellant submitted a Petition for Rehearing on August 2, 2018 which only challenged this Court's holding on the first issue raised on appeal. Specifically, Appellant asks this Court to reconsider its holding that the trial court did not abuse its discretion in denying Appellant's request for immunity under the Protection of Person's and Property Act (the Act). The State respectfully asks this Court to deny Appellant's Petition for Rehearing regarding the trial court's decision in the immunity hearing pursuant to Rule 221(a), SCACR, because this Court did not overlook or misapprehend any findings of fact or conclusions of law that would warrant further consideration of this matter. This Court's findings of fact and conclusions of law regarding the first issue are entirely supported by the Record and the case law cited in the

Court's opinion. Indeed, in regard to the first issue, this Court employed a straightforward application of existing precedent to the facts and circumstances of Appellant's case in finding the trial judge did not abuse his discretion by denying Appellant immunity under the Act. Accordingly, this Court should deny Appellant's Petition for Rehearing on the first issue raised on appeal.

Appellant asks this Court to reconsider its holding that the trial court did not abuse its discretion in denying Appellant immunity under the Act. In support of his petition, Appellant maintains that the trial judge somehow disregarded the burden of proof that Appellant was required to meet to be entitled to immunity under the Act. Specifically, Appellant complains the trial court disregarded the burden of proof by noting that Appellant's testimony conflicted with Erika Andrew's testimony. Furthermore, Appellant contends the trial judge did not evaluate the credibility of the witnesses presented during the immunity hearing. On the contrary, the trial judge correctly held that Appellant had not met his burden of proof by a preponderance of the evidence. Additionally, the trial judge specifically noted that he considered witness credibility in his findings.

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). The Court will "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." State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009). "Consistent

with the Castle Doctrine and the test of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." Curry, 406 S.C. at 371, 752 S.E.2d at 266.

Here, the trial judge considered the testimony and credibility of each witness in reaching his conclusion that Appellant had not proven he was entitled to immunity under the Act. The trial judge demonstrated that he was well aware of the correct burden of proof when he ruled on Appellant's motion for immunity:

The Court: The burden clearly is by just the preponderance of the evidence. Not the normal criminal case law beyond a reasonable doubt. But in order to receive the immunity that is established under these acts, it's clear there must be a case, a strong case for self-defense. And in this situation from the testimony, there's a lot of questions that are unanswered thus making a clear case for self-defense a question for a jury to decide. The testimony in this case from the witnesses and from [Appellant] have been at least very inconsistent. The testimony has been conflicting as to what the different witnesses saw and what happened on the night in question. And therefore, I find that [Appellant] has not met [his] burden of proving to me by a preponderance of the evidence, and therefore a request for immunity is hereby denied.

(R. 204, lines 4-21). The trial judge also explicitly noted that he considered witness credibility in his findings. The trial judge noted: "We don't count witnesses to determine whether or not I'll believe somebody. I listen to the testimony. And make it more credibility (sic)" (R. 201, lines 20-22). Thus, the trial judge appropriately weighed the evidence and ultimately determined Appellant did not prove that he was entitled to immunity by a preponderance of the evidence.

This Court correctly recognized that this case is similar to State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), but distinguishable from State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). In Curry, our Supreme Court considered a trial court's denial of immunity under the Act where Curry's testimony differed substantially from the State's eyewitnesses as to whether Curry

had acted in self-defense. Curry, 406 S.C. at 369, 752 S.E.2d at 265. Because the testimony of the State's witnesses differed considerably from Curry's, the court was presented with "a quintessential jury question, which, most assuredly is not a situation warranting immunity from prosecution." Curry, 406 S.C. at 372, 752 S.E.2d at 267.

In contrast, in Duncan the Supreme Court considered a trial court's grant of immunity under the Act where witness testimony was consistent. Duncan testified that he acted in self-defense and his testimony was corroborated by his girlfriend. Duncan, 392 S.C. at 407, 709 S.E.2d at 663. Not only was Duncan's testimony corroborated by his girlfriend, but it was uncontradicted by any other witnesses because Duncan's girlfriend was the only witness to the shooting other than Duncan. Id.

Here, this Court correctly held that the trial judge acted within his discretion in denying Appellant immunity under the Act. Like the facts in Curry, Appellant's version of events was directly contradicted by an eyewitness to the shooting. Appellant maintains this case is identical to the factual scenario in Duncan, but in making his claim, Appellant ignores the contradictory testimony of Erika Andrews. Erika testified that Victim was in fact leaving Appellant's residence when Appellant shot him without provocation. (R. 165).

Appellant suggests the trial judge abused his discretion simply because he didn't find Appellant's version of events to be more credible than Erika's. Indeed, Appellant also argues the trial judge abused his discretion because Appellant and his father, Robert Andrews, told similar stories and therefore must have been more credible than Erika Andrews. Appellant misapprehends the role of the trial court and the burden of proof under the Act. Indeed as the trial judge correctly noted, a trial court does not count the witnesses from either side to determine which side has met their burden of proof. A trial judge sits as a finder of fact to balance the

weight of the evidence presented by both sides. If a defendant produces enough evidence to tip the metaphorical scale in his favor, he would be entitled to immunity under the act. If the scale is equally weighed or tips in favor of the State, a defendant is not entitled to immunity under the Act. Here, Appellant did not produce enough evidence to entitle himself to immunity under the Act by a preponderance of the evidence. The trial judge reached this conclusion based on evidence presented in the record. Accordingly, the trial judge did not abuse his discretion in denying Appellant's motion for immunity under the Act. This Court should deny Appellant's petition for rehearing on issue one.

Conclusion

Based on the foregoing arguments and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant's Petition for Rehearing on issue one.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 16, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DANA ANDREWS

PETITIONER.

APPELLATE CASE NO. 2015-001679

Opinion No. 5574

RETURN TO PETITION FOR REHEARING

This is a case wherein petitioner was denied immunity pursuant to the Protection of Persons and Property Act, South Carolina Code § 16-11-440 (a) & (c), even though petitioner shot the decedent after demanding that he leave petitioner's home several times. This Court affirmed the denial of immunity to petitioner but granted him a new trial because an EMS paramedic, Kimberly Graham, was allowed to opine that the decedent was standing on the porch when he was shot. This opinion testimony was very prejudicial in this self-defense case, and it went beyond any expertise in the field of "emergency medical services" that a paramedic should have been allowed to offer. Graham was improperly testifying as a crime scene reconstruction expert.

This Court cited State v. Ellis, 345 S.C. 175, 547 S.E.2d. 490 (2001), in reversing on this issue. State v. Jeffrey Dana Andrews, Op. No. 5574, Shearouse's Adv. Sh. #29, at 36-38. In Ellis, our Supreme Court held that a police officer who was qualified as an expert in *crime scene processing* was not qualified to testify as an expert with respect to *crime scene reconstruction*. In Ellis, the trial judge allowed the Sergeant to give his opinion on the position of the victim wherein he imparted his conclusion to the jury that the decedent was on the bicycle at the time he was shot. Our Supreme Court held that this, in effect, allowed the Sergeant to give his opinion on the ultimate issue: Was Defendant Ellis acting in self-defense when he shot and killed the victim. The Supreme Court also found the error could not be deemed harmless where the defendant's defense was self-defense, and, in essence, the witness opined that the victim was not a threat to Ellis at the time of the shooting.

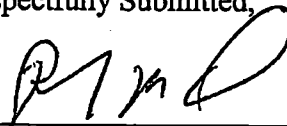
Here, similarly, Graham's opinion far exceeded her expertise on emergency responding. She was much less qualified than even the expert in State v. Ellis to testify on crime scene reconstruction. Her opinion that the decedent was outside on the porch when he was shot was at minimum was going to be confusing to the jury. Where the decedent fell, where his head was, were all ripe to be taken out of context for the jury. Indeed, it was used by the state in closing to urge that the decedent was shot outside, he was not a threat to petitioner because he was outside, and that he was not breaking in or entering when he was shot. The solicitor argued that the decedent "was gone," and petitioner shot him anyway. R. 567, l. 7- 572, l. 25. The improper crime scene reconstruction testimony in this case, as in Ellis, was also not harmless.

The state argues that this testimony did not exceed "Graham's expertise," and goes so far as to assert that any lay witness could have given this opinion that the decedent was shot on the porch because it "did not fall outside the realm of ordinary lay knowledge." Petition for rehearing

at 2-3. That is respectfully, simply incorrect. Further, the state's harmless error argument in this self-defense case should again be rejected for the same reason the Supreme Court rejected a harmless error finding in Ellis. Having an expert exceed the scope of his or her expertise in giving an opinion on the ultimate issue to be decided by the jury is extremely prejudicial given the respect given to most experts, and a harmless error analysis urging a kind of logical mathematical precision loses all context of the impermissible allure of improper expert testimony. Further, here, petitioner pre-trial had strongly asserted he was entitled to immunity in this shooting because it happened in his home after the decedent had been ordered to leave.

The expert testimony error in this self-defense case respectfully cannot be distinguished from the one in State v. Ellis in an intellectually honest way. Rehearing should be denied.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 17th day of August, 2018.

The South Carolina Court of Appeals

The State, Respondent,

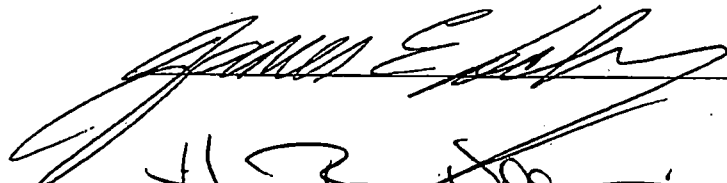
v.

Jeffrey Dana Andrews, Appellant.


Appellate Case No. 2015-001679

ORDER

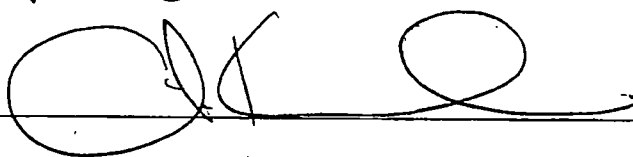
After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
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Ernest Adolphus Finney, III, Esquire
Jonathan Scott Matthews, Esquire
The Honorable W. Jeffrey Young