

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

DOMONEIK ANTWAN WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000399

APPENDIX

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CLOSING BY MR. DURANT

1 You don't get to say -- I mean I can't go in and shoot
2 up a school bus and then claim I didn't mean to kill
3 Sally -- Sally Doe, I meant to kill John Doe. It don't work
4 that way.

5 If you take a gun and you are shooting into a car that
6 is occupied with people and you kill someone, it is murder.
7 And if you don't kill someone, it is attempted murder.

8 You don't even have to hit them. You don't even have
9 to be injured. That is not an element of the offense.
10 There is no specific intent to kill any particular person.

11 Like I said, when you act with such depravity with such
12 a malignant disregard for what the consequences of your
13 conduct, when you shoot into an occupied vehicle you are
14 responsible for the consequences of what you do.

15 So what was going on in the mind and heart of Domoneik
16 Washington that night? Malice, hatred, ill will pure and
17 simple. It is all on that video.

18 He was mad when he got there because of the fight at
19 the club. When these guys show up on his turf he gets even
20 madder.

21 You don't see those guys on -- in that Impala doing
22 anything to him. He gets there. He makes a point to go out
23 there and start causing trouble.

24 They are invading his turf and he doesn't like it one
25 bit. You can see his demeanor on that video. He is an

1 angry man.

2 As Mr. Hazel and Ms. Trusdale said, 'quoted him as
3 saying, you MF's are going to pay. And then he goes out and
4 goes into his little dance of dancing or posturing or
5 taunting or beating his breast or whatever the heck you want
6 to call it.

7 And when his buddy James Washington opens the floodgate
8 by shooting his gun into the air Domoneik Washington says
9 I'm going to take matters into my own hands.

10 So he walks up to that Impala, nine millimeter extended
11 firing shot after shot after shot as he approaches the
12 vehicle.

13 And ladies and gentlemen, when you do that, when you
14 take a deadly weapon and shoot it repeatedly into an
15 occupied vehicle, what are you trying to do? You are trying
16 to kill whoever is in that vehicle. That is exactly what he
17 was trying to do.

18 This is not an accident. It is not unintentional. It
19 is not self-defense. The judge is going to charge you on
20 the law of attempted murder here in a few minutes. And she
21 is going to charge you also with some lesser included
22 offenses of attempted murder. And you will be able to
23 consider those.

24 But I'm telling you right now they do not fit the facts
25 of this case. What he did was attempted murder. And a

CLOSING BY MR. DURANT

1 verdict of anything else would be a copout.

2 Because when you get right down to it attempted murder
3 is nothing more than murder without a death. And there is
4 no question in this case that had he killed Antwan Wilson,
5 Ronald Bryant and Edward Wittrell in that car at the
6 Kangaroo, if they had died as a result of this -- that
7 shooting, he would be guilty of murder and nothing but
8 murder.

9 Not voluntarily manslaughter, not involuntary
10 manslaughter. He would be guilty of murder and nothing
11 else. And do not reward him because he is a bad shot.

12 Thank you.

13 MS. PROCTOR: May it please the court?

14 THE COURT: Yes, ma'am, you may proceed.

15 **CLOSING BY MS. PROCTOR:**

16 (WHEREUPON, played video.)

17 (WHEREUPON, stopped video.)

18 Domoneik Washington ---

19 (WHEREUPON, played video.)

20 (WHEREUPON, stopped video.)

21 Domoneik Washington is not shooting at the people in
22 the gold Impala. Because the people in the gold Impala are
23 not shooting at him.

24 Monday morning before you stepped into this courtroom
25 you heard Judge Jefferson in the jury room and she was

1 speaking to you and she was telling me what your duties were
2 and things to expect while you were here.

3 And she pointed to the cameras that were in the
4 courthouse and in the jury room. And she said be careful
5 because people make assumptions. They see things on a video
6 and they make assumptions. So be careful because somebody
7 might look at something and think oh the jury is doing --
8 the juror is doing something wrong.

9 And that is what the State is doing in this case. They
10 are wanting you to make assumptions. The State has seen
11 this video. The police saw the video. Okay, he is on the
12 video; he is guilty; look what we see; we see him shoot into
13 the gold Impala.

14 Now you heard Mr. Don Manigault. He testified. He
15 said that he went to the club with his friend, Laval Hazel.
16 He said they were in the green car or blue car. They both
17 called it something different. But they were in the blue
18 car in the back.

19 And he testified. He got on the stand and said
20 Laval Hazel in the back seat was shooting. He was shooting
21 a gun.

22 But Mr. Manigault said well the shooting didn't start
23 until we got further down Camp Road. Well, we know that
24 that is not true because the shell casings are at the gas
25 station.

CLOSING BY MS. PROCTOR

1 Then Laval Hazel takes the stand. He comes in from the
2 Department of Corrections and he says I don't know what
3 y'all are talking about, I was not shooting. Gets on the
4 stand after his friend, one of his best friends who was with
5 him, and says I wasn't shooting.

6 The casings don't lie. And also if you think what else
7 did he say. The first thing he did -- the next morning, the
8 very next morning he goes and gets a lawyer. And he goes to
9 the police with a lawyer.

10 So there is a lot more. They weren't shooting down
11 Camp Road. They were shooting at that gas station.

12 And who were they shooting at? They were shooting at
13 Domoneik Washington. Domoneik Washington shot back at them
14 because they were shooting at him.

15 And the State has just assumed. When Mr. Kozelski gave
16 his opening argument he said he shot in self-defense. So
17 the State just again they assumed oh he must be talking
18 about the gold Impala. But he wasn't. He is talking about
19 the blue car that was shooting.

20 Play the video, please.

21 (WHEREUPON, played video.)

22 Please stop.

23 (WHEREUPON, stopped video.)

24 If you notice, you see him coming into the picture and
25 going forward. Why? That is because the blue car that has

1 been shooting is now leaving.

2 Look at it where his arm is raised. He is not shooting
3 down at the door. His hand is raised up. And when he steps
4 up -- and if you look at that video, yesterday when Mr.
5 Kozelski was talking to the crime scene man -- and I'm sure
6 it was a little probably boring at times.

7 But what he was saying is they were talking about the
8 fishbowl effect. And if you look at -- the reason that is
9 important is if you look at this video, this video --
10 this -- we know that this sidewalk is a straight line. But
11 in the picture you get a curve.

12 So all of this is a curved picture. So when you see --
13 so you have this part curved (motioning), and you have this
14 part curved (motioning).

15 So what you are getting, that is not a clear perception
16 of what you were seeing. And I think that's when they were
17 talking about you have perception distortion.

18 Because you have a round circle, and that is what makes
19 it a fishbowl. So when he is shooting and you see his hand
20 right here (pointing), he is not shooting -- his hand it up.
21 He is not shooting at this car (pointing). This is not a
22 straight picture. He is shooting at the car that is
23 leaving.

24 You can turn that off.

25 (Complied.)

VOL. II OF II**STATE OF SOUTH CAROLINA****In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY**Deadra L. Jefferson, Circuit Court Judge**

THE STATE,**RESPONDENT,****V.****DOMONEIK ANTWAN WASHINGTON,****APPELLANT****APPELLATE CASE NO. 2013-001616**

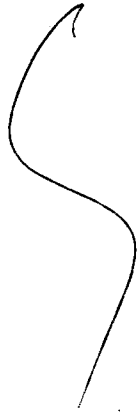
RECORD ON APPEAL

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CLOSING BY MS. PROCTOR

1 Now if I stand over here (motioning) -- and I think
2 what I was talking about -- and to everybody it will look
3 different to every person.

4 But if I stand here and I am aiming (motioning), some
5 people are going to think I am aiming right at Domoneik.
6 But I'm not. I'm aiming to John in over in the corner.

7 So when you see something and somebody is standing you
8 can't tell where they are aiming. It is an impossibility.
9 And that is what we see on the video.

10 He is shooting at the car that is shooting at him. And
11 there is evidence that that car was shooting.

12 Now Equett Robinson she says she's the only -- she is
13 the only person that sees Domoneik shoot. Well, when you go
14 back to the jury room, look -- look at the video. You will
15 see -- you will have the video of her from the inside of the
16 store.

17 You're going to see people -- it is very quiet and then
18 people are coming in and out. There are a lot of cars. You
19 have got Little Wayne singing in the background. You have
20 got some beeping sound that I think we have all heard ad
21 nauseam that beeping sound and the music. You have people
22 yelling. You have got cars revving. And you have people
23 talking in the store.

24 Now she hears shots. And if you watch that video, when
25 those shots are going off she is at the door still shoving

1 people out. She's not looking.

2 And all of a sudden when she looks up we are probably
3 at about shot 10 or 11 at that point and that is when she
4 sees Domoneik.

5 But from where her position is there is no way what she
6 can see. She perceives. And that is what she is assuming
7 that is who he is shooting. She can't see the blue car
8 behind him.

9 She says when she gave a statement, two statements I
10 think the next week to the police, she said he had a small
11 gun.

12 Well, now all of a sudden today at the jury she says
13 semiautomatic, two years later. But at the time, she told
14 the police I looked up and he had a small gun.

15 So she says -- you hear her on tape say -- she is
16 standing right next to somebody and she says oh I think
17 somebody is shot.

18 Well, the person next to her didn't see anybody shot.
19 Again, people perceive different things from where they
20 are.

21 And then she says well I think somebody's shot. Well,
22 does she call 911? No. You hear them laughing in the
23 store. They are still letting people out.

24 She thinks somebody just got shot and you hear laughter
25 in the store. She lets people out. She then rings up some

CLOSING BY MS. PROCTOR

1 people out. She's not looking.

2 And all of a sudden when she looks up we are probably
3 at about shot 10 or 11 at that point and that is when she
4 sees Domoneik.

5 But from where her position is there is no way what she
6 can see. She perceives. And that is what she is assuming
7 that is who he is shooting. She can't see the blue car
8 behind him.

9 She says when she gave a statement, two statements I
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11 gun.

12 Well, now all of a sudden today at the jury she says
13 semiautomatic, two years later. But at the time, she told
14 the police I looked up and he had a small gun.

15 So she says -- you hear her on tape say -- she is
16 standing right next to somebody and she says oh I think
17 somebody is shot.

18 Well, the person next to her didn't see anybody shot.
19 Again, people perceive different things from where they
20 are.

21 And then she says well I think somebody's shot. Well,
22 does she call 911? No. You hear them laughing in the
23 store. They are still letting people out.

24 She thinks somebody just got shot and you hear laughter
25 in the store. She lets people out. She then rings up some

1 food. And finally she gets to calling 911.

2 And what does she tell the police? What does she say?
3 The person had on a white shirt and black pants. Because
4 that is who started the fight. It was James Washington.
5 That is who she saw.

6 And the State wants you to think oh they just -- that
7 was just a little mistake. A little mistake she identified
8 somebody?

9 It is not a mistake, because that is who she saw. She
10 saw someone in a white shirt with black pants. And that was
11 James Washington.

12 You also hear James Washington. He is standing in
13 front of the store. And you hear it on the camera. He is
14 like shoot, shoot. You hear him say it. It is very clear
15 on the video.

16 Now the most important people I think in this case are
17 the victims. And unfortunately one has passed away.

18 Ronald Bryant didn't seem to care to come and he didn't
19 seem to care much about it. He is not here. Where is he?
20 He didn't want to be here. He doesn't care.

21 And then you have Mr. Wittrell. He doesn't even know
22 he is being shot at. Watch that video. Watch how slow he
23 is walking to that car. He just slowly walks up to get to
24 the car.

25 Why? Because there is nobody standing in front of him

CLOSING BY MS. PROCTOR

1 shooting at him. Nobody is shooting at him. Because the
2 shooting is aimed that way (motioning). It is not going to
3 him. So watch it. Watch how carefully he is slowly getting
4 into that car.

5 Ervette Robinson, she says she knows Domoneik, and she
6 is speaking to him. She never ever -- she speaks to him
7 probably a good -- ever says he had a gun. And she said
8 people were calling his name. They are going Chip, Chip.

9 So people -- he is not taunting people. People are
10 taunting him. All those people that were in the back.
11 You've got the people that went to the club that are all
12 standing in the back. And they are the ones that are
13 taunting him.

14 And he's -- he is not acting mean. He is out in the
15 parking lot, hey, dancing. There is music. He is not
16 saying anything mean. He is just walking.

17 And you also hear -- see when he is talking to Ervette
18 that he tries to go back into the store. But he can't get
19 in the store. Because you will hear. You will hear the
20 door click.

21 So he is not trying to fight. He doesn't have a
22 weapon. He is trying to get into the store. And that is
23 when the door is locked.

24 The State wants you to believe within two minutes this
25 malice came over him and he thought I think I am just going

1 to go kill three people.

2 Now Zadio, she says she was at the club. Nobody, not
3 one person from that witness stand said that Domoneik was at
4 that club.

5 Who was fighting? Ronald Bryant. Zadio tries to get
6 Ronald to leave. He is agitated. She said the bouncer had
7 to take him by a choke hold to get him out. Those are the
8 agitated people that are on there, not Domoneik.

9 She says: I don't see him at the club. People they
10 are fighting. I try to get him out. I try to get him to
11 come home with me.

12 But he doesn't -- we won't go with her. So Zadio said
13 she goes to the gas station, there is Ronald. She says she
14 sees James Washington walk up.

15 Nobody said he came in a car with four other people.
16 The State again is assuming all, all four of them drove up
17 in a car.

18 Nobody saw a car. Nobody saw them come together. Yes,
19 they are walking into the store. But that doesn't mean they
20 came together. There is no evidence of that. Again, that
21 is assumptions. We are just assuming they were all
22 together.

23 And Zadio is also on the phone the whole time. She
24 is trying to talk to Ronald's mother. She is saying call
25 911.

CLOSING BY MS. PROCTOR

1 Well, I think she could have called 911. But still,
2 she is saying call 911, I think something is going to
3 happen. But she is on the phone.

4 She says she sees Domoneik with a gun. Well, her
5 friend had just seen him. He didn't have a gun. You are
6 going to see him in the video. He is waving his hands. He
7 is trying to get into the store. There is no gun in his
8 hand. He does not have a gun.

9 She then sees James Washington shoot. And she takes
10 off. And she says -- she has taken off. And she never sees
11 the shooting, never sees anything but James Washington
12 shoot.

13 She runs to the police and what does she say? She was
14 running to the police and the police are running away from
15 the shooting. And is it just like the police have been
16 running away from this the whole time.

17 We have been saying you know who is shooting on that
18 video. You know you have got a Laval Hazel shooting. His
19 own witnesses have said he has got a gun. James Washington
20 has a gun.

21 We know from all these shell casings there are a lot of
22 guns out there. There is even a fourth gun. Where -- where
23 is that other person?

24 We don't see them on the video. So other people
25 are out there shooting. Why is he the only one sitting

1 there?

2 He may be guilty of unlawful possession of a gun and
3 discharging a firearm. But he is not guilty of attempted
4 murder.

5 He is on the video, that is only one we can see, so
6 cased closed we are just going to charge him.

7 Now Detective Kjellman, she testified that there were
8 three shots in the door and one in the window. Now if she
9 is saying all these (motioning) came from the same gun --
10 you are going to see something separate over here

11 (motioning). You have got other guns over here (motioning).

12 So if three went in the door and one went in the window
13 and they made holes that showed they go -- went inside then
14 how come something is over there (motioning)?

15 There can't be three holes in that door.. Not at that
16 time. Because there is a bullet right there -- or shell
17 casing.

18 She also said well there were three other holes in the
19 canopy. She never said where they were. Mr. DuRant said oh
20 they had to be up here (motioning).

21 There was no testimony of where those other -- she just
22 said we had holes. We had no pictures, nowhere on that
23 diagram of where those other holes are. And there's bullets
24 in them. And they said we can't get a ladder?

25 He is charged with attempted murder. Get a ladder.

CLOSING BY MS. PROCTOR

1 Those -- they are still there. See what gun. That could
2 have been a fifth shooter shooting from that direction or
3 shooting from this direction. We don't know what direction.
4 But there are three holes. Well, where are those three
5 holes?

6 We know there have to be at least four people, at least
7 four people shooting because of the shell casings.

8 There are also if you noticed and if you watched the
9 video to the end, the crime scene didn't get there until
10 over an hour, over an hour after the shooting.

11 You have got cars coming in and out. You are going to
12 see people walking up there, walking where all of the shells
13 are.

14 There are about four or five cars drive -- about
15 four or five cars are still driving all in this area
16 (motioning).

17 And it is an unsecured scene for over an hour.
18 So we don't know how many other shell casings are out
19 there.

20 Attempted murder is a charge that is very, very
21 serious. Did he have malice? There is nowhere in that
22 video at all that you saw that he had any malice.

23 They also the State wants you to think of because he
24 ran and left and was arrested in Virginia that that makes
25 him guilty.

1 Well, you even heard Zadie say well when the shots
2 fired I hauled ass. He did -- he's got people shooting at
3 him he is not going to stay around here.

4 He also they said was arrested in May. What was
5 interesting that the gun that they want to say he used,
6 somebody else happen to use in a shooting about six months
7 later when he was in jail. Because that wasn't his gun. He
8 did not have that gun that night.

9 Please when you are watching that video look at where
10 he is aiming. Think about it. Think of the perspective of
11 it. And he is not shooting at that gold car. That gold car
12 never shot at him. So why would he shoot at him? There is
13 no reason.

14 This whole incident took place in a total of probably
15 four minutes. He did not have a beef with them at the club.
16 Nobody put him in the club.

17 You have the people in the blue Buick are the ones that
18 are at the club with the people in the gold Impala. The
19 people in the blue Buick have been at the club. The people
20 with the Impala have been at the club.

21 The people in the blue Buick are friends. They are all
22 friends. So when they know that something is going on the
23 people in the blue -- as you -- as we know, as we said,
24 Laval Hazel is shooting. He is shooting. And that -- the
25 State has said that. We have got bullet casings and his own

CLOSING BY MS. PROCTOR

1 friend said he was shooting out of the car.

2 Don't assume anything.

3 (WHEREUPON, played video.)

4 (WHEREUPON, stopped video.)

5 There are 12 shots fired before he comes into the

6 picture. That is because people are shooting at him.

7 There are twenty-seven shots, four different guns. Don't

8 assume.

9 THE COURT: Madam Forelady, ladies and gentlemen, is
10 everyone comfortable or does anyone need to go to the
11 restroom?

12 (No reply.)

13 THE COURT: Okay. I guess everybody is comfortable.
14 Go ahead and stand for me and stretch a little bit. Y'all
15 have been sitting about an hour.

16 Somebody can move that podium for me, please.

17 (Mr. DuRant complied.)

18 THE COURT: Thank you, Mr. DuRant.

19 **JURY CHARGE:**

20 THE COURT: During this trial, ladies and gentlemen,
21 you and I have certain duties to perform. As the trial
22 judge it is my responsibility to preside over the trial of
23 this case.

24 And I also have the duty to rule upon or pass upon the
25 admissibility of evidence which has been offered during this

1 trial.

2 You are to consider only the competent evidence that is
3 before you which was presented during the progress of this
4 trial.

5 You are to consider only the testimony which has been
6 presented from the witness stand together with any exhibits
7 which have been made a part of the record of this case and
8 any stipulations of counsel made into the record.

9 I instruct you, ladies and gentlemen, that a
10 stipulation between the attorneys is an agreement between
11 them and it requires no further proof.

12 I have the additional duty to charge or instruct you on
13 the law applicable to this case. As the presiding judge I
14 am the sole judge of the law of this case. And it is your
15 duty as jurors to accept and apply the law as I now state it
16 to you.

17 If you have a preconceived idea as to what the law is
18 or what the law ought to be in a case or in this case and it
19 should not agree with what I tell you the law is you are
20 obligated under the oath which you have taken to abandon
21 this preconception on your part because you are sworn to
22 apply the law and accept the law precisely as I now state it
23 to you.

24 In every case tried in this court before a jury the
25 jury becomes the sole and exclusive judges of the facts.

1 You the jury are the judges of the facts in this case.
2 The court is the judge of the law. The Constitution of our
3 state has declared that a trial judge shall not intimate,
4 state, comment upon, or make any statement to a trial jury
5 about the facts in a case.

6 Since you the jury are the sole judges of the facts in
7 this case you are not to infer anything from what I have
8 said during the progress of -- excuse me -- upon -- during
9 the progress of this trial in ruling upon the admissibility
10 of evidence or otherwise or anything that I now say to you
11 during the course of this instruction that I have any
12 opinion about the facts. The law does not permit me to have
13 an opinion about the facts.

14 This is a matter solely for you, the jury, to
15 determine. As jurors then it is your duty as I have
16 instructed to determine the effect, the value, the weight
17 and the truth of the evidence presented during this trial.

18 Necessarily you must assess the credibility of
19 witnesses who have testified in this case. Credibility is
20 simply a legalistic terms meaning believability.

21 It becomes your duty as jurors to analyze and to
22 evaluate the evidence and determine that evidence which
23 convinces you of its truth.

24 As you decide whether or not to believe a witness's
25 testimony about a particular matter you may consider the

1 following:

2 What was the manner and appearance of the witness who
3 testified. Was he or she straightforward or hesitant in
4 answering. Was the testimony of the witness consistent or
5 inconsistent. How did the witness come to know the facts
6 that he or she testified to or what was his or her ability
7 to know these facts. If there some reason a witness would
8 want to give testimony which would help or hurt one side or
9 the other. In other words, was the witness biased or
10 prejudiced. And was the testimony of a witness strengthened
11 or weakened by other testimony or evidence.

12 You can believe as much or as little of each witness's
13 testimony as you think proper. You may believe the
14 testimony of a witness in its entirety. And if you have a
15 good and sound reason, you may reject the testimony of a
16 witness in its entirety.

17 You may believe a part of the testimony of a witness
18 and reject the remaining part of the testimony of that same
19 witness.

20 You may believe one witness as against several
21 witnesses or several witnesses as against one witness.

22 You may consider the demeanor of a witness. That is
23 the manner and appearance of the witness from the witness
24 stand.

25 You can believe as much or as little of each witness's

1 testimony as you think appropriate.

2 Throughout this process, ladies and gentlemen, you have
3 but one objective, to seek the truth regardless of its
4 source.

5 I further instruct you that the rules of evidence
6 ordinarily do not permit witnesses to testify to opinions or
7 conclusion. An exception to this rule exists for witnesses
8 we call expert witnesses. A witness who by their education,
9 training and experience has become an expert in some art,
10 science, profession or calling may state an opinion as to
11 relevant and material matters in which the witness claims to
12 be an expert. And they may also state the reasons for that
13 opinion.

14 You should consider any expert opinion received in
15 evidence in this case like any other evidence. Give it the
16 weight you think it deserves.

17 If you decide that the opinion of an expert witness is
18 not based on sufficient education and experience or if you
19 conclude that the reasons given in support of the opinion
20 are not sound or that the opinion is outweighed by other
21 evidence you may disregard the opinion entirely.

22 An expert witness's testimony is to be given no greater
23 weight than that of other witnesses simply because the
24 witness is an expert. Further you are not required to
25 accept an expert's opinion even though it is not

1 contradicted.

2 I further instruct you that a person who has a past
3 criminal record is competent to testify during a trial. A
4 past record does not affect the ability of that witness to
5 testify. The past record may only be considered by you if
6 at all in determining the witness's believability.

7 Remember, ladies and gentlemen, you are the sole judges
8 of the facts of this case and of the believability of any
9 and all of the witnesses.

10 I further instruct you that you have heard evidence
11 that the defendant committed a bad act not the subject of a
12 conviction other than the one for which he is now on trial.

13 It is for you, ladies and gentlemen, to determine if
14 this is true. You must not consider this alleged bad act as
15 any evidence of the defendant's guilt of the charges we are
16 trying today.

17 Ladies and gentlemen, there are two types of evidence
18 which are generally presented during a trial, direct
19 evidence and circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 asserts or claims to have actual knowledge of a fact, such
22 as an eyewitness.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact.

25 The law makes absolutely no distinction between the

1 weight or value to be given to either direct or
2 circumstantial evidence nor is a greater degree of certainty
3 required of circumstantial evidence than of direct evidence.

4 You should weigh all of the evidence in this case.
5 After weighing all of the evidence if you are not convinced
6 of the guilt of the defendant beyond a reasonable doubt you
7 must find the defendant not guilty.

8 Conversely, if you are convinced of the guilt of the
9 defendant beyond a reasonable doubt then you must find him
10 guilty.

11 I instruct you, ladies and gentlemen, the fact that the
12 defendant was arrested, charged, and indicted is not
13 evidence in this case and cannot be considered by you as
14 evidence of guilt in this case nor does it create any
15 presumption or inference of guilt.

16 This documentation, ladies and gentlemen, are simply
17 the formal written instruments which contain the charge or
18 charges made against a defendant. They serve as the formal
19 documents by which the case is processed or brought into
20 this court.

21 The defendant has pled not guilty to the indictments.
22 And that plea cast the burden on the State to prove the
23 defendant guilty.

24 Because a person charged with committing a criminal
25 offense in South Carolina is never required to prove himself

1 innocent.

2 I instruct you, Madam Forelady, ladies and gentlemen,
3 that it is a cardinal and important rule of the law of
4 evidence that the defendant in a criminal trial no matter
5 what the seriousness of the charge or charges made against
6 him may be will also be presumed to be innocent of the crime
7 for which he has been indicted unless his guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does not cease when you
11 retire to deliberate but it accompanies the defendant from
12 the time of his appearance throughout the trial until you
13 reach a verdict in this case.

14 Our Supreme Court has said that the presumption of
15 innocence is like a robe of righteousness placed about the
16 shoulders of the defendant and it remains with him and
17 assigns him to that class, the innocent, until that
18 presumptive robe of righteousness has been stripped from his
19 person by evidence satisfying you of that guilt beyond a
20 reasonable doubt.

21 Madam Forelady, ladies and gentlemen, the presumption
22 of innocence is not mere legal theory. It is not just a
23 legal phrase. It is a substantial right to which every
24 defendant is entitled until you the jury are satisfied from
25 the evidence of his guilt beyond a reasonable doubt.

1 The State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors in civil cases where you were told that it
4 is only necessary to prove that a fact is more likely true
5 than not true such as by the greater weight or the
6 preponderance of the evidence.

7 In criminal cases the State's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt.

11 There are very few things in this world that we know
12 with absolute certainty. And in criminal cases the law does
13 not require proof that overcomes every possible doubt.

14 If based on your consideration of the evidence you are
15 firmly convinced that the defendant is guilty of the crime
16 charged, you must find the defendant guilty.

17 If on the other hand you think there is a real
18 possibility that the defendant is not guilty, you must give
19 the defendant the benefit of that doubt and find him not
20 guilty.

21 The defendant is charged with attempted murder. In
22 order to prove this crime the State must prove the defendant
23 attempted to kill another person with malice of forethought
24 either express or implied.

25 Malice is hatred, ill will, or hostility towards

1 another person. It is the intentional doing of a wrongful
2 act without just cause or excuse and with an intent to
3 inflict an injury or under circumstances that the law will
4 infer an evil intent.

5 Malice of forethought does not require that malice
6 exists for any particular time before the act is committed.
7 But malice must exist in the mind of the defendant just
8 before and at the time the act is committed.

9 Therefore, there must be a combination of the previous
10 evil intent and the act. Malice of forethought may be
11 expressed or inferred.

12 These terms expressed and inferred do not mean
13 different kinds of malice but merely the manner in which
14 malice may be shown to exist. That is either by direct
15 evidence or by inference from the facts and circumstances
16 which are proven.

17 Express malice is shown when a person speaks words
18 which express hatred of ill will for another or when the
19 person prepared beforehand to do the act which was later
20 accomplished.

21 For example, lying in wait for a person or any other
22 act of preparation going to show that the deed was within
23 the defendant's mind would be expressed malice.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise

1 when the deed is done with a deadly weapon. A deadly weapon
2 is any article, instrument or substance which is likely to
3 cause death or great bodily harm.

4 Whether an instrument has been used as a deadly weapon
5 depends on the facts and circumstances of each case. The
6 following are examples of instruments which may be deadly
7 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
8 knife, a slingshot, metal knuckles, a razor, gasoline, a
9 firebomb or molotov cocktail and lighter fluid. A gun may
10 be a deadly weapon even if it is not operating.

11 If facts are proven beyond a reasonable doubt
12 sufficient to raise an inference of malice to your
13 satisfaction this inference, ladies and gentlemen, would be
14 simply an evidentiary fact to be considered by you, the
15 jury, along with the other evidence in the case. And you
16 may give it the weight you decide it should receive.

17 A specific intent to kill is not an element of
18 attempted murder. But there must be a general intent to
19 commit serious bodily injury.

20 Intent means intending the result which actually
21 occurs. Not accidentally or involuntarily. Intent may be
22 shown by act and conduct of the defendant and other
23 circumstances from which you may naturally and reasonably
24 infer intent.

25 Evidence of the character of the act, the character of

1 the instrument used, the manner in which it was used, the
2 purpose to be accomplished, and the resulting wounds or
3 injuries may be considered in determining the intent with
4 which the act was committed.

5 Intent may also be inferred when it is demonstrated
6 that the defendant voluntarily and willfully commits an act
7 the natural tendency of which is to destroy another's life.

8 Ladies and gentlemen, included within the offense of
9 attempted murder is the lesser offense of assault and
10 battery of a high and aggravated nature.

11 Assault and battery of a high and aggravated nature
12 includes all of the elements of attempted murder except
13 malice of forethought.

14 I instruct you that a person commits the offense of
15 assault and battery of a high and aggravated nature if the
16 person unlawfully injures another person and great bodily
17 injury to another person results or the act is accomplished
18 by means likely to produce death or great bodily injury.

19 Great bodily injury means bodily injury which causes a
20 substantial risk of death or which causes serious permanent
21 disfigurement or protracted loss or impairment of the
22 function of a bodily member or organ.

23 I further instruct you that included within the offense
24 of attempted murder is the lesser offense of assault and
25 battery first degree.

1 I instruct you that a person commits the offense of
2 assault and battery in the first degree if the person
3 unlawfully injures another person -- let me restate that.

4 A person commits the offense of assault and battery in
5 the first degree if the person unlawfully commits the
6 offense of assault and battery in the first degree if the
7 person unlawfully offers or attempts to injure another
8 person with the present ability to do so and the act is
9 accomplished by means likely to produce death or great
10 bodily injury.

11 Great bodily injury means bodily injury which causes a
12 substantial risk of death or which causes serious permanent
13 disfigurement or protracted loss or impairment of the
14 function of a bodily member or organ.

15 I further instruct you, ladies and gentlemen, an issue
16 in this case is the identification of the defendant as the
17 person who committed the crime charged.

18 The State has the burden of proving identity beyond a
19 reasonable doubt. You must be satisfied beyond a reasonable
20 doubt of the accuracy of the identification of the defendant
21 before you may convict the defendant.

22 Identification testimony is an expression or belief or
23 impression by a witness. You must determine the accuracy of
24 the identification of the defendant. You must consider the
25 believability of each identification witness in the same way

1 as any other witness.

2 You may consider whether the witness had an adequate
3 opportunity to observe the offender at the time of the
4 offense. This will be affected by things like how long or
5 short a time was available, how far or close the witness
6 was, the lighting conditions and whether the witness had the
7 chance to see or know the person in the past.

8 Once again, I instruct you, the burden of proof on the
9 State extends to every element of that crime charged. And
10 this specifically includes the burden of proving beyond a
11 reasonable doubt the identity of the defendant as the person
12 who committed the crime.

13 If after examining the testimony you have a reasonable
14 doubt as to the accuracy of the identification, you must
15 find the defendant not guilty.

16 I instruct you and emphasize that the fact that the
17 defendant did not testify is not a factor to be considered
18 by you in any manner whatsoever in your deliberations
19 regarding this case and in your -- and in your consideration
20 on the question of the guilt or innocence of the defendant.
21 It must not be considered by you in any manner whatsoever.

22 A defendant has the constitutional right to remain
23 silent and the assertion of this right must not be
24 considered by you in your deliberations.

25 I repeat, under your oath you are to draw no conclusion

1 whatsoever from the fact that the defendant in this case did
2 not testify.

3 The fact that the defendant did not testify should not
4 even be discussed in the jury room during your deliberations
5 in any matter whatsoever.

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

10 Ladies and gentlemen, there are three indictments in
11 this case. And those charges are as follows. And you don't
12 have to try to write this down because it goes into the jury
13 room with you. Indictments 2011-GS-10-6881, 6882, and 6883
14 each of which alleges attempted murder.

15 Each indictment, ladies and gentlemen, charges a
16 separate and distinct offense. You must decide each
17 indictment separately on the evidence and the law applicable
18 to it uninfluenced by your decision as to any other
19 indictment.

20 The defendant may be convicted or acquitted on any or
21 all of the offenses charged. And you will be writing a
22 separate verdict for each indictment of guilty or not
23 guilty.

24 Ladies and gentlemen, there are several potential
25 verdicts for each indictment. And I am only going to go

1 over one of them because they all say the same thing as to
2 each indictment.

3 And again, you don't have to try to write this down
4 because these verdict forms go into the jury room with you.

5 There is no significance whatsoever to the order in
6 which I state these potential verdicts. It is simply that
7 one must be stated first.

8 And again, they will each say the same thing. It just
9 will be as to each separate indictment. As to Indictment
10 Number 2011-GS-10-6881 - and there will also be one for 6882
11 and 6881 - we the jury by unanimous consent find the
12 defendant guilty of attempted murder or as to the lesser
13 included offense guilty of assault and battery of a high and
14 aggravated nature or as to the lesser included offense
15 guilty of assault and battery first degree or not guilty.

16 And again, each of these indictments has the very same
17 form and options for the verdict. And there is no
18 significance whatsoever to the order in which I have stated
19 these potential verdicts. It is simply that one must be
20 stated first.

21 Ladies and gentlemen, your verdicts must be a unanimous
22 one, which means all 12 of you must agree in order to reach
23 a verdict.

24 Madam Forelady, when the jury has reached a verdict it
25 is your responsibility to fill out each verdict form, to

1 sign and date those forms, and then knock on the door and
2 advise the bailiff that the jury has reached a verdict.

3 It is also your responsibility to write out any
4 questions the jury may have during deliberations and follow
5 that same process by knocking on the door and advising the
6 bailiff that the jury has a question. And all questions
7 must be written out in the form of a note and signed and
8 dated by you.

9 Ladies and gentlemen, if you have any questions during
10 deliberations, please know that there will be a delay in our
11 response. And that is because we have to follow a procedure
12 in answering your questions.

13 So know if you have a question there -- expect a delay,
14 because we have to follow that procedure before we can
15 answer your questions.

16 Please know that we are not ignoring you. Again, if
17 you have a few questions we are just following that
18 procedure.

19 I am going to ask that you return to your jury room.
20 But do not yet begin your deliberation. I have some matters
21 of law I need to take up with the attorneys that may require
22 further instruction or clarification of an instruction.

23 However, if there is no further instruction we will
24 excuse the alternate, send in the evidence and your notepads
25 and at that time you will be allowed to begin your

1 deliberations.

2 If you would go with the bailiffs for me, please, and
3 leave your notepads in your seats.

4 (WHEREUPON, the jury exited the courtroom July 17,
5 2013, at 11:49 a.m.)

6 THE COURT: Any exceptions from the State?

7 MR. DURANT: No, ma'am.

8 THE COURT: From the defendant?

9 MS. PROCTOR: No, Your Honor.

10 THE COURT: Could you all check the evidence for me one
11 more time before they take it in.

12 (WHEREUPON, break to review exhibits.)

13 MR. DURANT: Okay. We are good, Your Honor.

14 THE COURT: Everything is good? Okay. We will -- she
15 is getting their notebooks now. She will take in the
16 evidence.

17 (WHEREUPON, break 11:56 to 11:59 a.m.)

18 (WHEREUPON, alternates entered courtroom.)

19 THE COURT: Ladies, we thank you for your time and
20 attention to this case. Being an alternate is really
21 thankless because we need you of course when we need you,
22 which is if somebody gets sick or is otherwise unavailable
23 so that you step in for the panel.

24 You both have been timely and attentive, and I hope
25 that this process has been educational for you. Your lunch

1 Mr. Brown is downstairs getting it down. So he should -- it
2 is here? It is upstairs?

3 THE CLERK: Uh-huh.

4 THE COURT: Okay. So what we will do is you are
5 welcome to leave if you would like. You are welcome to
6 stay. We can set you up in one of the multipurpose rooms so
7 you can take your time and eat if you would like. Or you
8 are welcome to take your lunch with you.

9 You are also welcome to see -- to stay if you want to
10 remain until the jury has completed deliberating. And
11 again, the bailiffs will put you in a separate room for that
12 purpose so that you can be comfortable.

13 You are welcome to discuss this case if you would like.
14 But I would ask that you not do that until after Friday when
15 the entire panel is dismissed.

16 Often lawyers will contact you to get feedback on their
17 performance because everybody always it is human nature
18 people always want to do better at what they do.

19 Again, you are welcome to talk with them if you would
20 like; but if you don't, you don't have to as well.

21 Your checks and my -- your checks and excuses will be
22 mailed to you on Friday. I anticipate that we are going to
23 select another jury in the morning. That is I think one and
24 a half day case. I am not certain. I will have to go over
25 it with the lawyers and see.

1 But I anticipate that we are going to pick another jury
2 in the morning. So again, it very important that you still
3 not speak to anyone in or about the courthouse when you are
4 leaving today.

5 If you need a work excuse today you can get one of
6 those on the first floor of the courthouse on the circuit
7 court side. Any of the deputy clerks at those windows can
8 give you a work excuse if you need one for today.

9 But again, you are welcome to remain with us if you
10 would like. Just let the bailiffs know. But if not, they
11 will get you situated with your lunch and you are welcome to
12 leave if you would like.

13 And if you want to keep your notes and destroy them,
14 you are welcome to. But the bailiffs will destroy them for
15 you if you would like them to.

16 I hope y'all have a great day. And thank you again for
17 your service. If you would go with the bailiffs please.

18 (WHEREUPON, the alternates exited the courtroom.)

19 THE COURT: The record should reflect that the jury
20 began its deliberations at 11:58. Y'all might want to --
21 see where Mr. Brown is. We have given them their lunch.
22 And let me -- give me a moment where I can see how --
23 whether the jury has been situated with their lunch first
24 and then I can tell you all how long I think you have to go
25 get something to eat.

1 MR. DURANT: Okay.

2 (WHEREUPON, break was had on July 17, 2013, at 11:59
3 a.m. for lunch.)

4 (WHEREUPON, proceeding resumed July 17, 2013, at 2:23
5 p.m.)

6 THE COURT: Okay, we have several questions from the
7 jury. And I am going to take them one at a time. And I am
8 probably going to bring them back in here to deal with all
9 of them. Because I have to reinstruct them anyway. So it
10 doesn't make any -- it doesn't make any sense to answer one
11 in writing or two in writing and then not answer the rest
12 without bringing them in.

13 It is my understanding that there are no pictures of
14 the car in evidence, correct?

15 MS. PROCTOR: Correct.

16 MR. DURANT: No.

17 THE COURT: Okay. The first question was: Need
18 explanation on three separate charges.

19 So I assume that means they want me to reinstruct them
20 on attempted murder, ABHAN, and assault and battery first.

21 Is there any exception, from the State?

22 MR. DURANT: No, ma'am.

23 THE COURT: From the defense?

24 MS. PROCTOR: No, ma'am. May I ask -- and I cannot
25 remember.

1 THE COURT: Sure.

2 MS. PROCTOR: When you charged them the first
3 time - and I don't remember what we talked about yesterday
4 during jury charge - did you charge specific intent for the
5 attempted ---

6 THE COURT: It's not a specific intent crime. Specific
7 intent is not required for attempted murder. You have to
8 have a generalized intent, but it is not done -- not done
9 involuntarily. It has to be done intentionally. But a
10 specific intent to kill is not required.

11 MS. PROCTOR: Because I saw it in the new statute they
12 didn't put it in there.

13 THE COURT: It is the same. I mean my -- my
14 instruction for attempted murder comes straight from the
15 statute. And we just had our charge books updated about a
16 week ago.

17 So if there was something new that came out -- and
18 I read the advance sheets every Monday. So if something
19 had -- although I am not perfect or infallible. I miss
20 stuff. Because sometimes I read quickly. I read for what I
21 need. You know, I just kind of flip through them every
22 Monday. But I don't recall anything that would have changed
23 the instruction.

24 But a specific intent to kill is not required, just as
25 murder a specific intent to kill is not required.

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1 MR. DURANT: I mean isn't ----

2 THE COURT: It is not an element.

3 MR. DURANT: Isn't that standard?

4 THE COURT: But there has to be a general intent to
5 commit serious bodily injury.

6 MR. DURANT: Isn't that statute like three years old
7 now? I mean ---

8 THE COURT: Yeah, 2011, 2010.

9 MR. DURANT: I think it was two thousand ---

10 THE COURT: I think it was June 11, 2010, when it was
11 passed.

12 MR. DURANT: Yeah, I think so. So I mean I would think
13 that charges would ---

14 THE COURT: Wasn't it June 10th, 2011 -- yeah,
15 something -- but what is very interesting, and is just
16 totally anecdotal with the revamp of the statute and it is
17 so voluminous that I have read it all once but now I only
18 read it for what I need because it is just too much to try
19 to retain it.

20 MR. DURANT: Right.

21 THE COURT: But what is very interesting to me is
22 assault and battery of a high and aggravated nature is now
23 most serious and violent. It is a strike when it wasn't
24 before.

25 MS. PROCTOR: I know.

1 THE COURT: And, you know, of course there is no
2 savings clause and of course an enhancement which that would
3 be -- can't be retroactive. But I just thought that was
4 very interesting.

5 MR. DURANT: Yeah.

6 THE COURT: Because you used to get cut a break on
7 ABHAN. Even though it carried that much time it was still a
8 common law misdemeanor. But now it is most serious and
9 violent. It is a strike which is like a little
10 disconcerting at least to me I thought when I read it.

11 MS. PROCTOR: We thought that ---

12 THE COURT: I thought wow, most serious and violent,
13 ABHAN went from being -- so I thought that was an
14 interesting change in the statute.

15 So I am going to reinstruct them on those and then I
16 will have that note marked as a court's exhibit. And then
17 immediately after that before I can get down the hall I had
18 another note.

19 It says: What happens if a unanimous decision cannot
20 be reached on two charges?

21 And I will instruct them that their verdict must be
22 unanimous, that which means all 12 of them must agree. That
23 if they cannot reach a verdict that they should let us know.
24 But however do not give us any numerical breakdown. That
25 would be inappropriate.

1 And then if they come back and they still -- if they
2 tell me they are deadlocked on any of them I would give them
3 an Allen charge. I wouldn't give them a second charge Allen
4 charge unless they told me they want one. But initially I
5 think I would be required to give them an Allen charge.

6 And then the third question -- well, the second
7 question on that note is: Can we obtain pictures of the
8 car?

9 And what I was going to instruct them is: Ladies and
10 gentlemen, you may only consider the testimony in evidence
11 which has been submitted into the record for purposes of
12 your deliberations. All of the evidence that you are
13 entitled to review is with you in the jury room. You are
14 not to speculate or draw any inferences or conclusions as to
15 why the document or documents have not been sent in with you
16 for purposes of your deliberations.

17 I can't talk today.

18 If you desire to have any of the testimony replayed,
19 please advise the bailiff and we will accommodate your
20 request immediately.

21 Any exception from the State?

22 MR. DURANT: No, ma'am.

23 THE COURT: From the defense?

24 MS. PROCTOR: No, Your Honor.

25 THE COURT: If you will have that marked as a

1 court's -- we will have that note marked as a court's
2 exhibit as well. And then once she has marked them you can
3 give them back to me.

4 (WHEREUPON, Court's Exhibit Number 5, note from jury,
5 was marked for identification.)

6 (WHEREUPON, Court's Exhibit Number 6, note from jury,
7 was marked for identification.)

8 THE COURT: And then you can go ahead and get the jury
9 for me. And what I may do is do them in reverse order
10 because the instructions on the three separate charges is
11 longer than my response to these first two.

12 And I'm also going to let them know in response,
13 because it says to two charges, I am going to let them know
14 and likewise you need to make us aware of any charge where
15 you have reached a unanimous verdict so that that verdict
16 can be received and then we will go from there.

17 (WHEREUPON, jury returned to courtroom July 17, 2013,
18 2:50 p.m.)

19 THE COURT: Thank you, Mr. Juliatt.

20 Ladies and gentlemen, we received each of your
21 questions. And I'm going to take them a little in reverse
22 order because one of my answers is longer than the other.

23 And I'm going to start with your second questions which
24 are -- the second note which has two questions which is:

25 What happens if a unanimous decision cannot be reached

1 on two charges?

2 I instruct you and answer the question in this way:

3 Your verdict must be a unanimous one which means all 12 of
4 you must agree. However, if you cannot reach a verdict you
5 should advise the court of that. We have a procedure that
6 we follow regarding that.

7 However, you should not give us any numerical breakdown
8 of that inability to reach a verdict. However, if there is
9 a charge or charges where you have reached a verdict
10 likewise you need to make us aware of that at the same time.

11 As regards second question: Can we obtain pictures of
12 the car?

13 I instruct you as follows: You may only consider the
14 testimony in evidence that has been submitted into the
15 record for purposes of your deliberations.

16 All of the evidence that you are entitled to review is
17 with you in the jury room. You are not to speculate or draw
18 any inferences or conclusions as to why the document or
19 documents have not been sent in with you for purposes of
20 your deliberations.

21 If you desire to have any of the testimony replayed,
22 please advise the bailiffs and we will accommodate your
23 request immediately.

24 As regards your first question which was: Need
25 explanation on three charges.

1 I reinstruct you as follows: The defendant is charged
2 with attempted murder. In order to prove this crime the
3 State must prove the defendant attempted to kill another
4 person with malice of forethought either express or implied.

5 Malice is hatred, ill will or hostility towards another
6 person. It is the intentional doing of a wrongful act
7 without just cause or excuse and with an intent to inflict
8 an injury or under circumstances that the law will infer an
9 evil intent.

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

16 Malice of forethought may be expressed or inferred.
17 These terms express and inferred do not mean different kinds
18 of malice but merely the manner in which malice may be shown
19 to exist. That is either by direct evidence or by inference
20 from the facts and circumstances which are proven.

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when the
23 person prepared beforehand to do the act which was later
24 accomplished.

25 For example, lying in wait for a person or any other

1 act of preparation going to show that the deed was within
2 the defendant's mind would be expressed malice.

3 Malice may be inferred from conduct showing a total
4 disregard for human life. Inferred malice may also arise
5 when the deed is done with a deadly weapon. A deadly weapon
6 is any article, instrument or substance which is likely to
7 cause death or great bodily harm.

8 Whether an instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each case. The
10 following are examples of instruments which may be deadly
11 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
12 knife, a slingshot, metal knuckles, a razor, gasoline, a
13 firebomb or molotov cocktail and lighter fluid. A gun may
14 be a deadly weapon even if it is not operating.

15 If facts are proven beyond a reasonable doubt
16 sufficient to raise an inference of malice to your
17 satisfaction this inference, ladies and gentlemen, would be
18 simply an evidentiary fact to be considered by you the jury
19 along with the other evidence in the case and for you to
20 give it the weight, value, and effect you decide it should
21 receive.

22 A specific intent to kill is not an element of
23 attempted murder. But there must be a general intent to
24 commit serious bodily injury.

25 Intent means intending the result which actually

1 occurs. Not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent.

5 Evidence of the character of the act, the character of
6 the instrument used, the manner in which it was used, the
7 purpose to be accomplished, and the resulting wounds or
8 injuries may be considered in determining the intent with
9 which the act was committed.

10 Intent may also be inferred when it is demonstrated
11 that the defendant voluntarily and willfully commits an act,
12 the natural tendency of which is to destroy another's life.

13 Included within the offense of attempted murder is the
14 lesser offense of assault and battery of a high and
15 aggravated nature.

16 Assault and battery of a high and aggravated nature
17 includes all of the elements of attempted murder except
18 malice of forethought.

19 A person commits the offense of assault and battery of
20 a high and aggravated nature if the person unlawfully
21 injures another person and great bodily injury to another
22 person results or the act is accomplished by means likely to
23 produce death or great bodily injury.

24 Great bodily injury means bodily injury which causes a
25 substantial risk of death or which causes serious permanent

1 disfigurement or protracted loss or impairment of the
2 function of a bodily member or organ.

3 Also included within the offense of attempted murder is
4 the lesser offense of assault and battery first degree. A
5 person commits the offense of assault and battery in the
6 first degree if the person unlawfully offers or attempts to
7 injure another person with the present ability to do so and
8 the act is accomplished by means likely to produce death or
9 great bodily injury.

10 Great bodily injury means bodily injury which causes a
11 substantial risk of death or which causes serious permanent
12 disfigurement or protracted loss or impairment of the
13 function of a bodily member or organ.

14 Ladies and gentlemen, that concludes the court's
15 response to your questions. If you need anything further,
16 please do not hesitate to let us know and we will
17 accommodate your request immediately.

18 (WHEREUPON, jury exited courtroom July 17, 2013, at
19 2:37 p.m.)

20 THE COURT: Any exceptions from the State?

21 MR. DURANT: No, ma'am.

22 THE COURT: From the defense?

23 MS. PROCTOR: No, Your Honor.

24 THE COURT: All right. We will await further
25 instructions from the jury.

1 (WHEREUPON, break July 17, 013, 2:38 p.m.)

2 (WHEREUPON, resumed July 17, 2013, at 3:23 p.m.)

3 THE COURT: Okay. We have two questions from the jury.

4 One deals with asking for a written copy of the

5 instructions. And I am going to instruct them by written

6 response that our procedure does not allow for that.

7 If they would like anything reinstructed I will be glad

8 to accommodate them. Is there any exception from the State?

9 MR. DURANT: No, ma'am.

10 THE COURT: From the defense?

11 MS. PROCTOR: No, Your Honor.

12 THE COURT: The second instruc- -- actually I took them

13 in reverse order. The first question is: Is the weapon

14 list provided for attempted murder the same as assault and

15 battery of a high and aggravated nature?

16 And I guess the simple answer is no. Because really

17 there is no weapon list for assault -- for attempted murder.

18 It is simply that deals with implied malice, not a list of

19 weapons.

20 And I don't -- and I am debating whether I need to

21 clarify that for them again in the event that they have

22 misapprehended what I have told them.

23 Because there is not a weapon list. The purpose of

24 even articulating that is to show how implied malice can be

25 shown. And it is emphasized to them that that is an

1 inference they can draw if they want. But they don't have
2 to, based on the totality of the evidence that has been
3 provided.

4 And I guess -- that's why I pulled up the statute again
5 looking at assault and battery of a high and aggravated
6 nature. It says the act is accomplished by means likely to
7 produce death or great bodily injury. And I don't know that
8 that needs anymore clarity. Because I don't think it is
9 vague or ambiguous.

10 Do you all want me to simple answer no; or how do you
11 all want me to handle that, from the State?

12 MS. PROCTOR: Read ---

13 THE COURT: Is the weapon list provided for attempted
14 murder the same as assault and battery of a high and
15 aggravated nature?

16 MS. PROCTOR: That is so strange.

17 MR. DURANT: I think ---

18 THE COURT: What they did was they really didn't pay
19 attention to the inference language and they -- I really --
20 I am almost temp -- no, not really. Not if you are
21 listening.

22 And maybe I have just being doing it so long it doesn't
23 seem vague to me. But I almost feel the need to clarify and
24 tell them that that -- the list is provide- -- it almost
25 requires me to go into -- because you don't have to --

1 anything can become a deadly weapon.

2 MR. DURANT: Right.

3 THE COURT: A fist can be a deadly weapon, a bb-gun. A
4 lots of things. It depends on its use. But I almost don't
5 feel like going into that Pandora's Box.

6 But in a way I feel like I need to explain to them that
7 the list that was given is not some exhaustive list nor are
8 they bound by it.

9 MR. DURANT: Right.

10 THE COURT: It is simply the way malice can be shown
11 and an inference can be drawn from that. But you are not
12 bound by that. You need to look at the totality of the
13 facts. And I don't know how to do that except to instruct
14 them again. But they have heard it now twice and they seem
15 to still

16 But the simple answer is no. Because the ABHAN you
17 don't have to have -- that is why it is a lesser included.

18 MS. PROCTOR: Right.

19 THE COURT: And it includes everything except having to
20 show malice which deals with a gun. So I think after now
21 that I have talked it out I think the simply answer is no.

22 MS. PROCTOR: No. Okay.

23 THE COURT: Is there any exception from the State?

24 MS. PROCTOR: No -- oh ---

25 MR. DURANT: I am so confused.

State versus Washington

1 THE COURT: Well, actually ABHAN is a lesser included
2 of attempted murder.

3 MR. DURANT: Right, I understand ---

4 THE COURT: The only difference is the showing of
5 malice. Malice is showed express or inferred. The only
6 reason you mention a list of weapons is to show inferred
7 malice.

8 MR. DURANT: Yeah ---

9 THE COURT: So you don't have to show malice on ABHAN.

10 MR. DURANT: I have no problem with either. I don't
11 have any problem with you saying no. I don't have any
12 problem with you saying that use of a deadly weapon raises
13 an inference of malice and these are just examples of deadly
14 weapons.

15 THE COURT: Yeah, I have kind of said that.

16 MS. PROCTOR: I like no better.

17 THE COURT: I said that -- well, no, I have said it
18 twice. And I don't -- I -- the simple answer I think ---

19 MS. PROCTOR: No.

20 THE COURT: --- is no. Yeah. Because you don't have
21 to show malice which doesn't include a list of how you show
22 inferred malice.

23 But I -- but I just feel like unambiguous --
24 unambiguous language for ABHAN says the act is accomplished
25 by means likely to produce death or great bodily injury.

1 That could be so many things. I mean you don't need ---

2 MR. DURANT: Yeah.

3 THE COURT: --- a list. I mean you would have to look
4 at the facts of the case. They are bound by them. So I
5 think the answer is no.

6 MR. DURANT: I mean -- I mean the actually answer is
7 that you could be guilty of murder or ABHAN and not use a
8 deadly weapon at all.

9 THE COURT: I know. And the problem though is case law
10 says you can't mention anything other than a gun or a deadly
11 implement unless those objects were used.

12 MR. DURANT: Okay.

13 THE COURT: You can only instruct if there is evidence
14 of a hand, a foot, a hammer, a brick, you know, all those
15 ordinary objects that can be used to kill someone. A car,
16 you know, that is a deadly implement.

17 MR. DURANT: Yeah.

18 THE COURT: It is a whole different statutory framework
19 which deals with reckless homicide. But so are we in
20 agreement that the answer is no from the State?

21 MR. DURANT: I'm -- I'm okay with that, Your Honor.

22 THE COURT: From the defense?

23 MS. PROCTOR: Yes, Your Honor.

24 THE COURT: And then I am going to attach my written
25 response which is that our procedures do not allow for the

1 copy -- a copy of the instructions.

2 And to tell you the truth I kind of -- I think they
3 would be parsing through it and getting themselves confused
4 frankly.

5 I don't think that's -- I never think that is a good
6 idea because I think people tend to -- as lay people tend to
7 pick and choose and give significance towards that they
8 don't have legally at least in our legal analysis of it. So
9 and the rules don't provide for it.

10 So I will give this instruction and tell them they are
11 not allowed to have one, our rules don't provide for it, but
12 if they need a specific instruction to let me know and I
13 will reinstruct them. These are to be marked as a court's
14 exhibit.

15 And I will have the question and the response marked as
16 a court's exhibit and instruct them to make sure they don't
17 throw it away so it can be placed back into the record once
18 they are done deliberating. Are there any exceptions from
19 the State?

20 MR. DURANT: No, ma'am.

21 THE COURT: From the defense?

22 MS. PROCTOR: No, Your Honor.

23 (WHEREUPON, Court's Exhibit Number 7, question from
24 jury, was marked for identification.)

25 THE COURT: All right. We will wait further

1 instructions.

2 (WHEREUPON, recess July 17, 2013, 3:32 p.m.)

3 (WHEREUON, proceeding resumed 4:10 p.m.)

4 THE COURT: The jury has reached a verdict. Is there
5 anything before we bring in the jury, from the State?

6 MR. DURANT: No, ma'am,

7 THE COURT: From the defense?

8 MS. PROCTOR: No, Your Honor.

9 THE COURT: Please bring in the jury. Ladies and
10 gentlemen of the gallery, I understand that this has been an
11 emotionally charged case. However, I do not expect there to
12 be any vocal, audible reactions upon the reading of the
13 verdict. If there are, I am instructing the deputies to
14 remove you from the courtroom.

15 (WHEREUPON, jury entered the courtroom July 17, 2013,
16 at 4:10 p.m.)

17 THE COURT: Madam Forelady, is it correct that the jury
18 has reached a verdict?

19 MADAM FORELADY: We have.

20 THE COURT: If you would give the verdict forms to the
21 bailiff for me, please.

22 (Complied.)

23 THE COURT: Thank you, sir. Madam Clerk, if you would
24 publish the verdicts. Sir, if you would stand for
25 publication of the verdicts.

1 **VERDICT:**

2 THE CLERK: County of Charleston, State of South
3 Carolina versus Domoneik Antwan Washington in the Court of
4 General Sessions of the Ninth Judicial Circuit, Indictment
5 2011-GS-10-6881 we the jury by unanimous consent find the
6 defendant guilty of attempted murder. Signed by Madam
7 Forelady Michelle Collins on Wednesday, July 17th, 2013.

8 As to Indictment 2011-GS-10-6882 we the jury by
9 unanimous consent find the defendant guilty of assault and
10 battery of a high and aggravated nature.

11 As to Indictment 2011-GS-10-6883 we the jury by
12 unanimous consent find the defendant guilty of attempted
13 murder. Also signed by Madam Forelady Michelle Collins on
14 Wednesday, July 17th, 2013.

15 Ladies and gentlemen of the jury, if these are your
16 verdicts please raise your right hands.

17 (All jurors complied.)

18 THE CLERK: Thank you.

19 THE COURT: Please take your seats. Is there any
20 request to poll the jury, from the State?

21 MR. DURANT: No, ma'am.

22 MS. PROCTOR: From the defense?

23 MS. PROCTOR: Yes, Your Honor.

24 THE COURT: Ladies and gentlemen, please give the clerk
25 your attention. She is going to ask you two questions. And

1 again, please follow her instructions.

2 THE CLERK: Starting with the forelady I am now going
3 to ask you two questions:

4 Juror Number 55, is this your verdict?

5 JUROR: It is.

6 THE CLERK: Is this still your verdict?

7 JUROR: It is.

8 THE CLERK: Juror Number 8, is this your verdict?

9 JUROR: It is.

10 THE CLERK: Is this still your verdict?

11 JUROR: It is.

12 THE CLERK: Juror Number 253, is this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR: Yes.

16 THE CLERK: Juror Number 248, is this your verdict?

17 JUROR: It is.

18 THE CLERK: Is this still your verdict?

19 JUROR: It is.

20 THE CLERK: Juror Number 271, is this your verdict?

21 JUROR: It is.

22 THE CLERK: Is this still your verdict?

23 JUROR: It is.

24 THE CLERK: Juror Number 181, is this your verdict?

25 JUROR: It is.

1 THE CLERK: Is this still your verdict?
2 JUROR: It is.
3 THE CLERK: Juror Number 71, is this your verdict?
4 JUROR: It is.
5 THE CLERK: Is this still your verdict?
6 JUROR: Yes, it is.
7 THE CLERK: Juror Number 7, is this your verdict?
8 JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: Juror Number 291, is this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR: Yes.
15 THE CLERK: Juror Number 167, is this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is this still your verdict?
18 JUROR: Yes.
19 THE CLERK: Juror Number 90, is this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is this still your verdict?
22 JUROR: Yes.
23 THE CLERK: And Juror Number 190, is this your verdict?
24 JUROR: Yes.
25 THE CLERK: Is this still your verdict?

1 JUROR: Yes.

2 THE CLERK: Your Honor, the jury has been polled and
3 the verdict stands.

4 THE COURT: Any further requests regarding polling the
5 jury from the defense?

6 MS. PROCTOR: No, Your Honor.

7 THE COURT: Madam Forelady, ladies and gentlemen, I
8 wish I could excuse you -- actually I may have enough jurors
9 to excuse y'all for the rest of the week. Do I have enough
10 jurors to pick a jury tomorrow?

11 THE CLERK: Yes.

12 THE COURT: Perfect. Ladies and gentlemen, you have
13 diligently provided us with your service this week.

14 I have another jury that I'm selecting in the morning.
15 But I'm going to excuse you for the remainder of the week
16 because you have been with us for three days and I think you
17 have more than satisfied your civic duty to us.

18 I hope that jury service has been educational for you.
19 I hope that you have learned as I said in jury qualification
20 that real court is nothing like Judge Judy, Judge Joe Brown,
21 the People -- the People's Court, Judge Mathis, all those
22 court shows.

23 That while they are incredibly entertaining they are
24 nothing like the real process where 12 individual citizens
25 sit and determine what the facts are of a case and then

1 apply a very complicated set of laws to those facts and
2 render verdicts.

3 Charleston County is -- makes up part of the Ninth
4 Circuit. The Ninth Circuit is also made up of Berkeley
5 County. The state is divided into judicial circuits.

6 Charleston is one of the busiest circuits in the state
7 ranking only probably neck and neck with Greenville County
8 which is in the upstate and Richland County which of course
9 is Columbia, the capital.

10 We hold jury trials with the exception of Christmas,
11 New Year and Thanksgiving and the Fourth of July we hold
12 court probably - Don, what would you say, 46 out of 52
13 weeks - we hold jury trials 46 out of 52 weeks.

14 And we have four trial courts operating, two civil and
15 two criminal, in addition to four family courts that operate
16 on the second floor, the probate court and the master in
17 equity which also operate in this building as well as the
18 magistrates that sometimes use this court for -- what is the
19 court -- I forget the name of it - for transfer court.

20 So as you can well imagine there is a lot of court that
21 we hold. And we would not be able to do that without you
22 all being willing really to donate your time to us.

23 You are welcome to discuss this case if you would like.
24 But I ask that you not do that until everyone has been
25 excused on Friday which means the earliest that you could

1 discuss this case with anyone would be on Monday.

2 Sometimes attorneys will call you and because they want
3 feedback on how they did during the process or how they can
4 improve their performance. And that is normal.

5 So if someone should call you or try to contact you
6 regarding this case you are welcome to discuss it. But by
7 the same token if you don't want to you are welcome to as
8 well. And if someone should persist in trying to speak with
9 you and it exceeds your comfort level please contact the
10 clerk's office so that we can take the appropriate action
11 necessary to protect your privacy.

12 If you need a work excuse you can get one on the first
13 floor as you leave, on the circuit side of the courthouse,
14 which is when you come off the elevators it would be to your
15 left.

16 Any of the deputy clerks at any of those windows can
17 give you a work excuse. Otherwise, those will be mailed on
18 Friday along with your checks.

19 You are excused with the court's profound thanks. I
20 will hear post-trial motions and sentencing as soon as I am
21 done greeting the jury. And I need sentence sheet.

22 MR. DURANT: Yes, ma'am.

23 THE COURT: Thank you.

24 (WHEREUPON, the jury was dismissed July 17, 2013, at
25 4:19 p.m.)

1 (WHEREUPON, break for court to speak with jury outside
2 of courtroom.)

3 THE COURT: All righty. Is there anything further from
4 the State and any victims wish to be heard or any further
5 presentation -- well, actually I need to start with are
6 there any post-trial motions, from the State? Are there any
7 post-trial motions, from the State?

8 MR. DURANT: I'm sorry, I didn't know you were talking
9 to me, Your Honor.

10 MR. DURANT: No. No, Your Honor.

11 THE COURT: From the defense?

12 MS. PROCTOR: Your Honor, since I have been in here I
13 don't have my file. But I would just renew all the motions
14 we made during the trial. I think the majority of them were
15 granted maybe but one. And I can't remember what it -- or
16 that. And so -- and then we would just make a motion for a
17 new trial based on -- on motions.

18 THE COURT: The court will -- and does the State want
19 to respond to any of the motions?

20 MR. DURANT: No, Your Honor.

21 THE COURT: The State -- I mean the court will mark all
22 of the motions renewed. And I will stand by the previous
23 rulings that were made for the record with the appropriate
24 findings of fact and conclusions of law that accompanied
25 those rulings.

1 As regards to the motion for new trial, where there is
2 any evidence to support the verdict the court must uphold
3 the verdict.

4 It is clear that the jury gave substantial
5 consideration to the facts and the circumstances of this
6 case. And there is evidence to support its verdicts on 6881
7 which is attempted murder, 6882 which is ABHAN, and 6883
8 which is attempted murder in the nature of the testimony
9 that was presented as well as the video of the actual
10 incident site.

11 And the motion is denied.

12 Does the State wish to proceed on sentencing?

13 MR. DURANT: Your Honor, I do have one of the victim's
14 family that just happened to go to the restroom. She is not
15 here right now.

16 THE COURT: That's okay. But does the State have
17 anything it wishes to state regarding sentencing?

18 MR. DURANT: Your Honor, it is our position that --
19 that he should receive the maximum sentence. In my opinion
20 this was nothing more than -- this was very lucky it wasn't
21 a triple murder. It could have very easily been a triple
22 murder. And basically for no reason whatsoever.

23 I've watched that video ad nauseum. I didn't see those
24 guys in that car doing anything to this defendant to warrant
25 him to come over there and unload on that car like he did.

1 That shows -- I think it show depravity of spirit, and
2 I would ask that he receive the maximum sentence.

3 THE COURT: I'm curious. You made an offer to him of
4 18 years previously. Is there a reason for the shift in
5 position ---

6 MR. DURANT: Yes.

7 THE COURT: --- as the court cannot enhance the penalty
8 based on him exercising his right to a jury trial.

9 MR. DURANT: Has nothing to do with him exercising his
10 right to a jury trial, Your Honor. It has everything to do
11 with what my assessment of the case. And particularly when
12 I had a couple of very difficult victims involved.

13 THE COURT: When you say very difficult, explain.
14 Elaborate.

15 THE COURT: I mean one of them -- one of them, Mr.
16 Bryant, refused to meet with me on -- or to discuss with me
17 the facts of the case on four separate occasions.

18 Mr. Wittrell would come in and talk to me but
19 repeatedly said that he didn't want to testify, was scared
20 to testify.

21 He showed up to court and then didn't show up to court,
22 and then he showed up to court again. And finally we were
23 able to get him in.

24 And I was of course and in the position logistically
25 that I have to herd these cats. And -- and it was primarily

1 based upon that, based upon some problems I saw with my case
2 particularly with regard to the self-defense issue not with
3 regard -- with regarding what was at the Kangaroo so to
4 speak.

5 But I did have a .38 caliber revolver with five spent
6 shell casings in my -- in my gold Impala that I had to
7 explain too.

8 So all of that went into my assessment of the case.
9 And all that went into my plea offer of 18 years.

10 It certainly was not based upon me not thinking that
11 what he did ---

12 THE COURT: Oh, no, I -- I was just curious regarding
13 what would have justified that at the time and then what the
14 change in posture.

15 MR. DURANT: My plea -- my plea offers are always based
16 upon my assessment of the case, Your Honor.

17 THE COURT: Well, yeah, I -- well, that goes without
18 saying. If I didn't articulate that well, I apologize.

19 MR. DURANT: Yeah.

20 THE COURT: I assumed -- there are many reasons people
21 make plea offers.

22 MR. DURANT: Right.

23 THE COURT: Sometimes people make plea offers because
24 they don't want to put victims through testifying ---

25 MR. DURANT: Sure.

1 THE COURT: --- especially when there are small
2 children. Sometimes plea offers are made -- plea offers are
3 made because of the uncertainties of evidence.

4 Sometimes plea offers are made simply in mitigation
5 because people are young and the State just wants to cut
6 them a break and give them another chance.

7 And sometimes plea offers are made -- made just because
8 it saves the State money and it saves them the time to get
9 prepared for a trial.

10 MR. DURANT: I agree.

11 THE COURT: And that is why I was just curious to know
12 what ---

13 MR. DURANT: And I agree ---

14 THE COURT: --- why.

15 MR. DURANT: And I agree with -- I agree with all of
16 those reasons, Your Honor. And like I said, mine was based
17 primarily -- primarily upon my assessment of the strength of
18 my case. And -- and but never based upon the fact that I
19 didn't think what he did was fault..

20 THE COURT: You said you had a victim that was present
21 that wished to be heard?

22 MR. DURANT: If you would, please state your name for
23 the record.

24 MS. WILSON: My name is Evette Wilson. I am Antwan
25 Wilson's mother. I am Antwan's -- Wilson -- mother,

1 deceased. And I just wanted to say(crying).

2 MR. DURANT: There will be nothing else, Your Honor.

3 MS. PROCTOR: Thank you, Your Honor. May it please the
4 court.

5 THE COURT: Yes, ma'am.

6 MS. PROCTOR: As far as to address what Mr. DuRant
7 said, there were as you heard through the tape quite a few
8 guns that night out there with other people. There also
9 were guns -- there was a gun in the victim's car. Mr.
10 Wittrell who testified had gun powder residue on his hands.

11 THE COURT: But you all stipulated ---

12 MS. PROCTOR: No.

13 THE COURT: --- that they never shot at your client so,
14 correct?

15 MS. PROCTOR: Well, we stipulated to that for other
16 reasons I think because ---

17 THE COURT: Well, the video certainly doesn't show them
18 shooting.

19 MS. PROCTOR: No, no, I agree with that. I am just
20 saying that this -- whenever it happened there was gunpowder
21 residue on his hands that night. Mr. Bryant had gunpowder
22 residue.

23 And so I think that this was a case which was
24 unfortunate. There were a lot of people out there that had
25 weapons.

1 As far as again Mr. Bryant he -- the verdict came back
2 ABHAN. And I am sort of surprised at that. Mr. Bryant
3 never wanted to testify in this case. And it is not because
4 he is afraid. As a matter of fact he ---

5 THE COURT: Actually Mr. Bryant's was attempted murder.
6 Mr. Wittrell's was ABHAN.

7 MS. PROCTOR: The person in the -- it is Mr. Bryant's
8 that is attempted murder?

9 THE COURT: Uh-huh.

10 MS. PROCTOR: That surprises me.

11 THE COURT: No, that would be consistent with the
12 testimony. Because Mr. Wittrell said he wasn't hit with a
13 bullet at the event.

14 MS. PROCTOR: Neither was Mr. Bryant. He was in the
15 back seat ---

16 THE COURT: But there is testimony from Ms. Trusdale
17 regarding Mr. Bryant and so I don't ---

18 MS. PROCTOR: No, he wasn't hit. He was not hit.

19 THE COURT: I didn't say he was hit. But there is more
20 testimony regarding the facts and circumstances and
21 potential acrimony between your client and Mr. Bryant, the
22 beefing and other things that certainly could support that
23 verdict.

24 MS. PROCTOR: Well, Mr. Bryant has gotten his justice
25 out of Mr. Washington. He has knocked out his bottom teeth

1 and beat him quite badly while he was in the county jail
2 waiting charges on his own home invasion.

3 THE COURT: I assume you all have taken some
4 administrative action with the jail regarding that?

5 MS. PROCTOR: He has been charged with lynching by mob.

6 THE COURT: And I assume that your client is going to
7 pursue that when he comes to trial.

8 MS. PROCTER: I hope he does.

9 THE COURT: Yeah, so I assume based on what you are
10 telling me that any -- that he get any appropriate remedy
11 that is as a result of that conviction, wouldn't he?

12 MS. PROCTOR: I don't ---

13 THE COURT: Do they tape what goes on in cells? I
14 don't know.

15 MS. PROCTOR: I have no idea, Your Honor.

16 THE COURT: I have no idea either. I don't know with
17 modern technology what they tape or don't tape in jail cells
18 anymore.

19 You may continue.

20 MS. PROCTOR: Your Honor, he is 27 years old. He has
21 been working. He has always had a good job. He has worked
22 since he was about 16. He has done catering. He has done
23 construction. And I think Your Honor has seen throughout
24 this week what family support he has. His whole family has
25 been here every day.

1 And out of all the people in this case Mr. Washington I
2 think has the least amount of record of anybody. He had the
3 resisting arrest and I think it was maybe ---

4 THE COURT: Two simple possessions of marijuana.

5 MS. PROCTER: Two simple possessions of marijuana which
6 is much less than all the other people, the other victims --
7 all three victims.

8 Your Honor, I think maybe some of his family might like
9 to speak.

10 THE COURT: Sure. If they would stand and state their
11 names for the court reporter and if necessary spell any last
12 names they think she would not be able to spell. Yes,
13 ma'am?

14 MS. DOWNIE: My name is Con-Sandra Downie. C-O-N,
15 apostrophe, capital S, A-N-D-R-A D-O-W-N-I-E.

16 THE COURT: I'm sorry, tell me your last name again.

17 MS. DOWNIE: Downie, D-O-W-N-I-E.

18 THE COURT: Thank you, ma'am.

19 MS. DOWNIE: I am Domoneik's older sister. And I just
20 want to say that I have sympathy and sympathy for the other
21 families. But Domoneik is a young man that has been a good
22 child up until this incident.

23 He has two kids that needs a father for him to take
24 care of. We have been holding the burden for him all this
25 time.

1 I am not saying they he should be set off free. I
2 don't want nobody to think that, because I am truly sorry
3 for what happened. But with him so young he do not deserve
4 no maximum sentence.

5 I just ask the court please consider the fact that he
6 has not had no trouble before this, that he do has kids and
7 he does have a family and he has always uphold a job. He
8 has not been found on the street selling drugs and he hasn't
9 been no hit man, none of that nature. Like he has been a
10 good child up until this incident.

11 MS. PROCTOR: Your Honor, I would just want to say also
12 I think from the video you saw and through the number of
13 shots fired, he was not the instigator of this shooting. He
14 did not start shooting first. And there had already been at
15 least 12 to 13 shots before he fired his gun.

16 MS. PAMELA WASHINGTON: My name is Pamela Washington.
17 And I am Domoneik's sister. You know, this is sad. This is
18 very sad. And I took off from work to stop and I'm trying
19 to help him with his children. And I got four kids and a
20 grand, and it is just hard on the family trying to ...
21 (crying).

22 MS. PROCTOR: Your Honor, he has been in jail a little
23 over two years.

24 THE COURT: How many days?

25 MS. PROCTOR: Since his arrest ---

1 THE COURT: About 400 and how many days?

2 MS. PROCTOR: May -- I think May 14th or 15th.

3 MR. DURANT: May 16th I think is when ---

4 MS. PROCTOR: May 16th, ---

5 MR. DURANT: --- he was taken into custody.

6 MS. PROCTOR: --- 2011.

7 THE COURT: So it is just a little over two years?

8 MS. PROCTOR: Yes, Your Honor. And one other person
9 would like to talk -- two people.

10 THE COURT: Yes, ma'am, be glad to hear from you.

11 MS. SMALLS: I am -- my name is Betty Smalls. I am
12 Domoneik's grandmother. I raised him from six months old.
13 But he knows his family because, you know, that's how --
14 raised by -- you know, so he never -- he always know his
15 sisters and his brother. And I am a Christian, and I am
16 very sorry for all of this mix up. I -- my heart goes out
17 to the other family.

18 But Domoneik I have seen through pain and emotion that
19 night like you -- you gave me some insight on why men when
20 you said what you said the other day.

21 THE COURT: I didn't realize you heard ---

22 MS. SMALLS: And I was saying ---

23 THE COURT: I was just talking to the lawyers.

24 MS. SMALLS: Yeah, I said ----

25 THE COURT: About not maturing until they are 35.

1 MS. SMALLS: That's -- you know, having -- I've got two
2 sons. Domoneik is my oldest son's son. And Domoneik has
3 two children. They are three and they are two. I get them
4 as much -- every weekend they are in church. I get them so
5 they can be in church. The same way I raised Domoneik up in
6 the church. Domoneik was a drummer in the church. Domoneik
7 is highly -- our organist was here Monday but she couldn't
8 get back because she is very busy. And my pastor sent all
9 his support. And Domoneik know that. I mean he was raised
10 up in the church.

11 And I believe and truly believe that this is a wake-up
12 call, you know. Because we train our children up the way we
13 would want them to go. I didn't train him to be in the
14 street. But, you know, they go out. But like you say, he
15 would work. He love his children.

16 And you know, that -- I'm sorry -- like I say, I am
17 sorry for the other young people and all. But when I pray I
18 pray for all the young people of this world. Because they
19 need prayer. They need to find their place.

20 And I thank you for your information on that. Now I
21 get a better understanding of why they -- you know, men, you
22 know.

23 But I just thank God and for all that, you know, the
24 court that I know that your heart you would do what needs to
25 be done. But I pray that you will take something I said

1 into consideration.

2 THE COURT: Thank you, ma'am.

3 MS. PROCTOR: Your Honor, we figured out 794 days.

4 THE COURT: So he has never made bond basically?

5 MS. PROCTOR: No, Your Honor.

6 THE COURT: Because he absconded from the jurisdiction?

7 MS. PROCTOR: Yes, sir -- yes, ma'am.

8 THE COURT: Anything further, Ms. Proctor?

9 MS. PROCTOR: No, Your Honor.

10 THE COURT: Sir, is there anything you would like to
11 state for the record on your own behalf?

12 MR. WASHINGTON: No, ma'am.

13 THE COURT: Thank you, sir. You may take your seat.
14 How far did he go in school, Ms. Proctor? You told me he
15 gradu- -- you told me he was 27. You didn't tell me ---

16 MS. PROCTOR: Eleventh grade.

17 THE COURT: Did he ever get his GED or anything?

18 MS. PROCTOR: No, ma'am.

19 THE COURT: Did he ever have any substance abuse
20 issues?

21 MS. PROCTOR: No, ma'am.

22 THE COURT: The court would be at ease for a few
23 moments.

24 (WHEREUPON, recess 4:36 p.m.)

25 (WHEREUPON, resumed proceedings 5:10 p.m.)

1 THE COURT: You may be seated.

2 SENTENCING:

3 Sir, if you would stand for imposition of sentence. On
4 both charges of attempted murder you are sentenced to the
5 State Department of Corrections for a period of 20 years.

6 On the assault and battery of a high and aggravated
7 nature which is Indictment 6882 you are sentenced to the
8 State Department of Corrections for a period of 20 years.
9 These sentences are concurrent with one another. You will
10 get credit for any time that you serve to be calculated and
11 applied by the Department of Corrections.

12 Since you have indicated you don't have a substance
13 abuse issue I am not going to order the ATU, although it is
14 my understanding that everyone gets screened for that
15 program and gets some treatment as they go through reception
16 and evaluation.

17 I have taken into consideration as mitigating factors
18 your youth, your lack of criminal record, as well as the
19 fact that you have two minor children -- well, that you have
20 minor children that your sister has advised the court about
21 who need your assistance in their rearing. I also took into
22 consideration, however, danger to the community and the
23 severity of the acts which took place.

24 While I have given consideration to what can best be
25 cast as the participation or lack of participation actually

1 by the putative victims in this case the issue really is not
2 these actual victims. The issue is a larger issue, that
3 being the protection of the community.

4 Just a large amount of people were at that gas station
5 and all of the things that really could have happened as a
6 result of what really was just an egregious act.

7 And as such the court finds that -- that the sentence
8 imposed is appropriate taking into account all of those
9 factors. Thank you, very much.

10 MR. DURANT: Thank you, Your Honor.

11 THE COURT: You are welcome.

12 (WHEREUPON, adjourned 5:12 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on .

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: Sept 9, 2013

Certified Transcript Provided For: SCCID

Certification Reference # 0909113 OR16

DBD20110402158

DOCKET NO. 2011GS1006883

571 583

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605014

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

J. F.
Foreperson of Grand Jury
Date: NOV 14 2011

VERDICT

Michael B. ...
Foreperson of Petit Jury
Date: 7/17/2013

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON
DOB:
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

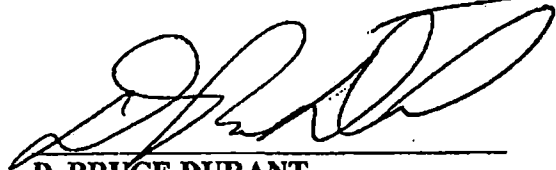
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Ronald Cornell Bryant III. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20110402158

DOCKET NO. 2011GS1006881

573585

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605012

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

[Signature]
Foreperson of Petit Jury

[Signature]
Date: 7/17/2013

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON

DOB: 1
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

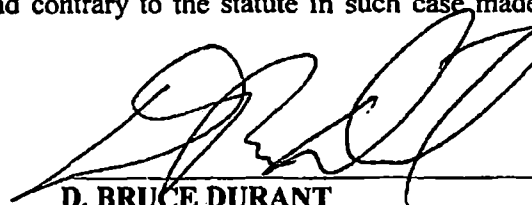
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County on or about March 30, 2011, the defendant, **DOMONEIK ANTWAN WASHINGTON**, with intent to kill and malice aforethought, attempt to kill Antwan Devon Wilson, also known as Brian Revon Wilson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20110402158

DOCKET NO. 2011GS1006882

575587

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605013

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON
DOB:
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

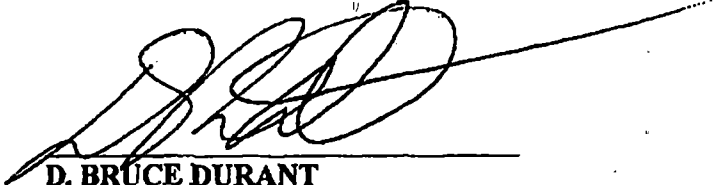
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Edward Jerome Wittrell Jr. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

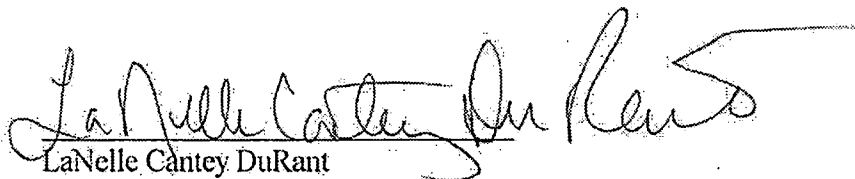


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 14th, 2014



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2013-001616

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Washington's motion for a mistrial when one state's witness referred to the autopsy of Antwon Wilson, who was one of the victims of the attempted murder charge, and another state's witness referred to Wilson as the decedent after the state and defense had agreed to a stipulation that no mention would be made of the subsequent death of Wilson because there was no connection between the death of Wilson and Appellant Washington?

STATEMENT OF THE CASE

On November 14, 2011, the Charleston County Grand Jury indicted Domoneik Washington on three counts of attempted murder. On July 15 – 17, 2013, Washington proceeded to trial before the Honorable Deadra L. Jefferson and a jury. Washington was represented by Lorelle Proctor and John J. Kozelski, III. The state was represented by D. Bruce DuRant. The jury returned a verdict of guilty on two of the attempted murder charges, and a verdict of guilty on one lesser charge of assault and battery of a high and aggravated nature (ABHAN). Judge Jefferson sentenced Washington to twenty years on each of the charges with all to run concurrent to each other. R. 568, ll. 1 – 25. Washington's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Appellant Washington's motion for a mistrial when one state's witness referred to the autopsy of Antwon Wilson, who was one of the victims of the attempted murder charge, and another state's witness referred to Wilson as the decedent after the state and defense had agreed to a stipulation that no mention would be made of the subsequent death of Wilson because there was no connection between the death of Wilson and Appellant Washington.

On March 30, 2011, a famous rapper named Lil Phat was to perform at the Palm Tree club on James Island in Charleston County. About 2:30 in the morning a fight broke out between the James Island people, which included Domoneik Washington, and three people from downtown which included the victims in this case: Antwan Wilson, Edward Witrell, and Ronald Bryant. The club closed after the fight, and the crowd went to the Kangaroo Station nearby. The three downtown men pulled up in a gold impala to get gas but had to wait. Shots rang out from the adjacent car wash. Then Washington appeared and began arguing with the guys in the Impala. Appellant Washington pulled a gun and began shooting into the Impala where the three downtown guys were. The only one hit was the driver, Antwan Wilson, who was hit in the leg. The Impala took off heading towards town. All of this was caught on the store's video. R. 145, ll. 12 – R. 146, ll. 5; R. 136, ll. 17 – R. 142, ll. 17.

Equette Robinson, the clerk at the Kangaroo Station during the incident, testified at the Neil v. Biggers¹ hearing to identify Washington. She had seen Washington come in the Kangaroo almost every Saturday for over a year, usually late at night after the clubs closed.

¹ Neil v. Biggers, 409 U.S. 188 (1972).

However, she did not know his name. She identified Washington as the person who shot at the gold Impala on March 20, 2011. When Washington came to the door of the station just prior to the shooting, she was going to ask him to pay for the hot dog he had stolen the Saturday before. He took the hot dog without paying for it. But he did not come in the store but began arguing with the guys in the gold Impala. She saw Washington shoot into the Impala at the people inside. R. 106, ll. 16 – R.111, ll. 25.

Edward Wittrell, one of the young men from downtown who was a passenger in the Impala, testified that they had been to the Palm Club to celebrate his birthday. They were involved in the fight at the club. They left and went to the Kangaroo when the club closed. R. 190, ll. 18 – R. 195, ll. 25. Wittrell admitted that he was intoxicated that night, and did not remember much. He did remember Antwan Wilson getting shot at the Kangaroo, and they left to go downtown to the hospital. R. 196, ll. 1 – R. 197, ll. 1.

He, and Antwan, and Ronald Bryant did not shoot at the Kangaroo station. In an in-camera hearing, Wittrell explained that as they were on the way to the hospital traveling down Folly Road, someone started shooting at them from behind from a vehicle. The car wrecked because Antwan, who was driving, was shot in the back of his head and died. Wittrell was shot in his shoulder, and Bryant was shot in his head but survived. A gun was found in the Impala that Wittrell was in but he did not remember anyone shooting. R. 200, ll. 3 - R. 205, ll. 16.

Defense counsel objected to any testimony concerning this subsequent chase and shooting because it was not relevant to whether Washington shot at and allegedly attempted to murder these downtown men. The defense also argued it was too prejudicial even if the court felt it was relevant. The state conceded that there was no evidence that Washington

was associated with the subsequent shooting nor the vehicle from which the shooting came. But the state argued, it was part of the *res gestae* and should come in because the jury needed to know Antwan Wilson was dead and that was the reason he was not present at the trial. The state also wanted to show that the gun and shell casings found in the Impala were from the victims shooting at during the chase and not at the Kangaroo because the defense was claiming self-defense. The men in the Impala had gunshot residue on them as well. Defense counsel argued that their theory was not that the gold Impala occupants shot at Washington but other people were shooting at him, and he was shooting in self-defense. At least twenty-seven shots were fired during this "shoot-out." R. 205, ll. 15 – R. 215, ll. 17.

The judge told the state and defense to work out a stipulation that both could agree to since the defense was not going to say the victims were shooting at Washington. The state agreed to say Antwan was killed in an unrelated incident. The state then said he would have to put up the medical examiner but he would not go into the cause of death but he did have to go into the bullet removed from Antwan's leg. R. 215, ll. 18 – R. 217, ll. 25.

The parties agreed on a stipulation which provided:

1. The parties agree that no one from the gold Impala shot at the defendant, Domoneik Washington, at the Kangaroo in the early morning of March 30, 2011.
2. The parties agree that Antwan Wilson died from causes unrelated to being shot at the Kangaroo and is not available to testify.

R. 1 – 20.

During the testimony of Suzanne Cromer, the SLED expert in fire arms' identification, she referred to the bullet removed from Antwan Wilson during his autopsy. Defense counsel objected at a bench conference because the use of the word "autopsy" by the witness was outside their agreement and should be in the stipulation. Defense counsel

said it was out of the bag, and she asked for a mistrial. The judge told her she was not getting one, but offered to give a curative instruction which defense counsel rejected. R. 392, ll. 20 – R. 395, ll. 24; R. 400, ll. 3 – R. 402, ll. 17.

The medical examiner, Dr. Ellen Riemer, testified that she removed the bullet from the leg of Antwan Wilson. When explaining the trajectory of the bullet, she referred to Wilson as the “decedent.” The judge immediately asked for a bench conference with the attorneys. The doctor/witness admitted that she made an error in referring to Wilson as the decedent. Defense counsel said it had happened twice, and she made a motion for a mistrial. The judge denied the motion but again offered to give a curative instruction. Defense counsel again refused the curative instruction. R. 427, ll. 17 – R. 432, ll. 7.

At the completion of the doctor’s testimony, the state proffered the stipulation to which the parties had agreed to the jury. There was no objection by the defense. The state rested. R. 434, ll. 1 – R. 435, ll. 3.

In State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013), the Court of Appeals held that the decision to grant or deny a mistrial is within the sound discretion of the trial court. In State v. Wiley, 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010), the Court of Appeals ruled that the trial court’s decision to grant or deny a mistrial will not be overturned on appeal absent an abuse of discretion amounting to an error of law.

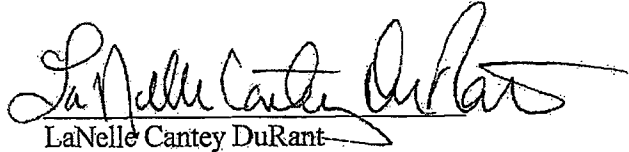
In State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009), the Court of Appeals held that the granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way.

Washington was prejudiced by the two witnesses telling the jury through their testimony that Antwan Wilson was deceased. The jury had not heard the stipulation that Wilson died from an unrelated incident before these two witnesses testified. Therefore, the first impression of the jury was that Antwan Wilson died at the hands of Washington in some way. The state reading the stipulation to the jury after the testimony was too late to erase the impression from the minds of the jurors.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Domoneik Washington states:

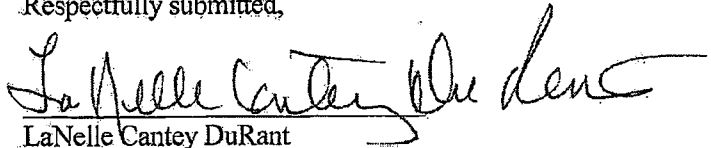
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on July 17, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Domoneik Washington.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of March, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2013-001616

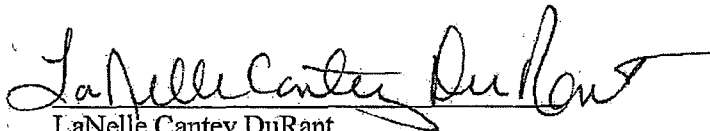
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Complete Trial Transcript July 15-17, 2013

I certify that this designation contains no matter which is irrelevant to this appeal.

March 14th, 2014



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

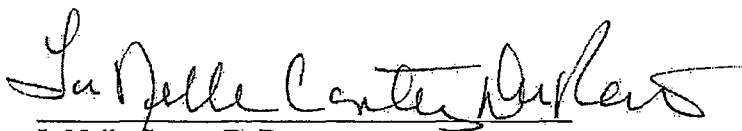
V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

CERTIFICATE OF SERVICE

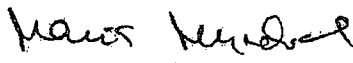
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Mr. Domoneik Washington, #356158, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of March, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of March, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Domoneik Washington, Appellant.

Appellate Case No. 2013-001616

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-434
Submitted October 1, 2014 – Filed December 3, 2014

APPEAL DISMISSED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

County of CharlestonDomoneik Antwon Washington

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2015-CP-10-2257
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2015 APR 20 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT
FILED**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence County of Charleston
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-CS-10-06881
 - (b) 2011-CS-10-06882

C.C.

- (c) 2011-LS-10-06883
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 15, 2013. All charges run concurrent to Twenty
- (b) years Sentence.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The South Carolina Court of Appeals Affirmed
- ii. Conviction on December 3, 2014
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Due Process 14th Amendment
- (c) Denial of Six Amendment at Trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Will explain at hearing.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i. N/A
- ii.
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii.
- iii.
- iv.

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

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

(a) which grounds have been presented:

- i. NO
- ii.
- iii.

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

- i. N/A
- ii.
- iii.

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

(a) This is the first attack
 (b) _____
 (c) _____

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

(a) your arraignment and plea? N/A
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

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

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

i. Lorelle L. Proctor, Esquire, Public Defender Office
John S. Kozelski III, Esquire, Public Defender Office
 ii. Lanelle Pantey Durant Appellate Defender Office
 iii. _____

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

i. Lorelle L. Proctor, attorney at trial O.T. Wallace
County Office Bldg 101 Meeting St., 5th Floor Charleston, SC 29401
 ii. John S. Kozelski III attorney at trial O.T. Wallace County
Office Bldg 101 Meeting St., 5th Floor Charleston, SC 29401
 iii. Lanelle C. Durant, on Appeal South Carolina on Indigent
Defense, P.O. Box 11589 Columbia, SC 29211

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

New Trial

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

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

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

D. Washington

SWORN to and subscribed before me this 16th
day of April, 2015.

Ludman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

D. Washington
Applicant

SWORN or affirmed to and subscribed before me this
16th day of April, 2015.

Ludieen Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Domoneik Antwan Washington, #359194,

2015-CP-10-2257

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 20, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the November 2011 term of the Charleston County Grand Jury for two (2) counts of Attempted Murder and one (1) count of Assault and Battery of a High and Aggravated Nature (2011-GS-10-6881, 6882, 6883). Lorelle Proctor, Esquire, and John J. Kazelski, Esquire, represented him. The Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced Applicant to incarceration for twenty (20) years for all three charges, each to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Washington, 2014-UP-434 (Filed on December 3, 2014). The Remittitur was issued on December 22, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the application, and the record on appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Will explain at hearing;"
2. "Due Process 14th Amendment:"
 - a. "Will explain at hearing;"
3. "Denied of Six(sic) Amendment at Trial:"
 - a. "Will explain at hearing."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits that Applicant's allegation of Ineffective Assistance of Counsel is without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's allegations of due process violations are without merit. The Applicant's allegation claims infringement of his rights under certain amendments to

the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that an Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

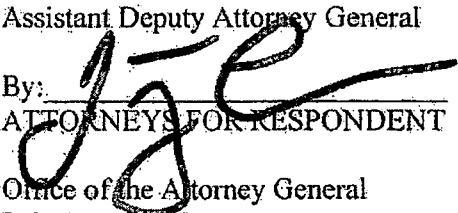
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

February 5, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2015-CP-10-2257
DOMONEIK A. WASHINGTON, #356158	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Rodney D. Davis, Esq.
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this 5th day of February, 2016.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3) Case No. 2015-CP-10-2257
4 DOMONEIK A. WASHINGTON,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: December 6, 2016

9
10 B E F O R E:

11 THE HONORABLE G. THOMAS COOPER
12

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

14 RODNEY DAVIS
15 Attorney for the Applicant

16 ALICIA OLIVE
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

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1 THE COURT: Domoneik A. Washington,
2 2015-CP-10-2257.

3 MR. DAVIS: Your Honor, may it please the Court.

4 THE COURT: Yes.

5 MR. DAVIS: Rodney Davis on behalf of Domoneik
6 Washington. Mr. Washington is in the courtroom with us
7 today.

8 A couple of preliminary matters before we get
9 started, if you will. First of all, this is --
10 Mr. Washington was one of my last clients when I was actually
11 at the public defender's office in this case. I initially
12 was appointed to it, met with him, handled his preliminary
13 hearing. And then the best I can tell, my last contact would
14 have been August the 2011. And the --

15 THE COURT: That's after the trial?

16 MR. DAVIS: Before, Your Honor.

17 THE COURT: Before the trial?

18 MR. DAVIS: Yes, Your Honor. August 2011 is my best
19 look. I went through the entirety of the public defender's
20 file. Ms. Proctor is here with us, made that file available
21 to me. Best I can tell, my last contact was a note to him on
22 August -- in August of 2011. The trial did not commence
23 until July of 2013. Mr. Washington brought this to my
24 attention. I appreciate him doing that. I told him,
25 honestly, somewhere over 5,000 clients in the public

1 defender's office, earlier on he says, you will remember the
2 case once you hear the facts of it. I did from that. I
3 didn't from the name.

4 SO my first meeting with him before I had the
5 entirety of the case file, I didn't recognize the name. But
6 he told me about it. We've discussed that several times
7 during my representation of him. He has no issue with me
8 going forward, but I would like to just get that on the
9 record.

10 THE COURT: Mr. Washington, do you understand what
11 Mr. Davis just told me?

12 MR. WASHINGTON: Yes, sir.

13 THE COURT: Are those -- is that the way you
14 remember your association with him?

15 MR. WASHINGTON: Yes, sir.

16 THE COURT: Okay. He's been appointed to represent
17 you in this case, do you understand, in this PCR case. Do
18 you understand that?

19 MR. WASHINGTON: Yes, sir.

20 THE COURT: Do you have any problem with him going
21 forward as your attorney?

22 MR. WASHINGTON: No, sir.

23 THE COURT: Okay. Thank you very much.

24 MR. DAVIS: One thing additionally on that, Judge.
25 And this is what just took a moment. I appreciate you

1 letting me have a little bit of time with him. I told him I
2 would give him a chance to express any concerns.

3 The first time I recall in my representation of him
4 when we were meeting in the room just off the courtroom
5 today, just a quick review, at that point, he did express
6 concern. And, look, I told him I wanted to give him -- I
7 wanted him to voice any concerns he had. Certainly, I was
8 appointed to this case. So the State funds me, pay my fee on
9 this. He did not hire me. But his comment was concerning, I
10 know you are working for them. I said, no, Domoneik, I'm
11 working for you, buddy, but I want to make sure if there are
12 any issues. We talked about the fact I was your attorney way
13 back. I don't think that is an issue. There's just some
14 issue now. You think because I was appointed by the State,
15 you are going to have a chance to talk to the judge, and we
16 will deal with any issue we have about that.

17 So any concerns you have, here's your chance to talk
18 to the judge about that.

19 MR. WASHINGTON: Ain't really no concern. It's
20 just, like, I never been through a whole trial thing before.
21 And I had a public defender. And I don't think I was -- I
22 didn't have a fair trial, or whatever. So that's why I was
23 kind of skeptical with the State appointing a new attorney.

24 THE COURT: Do you have a private attorney?

25 MR. WASHINGTON: No, sir.

1 THE COURT: Well, you know, I will tell you, in my
2 experience, some of the public defenders that I've seen in
3 this state are doing a heck a lot better job than some
4 private attorneys, because they do it all the time and they
5 understand the process. They know what to look for. They
6 know what to present in the way of evidence.

7 So I never derogate or think that public defenders
8 are anything less than professionals. Certainly, you do get
9 sometimes a young person right out of law school, but they
10 are in the private sector too. And attorneys who try,
11 particularly try criminal cases on a regular basis, are some
12 of the best lawyers in this state.

13 Now, I know Mr. Davis is an active lawyer dealing
14 with PCRs. But I can assure you, he's not taking directions
15 from the attorney general. He's not taking directions from
16 me. He is committed by law and by his ethics to represent
17 you as best he can and to point out whatever flaws there may
18 have been with your original attorneys or mistakes they might
19 have made. That's his job and he understands that.

20 So I don't know if that makes you feel any better,
21 but he's a good lawyer.

22 MR. WASHINGTON: Yes, sir.

23 THE COURT: All right.

24 MR. DAVIS: Thank you, Judge. And last thing we
25 would ask is, I've certainly talked to him about it, but I

1 would ask you to put on the record, obviously, we are hopeful
2 of a benefit of being successful here today. But there's a
3 risk, because he was originally, Your Honor, arrested for one
4 count of murder, two counts of attempted murder. At the end
5 of the trial, he was convicted -- let me back up.

6 Actually, at the prelim, I argued, and the murder
7 was reduced to attempted murder. So he had three attempted
8 murder charges that he went to trial on.

9 THE COURT: That he went to trial? I mean, the
10 indictment says murder.

11 MR. DAVIS: It was attempted, Your Honor.

12 THE COURT: I'm sorry. It's attempted. You are
13 right. I was looking at the affidavit.

14 MR. DAVIS: It was quite a convoluted case. He went
15 to trail on three attempted murder charges. The jury
16 convicted him of two attempted murders and one ABHAN, the new
17 statute.

18 So I've certainly talked with him about if we were
19 successful and his convictions were vacated, he would still
20 be facing two attempted murders and one ABHAN. He got 20
21 years. That is certainly not the maximum he could get. If
22 we can get that on the record that he still wishes to go
23 forward, I believe he does, but if you can inquire about
24 that, I would appreciate it.

25 THE COURT: I usually inquire about that. All

1 right.

2 Do you understand that, Mr. Washington, that if you
3 are successful today, you still -- these charges are not
4 going to go away?

5 MR. WASHINGTON: Yes, sir.

6 THE COURT: You still have to -- if the State wishes
7 to prosecute you again, they still can on these charges; do
8 you understand that?

9 MR. WASHINGTON: Yes, sir.

10 THE COURT: And you are willing to go forward today?

11 MR. WASHINGTON: Yes, sir.

12 THE COURT: Okay. All right. Let's proceed.

13 MR. DAVIS: Thank you very much, Your Honor.

14 THE COURT: Attorney general.

15 MS. OLIVE: Thank you, Your Honor. May it please
16 the Court. Your Honor, this is Domoneik Washington,
17 2015-CP-10-2257. Mr. Washington was indicted in November of
18 2011 for three counts of attempted murder. Lorelle Proctor
19 and John Kozelski represented him on these charges.

20 He proceeded to a jury trial on July 15th through
21 17th, 2013, after which he was found guilty of two counts of
22 attempted murder as indicted and one count of assault and
23 battery of a high and aggravated nature as a lesser-included
24 offense.

25 Judge Jefferson sentenced him to 20 years concurrent

1 on all charges. A notice of appeal was filed on his behalf.
2 And an Anders brief was filed on his behalf.

3 And, Your Honor, I apologize, my return is
4 inaccurate, for the record. So I'm correcting that now, but
5 an Anders brief was filed on his behalf. Court of Appeals
6 dismissed his appeal on December 3rd, 2014. The remittitur
7 was issued on December 22nd, 2014. And he filed this
8 application for post-conviction relief on April 20th, 2015.

9 In his application, he alleges ineffective
10 assistance of counsel. And states that he will be explaining
11 those allegations at the hearing.

12 Your Honor, just to protect the record, the State at
13 this time would object to -- well, the State would request to
14 reserve our right to object to any specific claims that have
15 not previously been raised in this application or any
16 amendments, and no amendments to this application have been
17 made, Your Honor. And I've discussed that with Mr. Davis as
18 well, just since there's general allegation of ineffective
19 assistance of counsel.

20 Mr. Washington is present in the courtroom today and
21 represented by Mr. Davis. I will turn it over to Mr. Davis
22 at this time.

23 THE COURT: Let me do one other thing. Were you in
24 the courtroom yesterday?

25 MR. DAVIS: Just briefly, Your Honor.

1 THE COURT: Well, yesterday -- I probably should
2 have done it a few minutes ago. I made the disclosure
3 yesterday that Ms. Olive at one time was my law clerk. And
4 I've had very little contact with her since that time. But
5 if that is of any concern to you or your client, I certainly
6 respect that.

7 MR. DAVIS: Can I have a moment, Your Honor?

8 THE COURT: Sure.

9 MS. OLIVE: Thank you, Your Honor. That slipped my
10 mind today.

11 MR. DAVIS: Judge, thank you so much. He indicates
12 even with that, we want to go forward.

13 THE COURT: Is that correct?

14 MR. WASHINGTON: Yes, sir.

15 THE COURT: Mr. Davis.

16 MR. DAVIS: Thank you, Your Honor.

17 We would call Mr. Washington to the stand.

18 THE COURT: Come right on up, Mr. Washington.

19 DOMONEIK A. WASHINGTON,
20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your first and last name,
22 and spell your last loudly and clearly into the microphone.

23 THE WITNESS: Domoneik Washington,
24 W-a-s-h-i-n-g-t-o-n.
25

1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Mr. Washington, I want to make sure you speak up.
4 This lady needs to take down everything you say and the judge
5 needs to hear you. All right?

6 Were you born here in Charleston?

7 A. Yes, sir.

8 Q. When? What's your birthday?

9 A. [REDACTED], 1986.

10 Q. And how far did you go in school?

11 A. 11th grade.

12 Q. Why didn't you finish?

13 A. Because I got expelled because I didn't show up to
14 school for the first two weeks and I was on probation.

15 Q. Now, have you gotten your diploma or GED? Do you
16 have that?

17 A. No, sir. Actually, I'm working on my GED right now.
18 I'm in school.

19 Q. Okay.

20 A. And I got my WorkKeys already.

21 Q. And are you also incarcerated at Lieber?

22 A. Yes, sir.

23 Q. And so you are working on your GED currently?

24 A. Yes.

25 Q. Are you married or single?

1 A. I'm single.

2 Q. Kids?

3 A. Yes, sir, I have two. I have a little girl and I
4 have a little boy.

5 Q. How old are they?

6 A. My little girl just turned eight last month on the
7 20th. And my little boy will be six this month right here.

8 Q. Let's turn directly to the case that we are here to
9 complain about. Do you recall what three charges you were
10 originally arrested on?

11 A. Yes, sir, it was murder and two attempted murder.

12 Q. And we've already talked about it on the record, but
13 originally, was I assigned to your case from the public
14 defender's office?

15 A. Yes, sir.

16 Q. Who was with you for the majority of your case,
17 though, as your attorneys?

18 A. Lorelle Proctor and John Kozelski.

19 Q. Okay. And are they the ones that actually took this
20 case to the jury trial?

21 A. Yes, sir.

22 Q. And at the end of the jury trial, the verdict was
23 guilty on two attempted murders and one ABHAN; is that
24 right?

25 A. Yes, sir.

1 Q. What was your sentence on these charges?

2 A. 20 years.

3 Q. Let me back up for a second. At some point during
4 Ms. Proctor's representation of you, was there an offer made
5 by the State to resolve this by a guilty plea?

6 A. Yes, sir.

7 Q. What was that?

8 A. 18 years.

9 Q. For all three charges?

10 A. Yes, sir.

11 Q. Can you tell the judge a little bit about what
12 discussions you and your attorney had about that offer?

13 A. I just didn't felt guilty or whatever and I wasn't
14 going to plead to 18 years.

15 Q. You rejected that offer?

16 A. Yes, sir.

17 Q. Was there any other offer made by the State?

18 A. No, sir.

19 Q. At the time you were discussing that offer, however,
20 what was your attorney's advice about that offer?

21 A. Just go ahead and take it.

22 Q. What was her advice about your chance of success at
23 trial?

24 A. It was just 50/50. They didn't really say. We was
25 not going to win or we was going to lose, just you need to

1 take the plea.

2 Q. Do you recall any comment about whether it was a
3 good idea or bad idea to go to trial?

4 A. Well, after we met a few times, it was at the end
5 when we was getting closer to trial, and she said, no, it's
6 not a good idea to go to trial. And I said, I'm not going to
7 plead to 18 years.

8 Q. Let's talk about how many discussions y'all did
9 have. Can you tell the judge how many times during her
10 representation of you that you would have met with Ms.
11 Proctor?

12 A. I don't know. We met a good bit, though. I am not
13 really sure.

14 Q. And during these meetings and these discussions,
15 were there things discussed other than the plea offer?

16 A. Besides talking and going over the case, no, sir.

17 Q. Did she provide you a copy of your Rule 5 or did she
18 just review it with you?

19 A. No, she had provided me with a copy.

20 Q. And so when you would meet, in addition to talking
21 about the plea offer, you also reviewed that material that
22 she gave you; is that right?

23 A. Yes, sir.

24 Q. Let me back up just one second. In any of these
25 discussions, perhaps during conversations about the plea

1 offer, did Ms. Proctor ever inform you of the possible
2 punishment for each of the attempted murders?

3 A. Yes, sir. As far as what the charges carry?

4 Q. Yes, sir.

5 A. Yes, sir.

6 Q. What did she tell you?

7 A. Attempted murder carried 30 years. And that's all
8 the charges I had besides the murder.

9 Q. And were there discussions about whether those could
10 run at the same time or one after the other? Did you have
11 any discussions about that?

12 A. No, sir.

13 Q. Okay. Was there any discussion about whether these
14 were 85 percent or no parole offenses? Was there any
15 discussions about that?

16 A. Once we start trial, it was like, these charges
17 carry 85 percent. But other than that ...

18 Q. Okay. Was there any discussions about the fact that
19 these charges were called strike offenses or most serious
20 offenses? Was there any discussions about that?

21 A. Not to my knowledge.

22 Q. And forgive me, when you answered just a moment ago,
23 did you give a number of how many meetings y'all had? Did
24 you have an idea of how many times?

25 A. No, sir. I would say it was a good bit. I would

1 give her probably maybe six to eight.

2 Q. Okay. Now, is it fair to say that in these
3 meetings, as it got closer to trial, there was more talk
4 about what would happen at trial; is that fair?

5 A. Yes, sir.

6 Q. Prior to this case, had you ever been through a jury
7 trial before?

8 A. No, sir.

9 Q. Was there any discussions with either of your
10 attorneys about how that process in South Carolina took
11 place, how a trial in South Carolina happened?

12 A. Yes, sir.

13 Q. Is it during these discussions that you started
14 talking about what defense you would have at trial?

15 A. Self-defense.

16 Q. Do you recall whether that's something that you
17 suggested to your attorneys, your attorneys suggested to you,
18 or was it --

19 A. I suggested that.

20 Q. When you did, was there any opposition from your
21 attorneys that that would be the defense?

22 A. We had a couple stumbling blocks, but we got over
23 it, and we just went with self-defense.

24 Q. Can you talk to the judge a little bit about those
25 stumbling blocks? What were the difficulties you were having

1 with you and your attorneys about that being your defense at
2 trial?

3 A. We just really didn't have -- we was trying -- I
4 guess they was trying to see what they were going to go on
5 with the self-defense. But I already had it in my mind it
6 was self-defense, because -- you want me to explain like the
7 night?

8 Q. We will get to that in just one second. During
9 these discussions, so there were several discussions about
10 self-defense and how it would be presented; is that fair?

11 A. Yes, sir.

12 Q. Okay. At trial, at trial during the opening
13 statement -- I believe Mr. Kozelski gave opening statement;
14 is that right?

15 A. Yes, sir.

16 Q. During opening statement, is what was presented what
17 you thought was going to be presented or different than you
18 thought was going to be presented?

19 A. The self-defense, yes, sir, the self-defense, I know
20 that would have been presented as far as -- but just a lot of
21 things that was said, I didn't know it was going to come out
22 like that.

23 Q. They hadn't told you how they were going to argue
24 self-defense?

25 A. No, besides the trial strategy.

1 Q. So you knew the theory of self-defense, but you
2 didn't know the details?

3 A. Yes, sir.

4 Q. Now, as we get through some specifics here about the
5 trial, is your major argument about how they presented that
6 defense to the jury? Is that your major argument today to
7 the judge?

8 A. Yes, sir.

9 Q. Okay. First of all, generally, was there some
10 problem you had with the way that your attorneys dealt with
11 the solicitor's questioning of the State's witnesses?

12 A. Yes, sir.

13 Q. What was your problem with the way they handled?

14 A. About how Mr. Bruce Durant, how he was leading the
15 witnesses during the trial. I mean, just common sense. I
16 could have just gone in the trial and just sit in the
17 audience and I would know how he was leading them. I would
18 have been like, well, that's the person or found him guilty
19 or however the case is.

20 Q. And that wasn't just to one witness, that was
21 throughout the trial, is that right?

22 A. Yes, sir.

23 Q. I'm going to jump ahead to after the State rested
24 their case, and then we will come back to some things. Okay?
25 Did you have a discussion with the judge at your trial about

1 whether you would testify or not? Do you remember having
2 that discussion?

3 A. Yes, sir.

4 Q. Did you tell the judge you wanted to testify or did
5 not want to testify?

6 A. I wasn't going to testify.

7 Q. Let's talk to Judge Cooper about that a little bit.
8 What discussions did he have with your attorneys about
9 whether you were going to testify or not?

10 A. She was just -- Ms. Lorelle Proctor was just telling
11 me it wasn't a good idea to testify, because you would be
12 cross-examined by the solicitor, the State. They have that
13 chance to, whatever. But if you want to, you could but, it
14 wouldn't be a great idea, for whatever reason.

15 Q. Well, other than the fact you would have to answer
16 questions by the solicitor's office, why did she think it was
17 a bad idea; do you recall?

18 A. I really don't have a clue.

19 Q. After that discussion, did you feel like, if you
20 wanted to, you could have testified or did you feel like you
21 couldn't testify after that discussion?

22 A. No, I could have testified.

23 Q. But you ultimately told Judge Jefferson that you
24 were not going to?

25 A. Yes, sir.

1 Q. Did you feel Ms. Proctor or Mr. Kozelski was
2 prepared to question you if you did testify?

3 A. I'm not even sure, honestly; not even sure.

4 Q. Is that part of what led you to decide not to
5 testify?

6 A. Yes, sir.

7 Q. Now, so let's get to this. So you did not testify
8 in a self-defense trial? Your trial on self-defense, right,
9 you didn't testify?

10 A. No, I didn't testify.

11 Q. And part of that was based on advice of counsel,
12 right?

13 A. Yes, sir.

14 Q. I need you today to talk to Judge Cooper about if
15 you had testified, what would your testimony have been about
16 that evening, that morning, the incidents of that morning?

17 A. Well, Judge, if I would have testified, it would
18 definitely have changed the burden shifting of my case, of me
19 getting this 20 years. Because if I had testified, the jury
20 would have understand and heard my situation of why the
21 incident happened that night. And we would have been able to
22 present more evidence for the jury to hear that they wouldn't
23 have came out with this ruling.

24 Q. So, specifically, this was a shooting that happened
25 at a Kangaroo station, correct?

1 A. Yes, sir.

2 Q. If you had been called to testify, what would you
3 have told the jury back then about what you did at that gas
4 station?

5 A. That I acted in self-defense after some guys in a
6 gold Impala, they started shooting at random people, and I
7 shot back in self-defense.

8 Q. That would have been your testimony even after
9 hearing all of the State's witnesses and not a single witness
10 said they observed shooting from the Impala; that still would
11 have been your testimony?

12 A. Yes, sir.

13 Q. Do you recall discussions with your attorneys about
14 witnesses, other than the people who testified at trial,
15 indicating that they did see shots coming from the Impala?

16 A. Yes, sir, I did, actually. Well, I don't have it
17 with me, but I have paperwork and documents that the 911
18 caller, I don't know who it was, a guy or female, but did
19 call saying there was a guy, a gold Impala shooting at a guy
20 with a white T-shirt on foot. And if I had that witness,
21 things would have changed, yes.

22 Q. Were you the guy in the white T-shirt?

23 A. Yes, sir.

24 Q. And did you have discussions about that piece of
25 evidence with Ms. Proctor?

1 A. Yes, sir.

2 Q. She talked to you about it?

3 A. Yes, sir.

4 Q. She knew about the 911 call?

5 A. Yes, sir. She said it was irrelevant because they
6 can say that happened down the road or anything like that,
7 like.

8 Q. Let's jump off from that.

9 And, Judge, I know you have the record. I can get
10 you a page number in a moment if you need it.

11 But, generally, there was this discussion where the
12 State was trying to present some testimony about what
13 happened after the Kangaroo. Do you remember that?

14 A. Yes, sir.

15 Q. And do you recall that your attorneys and the
16 solicitor made an agreement, a written agreement?

17 A. Yes, sir.

18 Q. A stipulation, do you remember that?

19 A. Yes, sir.

20 Q. What conversations did your attorneys have with you
21 before they made that agreement with the State?

22 A. Well, Mr. Kozelski, I mean, he was like just beating
23 in my head, man, if they say a -- if the jury see a dead
24 body, it's automatically going to find you guilty. And I
25 kept repeating, I not sitting in the county jail 26 months

1 just to be found guilty or whatever. For really me acting in
2 self-defense, it was wrong, but that's the way I acted.

3 Q. So your attorneys not only wanted to keep out
4 information about a shooting later, but they wanted to keep
5 out the autopsy and all that?

6 A. Mr. Bruce Durant, he wanted to keep it out. That's
7 why he signed a stipulation about the GSR and the gun being
8 found in the car and that.

9 Q. We will get to that in just a second. Your
10 attorneys, they were wanting to keep certain things out,
11 right?

12 A. Yes, sir, about what happened down the road, because
13 it was irrelevant. Nobody knows what happened down road.

14 Q. You had a discussion with your attorneys about
15 that?

16 A. Yes, sir.

17 Q. You understood that's what they were trying to
18 block, right?

19 A. No, sir. Yeah, that morning, when we went that
20 morning starting trial.

21 Q. Did any of your charges pertain to any shooting
22 other than right there at the gas station?

23 A. No. Well, at the murder that happened down the
24 road.

25 Q. When you were originally arrested, correct? I

1 apologize. The charges you went to trial on?

2 A. It was all at the gas station.

3 Q. Okay. Did you have any issue with the State talking
4 about the later shooting you are talking about, the person
5 being dead?

6 A. No, sir.

7 Q. Did you tell your attorneys that?

8 A. Yes, sir.

9 Q. Now, let's flip it. What information were you
10 hoping your attorneys would use that the stipulation gave up;
11 do you recall?

12 A. As far as the GSR and the gun being found in the car
13 and the five spent shell casings that were found in the car,
14 probably the DNA being positive with GSR on hands, all of
15 them. And I believe that would have given me a claim for
16 self-defense. And it would have been accurate, instead of
17 going off the trial strategy.

18 MR. DAVIS: Your Honor, if I could have just one
19 moment.

20 BY MR. DAVIS:

21 Q. Mr. Washington, just a couple final questions.

22 THE COURT: What was -- where is the stipulation?

23 MR. DAVIS: Just a moment, Your Honor.

24 MS. OLIVE: Your Honor, I believe it's page 219
25 through 221.

1 THE WITNESS: And during the course of trial --

2 MR. DAVIS: Just a second, Mr. Washington. May I
3 continue?

4 THE COURT: Yeah. You can continue.

5 BY MR. DAVIS:.

6 Q. Thank you, Your Honor. Give me just a second,
7 Mr. Washington. Is it your testimony that -- is it your
8 testimony that you wish you had testified about your
9 self-defense?

10 A. Yes, sir.

11 Q. And why is it that you didn't?

12 A. Because just listening to lawyers or whatever, just
13 wasn't a good idea. For what reason, I really don't know,
14 because they are saying, oh, Mr. Bruce Durant, he got the
15 chance to ask you a lot of different questions and all these
16 other things.

17 THE COURT: Did you have a prior record?

18 THE WITNESS: Yes, sir, I had a prior record,
19 possession of marijuana. And I think it was two those.

20 MR. DAVIS: In the transcript, Judge Jefferson
21 discussed that. And it would not have been allowed to go
22 into if he had testified.

23 THE COURT: Well, I've seen her colloquy, her
24 question and answer on his right not to testify. I didn't
25 see the part about his record.

1 MR. DAVIS: It was, and he states it accurately. It
2 was two prior marijuana convictions. And so the Court had
3 ruled that would not have been something the State would have
4 gone into.

5 BY MR. DAVIS:

6 Q. Domoneik, help me on the math. Do you remember how
7 old you were when you started trial?

8 A. I was 27.

9 Q. First trial ever, correct?

10 A. Yes, sir.

11 Q. Okay. I don't want to belabor the point. We talked
12 about the evidence that Ms. Proctor and you discussed, the
13 911 call recording. Okay?

14 A. Yes, sir.

15 Q. Separate from that, do you remember talking with her
16 about what was in discovery about the witness Joaquin
17 Washington?

18 A. Yeah. We talked about all the witnesses, actually.
19 But at this point in time, I really just don't remember what
20 Joaquin Washington said, because I don't have my motion.

21 Q. That's okay. But to be clear on that, back at the
22 time of your trial, when Ms. Proctor had provided you with
23 your discovery; is that right?

24 A. Yes, sir.

25 MR. DAVIS: Domoneik, thank you. That's all the

1 questions I have right now. The attorney general has some
2 questions for you.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q. Good morning, Mr. Washington.

6 A. Good morning.

7 Q. So you testified that, essentially, your testimony,
8 if you had testified at trial in your defense would have been
9 that you were shooting in self-defense because you had been
10 shot from within the gold Impala?

11 A. Yes, ma'am.

12 Q. And you testified that you disagreed with the
13 stipulation that your attorneys entered into?

14 A. No. The stipulation, I did agree, because I didn't
15 know what I was doing. And I was just going off their --
16 just going with them, because they had been through this and
17 I never been through a trial.

18 Q. So you were relying on the advice of your attorneys?

19 A. Yes, ma'am.

20 Q. And the nature of what they are trying to keep out
21 was that after the shots were fired at the gas station, the
22 gold Impala drove off and was subsequently chased by another
23 car that fired shots into the gold Impala and actually
24 killing the driver, which is the one that you were alleged to
25 have shot, correct?

1 A. I didn't kill nobody.

2 Q. Right, but that's the whole thing that your
3 attorneys were trying to keep the jury from hearing, that
4 this man actually eventually died, but it was by the hands of
5 another person that has never been identified?

6 A. Yes, ma'am.

7 Q. Okay. So do you disagree -- so now you are saying
8 you disagree with that evidence being kept out of your trial?

9 A. The stipulation, not what happened down the road,
10 but I disagree with the GSR that was positive on the hands
11 and the gun and the five -- the five shell casings that was
12 found.

13 Q. Do you understand that in order to bring that
14 evidence in, the State would have been able to counter that
15 by bringing in evidence about the additional chase and
16 somebody having fired on the Impala later down the road, to
17 explain how the shell casings and GSR wound up in the car?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. And Ms. Jefferson, actually, she told my lawyers
21 that it was exculpatory. I didn't even know what that word
22 meant, actually. And she told me it was exculpatory to keep
23 this evidence out because I could be free of blame or
24 guilt.

25 Q. Well, that's just the judge having heard that

1 information at the very beginning of trial, who is not
2 familiar with all the facts of your case, right?

3 A. Yes, ma'am.

4 Q. Wouldn't you agree that your attorneys were in a
5 better position to determine what evidence should or should
6 not come in at trial?

7 A. I would agree, because they are my attorneys,
8 but ...

9 Q. Okay. I'm going to back up for a second. You said
10 that your attorney went over all the discovery with you; is
11 that right?

12 A. Yes, ma'am.

13 Q. And y'all met a number of times, maybe up to eight
14 times?

15 A. Yes, ma'am.

16 Q. And do you recall reviewing this video of the front
17 of the gas station?

18 A. Yes, ma'am.

19 Q. Okay. And you appear in that video?

20 A. Yes, ma'am.

21 Q. And the store clerk testified that she knew you,
22 didn't know your name, but she knew that was you, right, in
23 the video?

24 A. Yes, ma'am.

25 Q. And the jury saw that video as well?

1 A. Yes, ma'am.

2 Q. And she testified, actually, that the first shots
3 that she heard came from the left where you would have been
4 standing?

5 A. Yes, ma'am.

6 Q. You testified you had discussions with your
7 attorneys about presenting self-defense?

8 A. Yes, ma'am.

9 Q. And you said you had discussions about presenting
10 self-defense and how that would be presented?

11 A. Yes.

12 Q. But then you said they didn't explain to you how it
13 was going to be presented?

14 A. Yes, ma'am.

15 Q. So did they or did they not discuss with you how it
16 was going to be presented?

17 A. No, we discussed that we was going with
18 self-defense. But I was telling them, well, we need to just
19 go through and go with the gold car or whatever the case,
20 whatever really happened that night. And me relying on them
21 when they were telling me about the jury, if they see the
22 dead body, they are going to automatically find me guilty.
23 That changed my mind about a lot of things, not only
24 self-defense, because I just went with their trial strategy.
25 I really didn't know how we were going -- what they had

1 planned, but ...

2 Q. And this video of the front of the Kangaroo, that
3 you can clearly see the gold Impala in that video, right?

4 A. Yes, ma'am.

5 Q. And other people at trial testified that you walked
6 up to the car first and had some words with people in the
7 car?

8 A. I mean, yeah, they said -- yes, ma'am, we had words.

9 Q. And you testified you did discuss with your
10 attorneys whether or not you wanted to testify?

11 A. Yes, ma'am.

12 Q. You also testified that you still could have
13 testified, but you chose not to; is that correct?

14 A. Yes, ma'am, because it wasn't a good idea.

15 Q. And your testimony today is that your attorneys
16 would not have been prepared -- would not have been prepared
17 to question you if you testified?

18 A. I am not really sure if they would have been
19 prepared or not. I mean, I really can't answer that.

20 Q. But they didn't tell you that they would prepare you
21 prior to your testimony so that you were prepared to testify?

22 A. Yes, ma'am.

23 Q. They did or did not?

24 A. They did that.

25 Q. But they still told you it was your choice whether

1 you wanted to testify?

2 A. Yes, ma'am.

3 Q. And you said you had a problem with the way your
4 attorneys handled how the solicitor was leading witnesses.
5 Is there any specific testimony that you can refer to?

6 A. Yes, ma'am, but I just don't have that right in
7 front of me at the moment.

8 Q. Based on your recollection --

9 MR. DAVIS: Your Honor, I'm going to object to this.
10 He's not a lawyer. During presenting my case, I will ask
11 strategy questions about evidentiary issues.

12 THE COURT: Sustained.

13 BY MS. OLIVE:

14 Q. And you testified that if you had testified, in
15 addition to presenting your defense that the people in the
16 gold Impala were shooting at you first, you said you could
17 have gotten less than 20 years?

18 A. I would have went home. I would have went home.

19 Q. And, again, you understand that you were facing up
20 to 30 years on each of those attempted murder charges at
21 trial?

22 A. Yes, ma'am.

23 Q. And you understand if you are successful here today,
24 all of these charges will still be brought against you, or if
25 those will be sustained, you can get sentenced consecutively?

1 A. Yes, ma'am.

2 MS. OLIVE: Beg the Court's indulgence, Your Honor.
3 That's all the questions I have.

4 MR. DAVIS: May it please the Court.

5 REDIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Couple of things, Mr. Washington. Do you recall
8 your attorney's closing argument?

9 A. Yes, sir, I do recall.

10 Q. Did you ever discuss using a defense that you shot
11 at the blue car, not the gold car? Was that ever discussed?

12 A. No, sir. No, sir.

13 Q. So this is the first time you heard that theory when
14 your attorney was saying closing arguments?

15 A. Yes. No. No, I can't say that. Right before
16 trial, when they were going with the trial strategy or
17 whatever the case, at that point in time, I really was
18 clueless, honestly, because I never been through no trial
19 cases. So I was going, whatever, whatever, whatever, sounds
20 good, so I could get home to my kids and stuff.

21 Q. But to be clear, if you had testified, would you
22 have testified you were shooting at the blue car or gold car?

23 A. I would testify I was shooting at the gold car.

24 Q. Final issue, just to give the judge a time frame
25 here, we talked about somewhere in the neighborhood of eight

1 meetings with your attorneys. Can you tell the judge what
2 your date of arrest was up in Virginia? When did you get
3 arrested?

4 A. That was May 17th, 2011.

5 Q. And, of course -- did they keep you for a while or
6 did they drive you back real quick?

7 A. No, I stayed in the county jail maybe a couple of
8 days. And then Detective Boyd, I think, and U.S. Marshal --
9 no, whoever that was, I don't know, they came and got me and
10 brought me back here.

11 MR. DAVIS: Thank you, Mr. Washington. That's all
12 the questions I have of you.

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

14 THE COURT: Come down. Thank you.

15 MR. DAVIS: Your Honor, the applicant would call
16 Lorelle Proctor.

17 LORELLE PROCTOR,

18 having been duly sworn, testifies as follows:

19 THE CLERK: For the record, if you would state your
20 first and last name and spell your last name.

21 THE WITNESS: Lorelle Proctor, P-r-o-c-t-o-r.

22 DIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q. Ms. Proctor, how many years have you been an
25 attorney?

1 A. I think 32, 33. I forget after awhile.

2 Q. And has the entirety or majority of that time been
3 with the Charleston County Public Defender's Office?

4 A. Whole time spent in the public defender's office.

5 Q. Do you recall when this case got transferred from me
6 to you?

7 A. It would be in the fall. I mean, do you mean the
8 date? I don't.

9 Q. Do you recall I left the office at the end of 2011,
10 beginning of 2012? Would that refresh your memory as to when
11 I left at least?

12 A. Yes. So I received the file when you left.

13 Q. After discussions with Mr. Washington and reviewing
14 discovery, did it become clear that this was not going to
15 resolve itself through any type of guilty plea?

16 A. Yes.

17 Q. After that, were there discussions about what the
18 defense would be at trial?

19 A. Yes.

20 Q. And you understood that he intended for you to
21 defend this as a self-defense claim?

22 A. Yes.

23 Q. Is it fair that a majority of the witnesses either
24 did not see where shots were coming from or did not see shots
25 coming from the gold Impala? Majority of witnesses fell into

1 that category; is that fair?

2 A. I would have to look at the transcript again. It's
3 been a while, but that's probably right, I think. The
4 problem is, we had the video. And that was our biggest
5 problem, that this was all on video for the gas station.

6 Q. So that precluded alibi, "it wasn't me," as
7 defenses, correct?

8 A. Yes.

9 Q. There was more than one witness at the scene
10 identifying Domoneik as being there, number one, correct?

11 A. Correct.

12 Q. And actually firing a weapon, correct?

13 A. Correct.

14 Q. Have you, in your experience, had a successful
15 self-defense claim where the defendant did not testify that
16 they were in fear and defending themselves?

17 A. Now that I think about it, I don't know if I've ever
18 had a self-defense case. They usually end up working itself
19 out, but that would be correct. But this case was, I think,
20 complicated because of what happened afterwards.

21 Q. Meaning the continued shootout?

22 A. The continuation of the shootout.

23 Q. We will get back to that in a second. I will put it
24 the other way. It would be normal if you went to trial to a
25 self-defense case that you would expect the client to testify

1 about being in fear and testifying about that?

2 A. Correct.

3 Q. Now, in this case, is it true that you did advise
4 Mr. Washington not to testify?

5 A. I will be honest, I can't remember. I'm sure that
6 if he wanted to testify, we would have said fine. I never
7 told a client he could not testify at his own trial. I'm
8 sure that we went over it with him and told him the pros and
9 cons of what could happen if he did testify, but that's
10 always their decision.

11 Q. And, certainly, Mr. Durant is in the courtroom. He
12 was the lead solicitor in the case, correct?

13 A. Yes.

14 Q. Many, many years of experience as well?

15 A. Yes.

16 Q. You've tried several cases against Mr. Durant over
17 the years?

18 A. Yes.

19 Q. His skill at cross-examination, would that have been
20 a concern of yours?

21 A. Yes.

22 Q. Given the complexity of this case and the
23 continuation of the facts, would a fear of opening the door
24 be an issue, would have been an issue?

25 A. Yes.

1 THE COURT: Let me interrupt you. You keep skirting
2 around what happened after the facts. I don't have any idea
3 what happened and so the -- how it would lead to a
4 recommendation that he not testify, because of something -- I
5 don't -- everybody in the room knows what happened except me.

6 MR. DAVIS: I will dive right into that, Judge, if
7 we can.

8 THE COURT: There's the witness.

9 MR. DAVIS: I understand, Judge.

10 THE WITNESS: And like I said, this is to the best
11 of my recollection, because it happened a few years ago. But
12 what happened is, this was like at 2 in the morning once the
13 bars had closed. And every -- it's a picture -- we have
14 video of the Kangaroo gas station, which is on the corner of
15 Folly Road. There are very few cars there. And all of a
16 sudden, because it's two o'clock and bars are closing, more
17 cars come. More cars coming. All of a sudden, there are --
18 there are probably 50 people in the parking lot coming in and
19 out of the store, getting gas, standing outside talking.

20 And all of a sudden, it erupts in gunfire. It's
21 like a shootout at the O.K. Corral. People are shooting.
22 There are -- the lady that is working the counter at the
23 store at the gas station is trying to rush people out of the
24 door so she can lock the door, because she's afraid people
25 are going to come in and start shooting. So there's quite a

1 bit of chaos. This is all being recorded. They do have a
2 video.

3 All of a sudden, shots are fired. They are coming
4 from every direction. How they never hit a gas pump and that
5 place did not blow up is still shocking to me. There were
6 probably 20 to 30 shots fired at that gas station. Nobody
7 hit a gas tank. I don't know why. They were in the ceiling.
8 They were everywhere but into a gas tank.

9 You see a gold Impala drive up. Some words were
10 exchanged between Mr. Washington, I think, and somebody in
11 the Impala. Shot -- then there are other people on the other
12 side with guns. And at the very end, you see Mr. Washington
13 hold his hand out and shoot.

14 THE COURT: Into the car?

15 THE WITNESS: Well, that was our contention, he
16 wasn't shooting at the gold Impala, he was shooting at the
17 people that were shooting at him. But it was how you could
18 see the video. You couldn't really tell.

19 So everybody takes off, takes off. The cars,
20 everybody takes off. Well, going down the road, not very far
21 down the road, the people in the gold Impala, somebody pulls
22 up to them in, I think, a truck, if I recall, and shoots into
23 the car. They wreck. I think the driver or the person -- I
24 can't remember who, somebody dies in the car. But it
25 continues all the way down Folly Road, down to -- they cross

1 the bridges. They end up on Ashley River Road, I think, near
2 Carriage Lane.

3 This was a long process. So they ended up all the
4 way down into West Ashley. As a matter of fact, some of the
5 shots went into a couple of lawyers' offices that are there
6 on Carriage Lane.

7 And so we, because it was the people -- the person
8 in the gold Impala that died, and that's who the fight was
9 with, we were trying to keep that evidence out. And
10 Mr. Durant wanted it to come in. We had -- I think
11 Mr. Kozelski can explain this later. He wrote a brief on it,
12 to keep out that and to keep out the fact that the person in
13 the gold Impala died, because it would have looked -- we just
14 felt like then everybody could assume that it could have been
15 Mr. Washington, because he was the one that was shooting at
16 the gas station.

17 So it was very complicated in that we were trying to
18 skirt around not to bring all that up. So that is what
19 happened, because the person in the gold Impala did die three
20 or four minutes later, but they don't know who shot him. But
21 I think Mr. Durant wanted to assume that it was
22 Mr. Washington. So we had to sort of skirt around all of
23 those issues. But I think Mr. Kozelski, who did the memo,
24 can explain it better.

25 THE COURT: Well, explain the stipulation.

1 THE WITNESS: I haven't seen the stipulation. I
2 would have to look at it again. As I didn't really know
3 until today what his allegations were on this PCR, so ...

4 THE COURT: I've got a transcript.

5 THE WITNESS: No, I have the transcript, but I
6 don't --

7 THE COURT: If you look at page 219 and 220.

8 MR. DAVIS: Judge, may I have a moment? There was a
9 plea that was read in.

10 THE WITNESS: I don't remember what it says. Oh:
11 The parties agree that no one from the gold Impala shot at
12 the defendant, Domoneik Washington, at the Kangaroo. Parties
13 agree that Anton Wilson died from causes unrelated to being
14 shot at the Kangaroo and is not available to testify.

15 MR. DAVIS: And, Judge, just so you know, on 433,
16 lines 15 through 21, is the exact introduction of what Ms.
17 Proctor just read, when it was actually presented as
18 evidence, 433, lines 15 through 21.

19 THE COURT: Well, on 219, there's another. It looks
20 like an agreement: No mention of any weapon found in the
21 gold Impala.

22 MR. DAVIS: Yes, Judge. I will touch on that in
23 just a moment what was given on my defense for the
24 stipulation.

25 THE COURT: Go ahead.

1 MR. DAVIS: Thank you.

2 BY MR. DAVIS:

3 Q. Ms. Proctor, let's start with that. What you
4 received for Mr. Washington was that there was no discussion
5 about this ongoing shootout, correct?

6 A. Yes.

7 Q. No discussion about the deceased, correct?

8 A. Correct.

9 Q. No discussion about an autopsy?

10 A. Correct.

11 Q. Was the intention of the stipulation?

12 A. Was the intention, but I think Mr. Durant got it
13 out, the word "autopsy" out during it at some point. Yes,
14 but we had, as a matter of fact, Mr. Kozelski wrote a memo in
15 support of all of this to exclude that testimony. Because we
16 were very afraid of that testimony coming out and the jury
17 assuming -- could assume that he was shooting at the gold
18 Impala. Because that, I think, at the beginning of trial,
19 was what Mr. Durant wanted to bring out. We had a couple of
20 conversations about that and trying to keep it out, which was
21 our main goal, and we did. We were able to keep that out of
22 the trial.

23 Q. Do you happen to have the transcript with you?

24 A. I do.

25 Q. Let's just deal with housekeeping matter. One of

1 the things you hoped to keep out was the autopsy. And you
2 mentioned the autopsy.

3 A. Yes.

4 Q. Do you recall that the medical examiner testified?

5 A. Yes.

6 Q. And when called, though, she was addressed by the
7 State as doctor, as opposed to medical examiner; do you
8 recall that?

9 A. I don't. I mean, I believe you, if it's in the
10 transcript. I just don't remember.

11 Q. The doctor began testifying on page 4 -- large
12 number 427. But I will direct you to 429. Top of 429, line
13 5, the doctor testifies that -- talking about a bullet
14 wound -- one went from the decedent's left side to his right
15 side; do you recall that?

16 A. I see it, yes.

17 Q. And the judge interrupted, because the doctor, the
18 autopsy referred to one of the victims as decedent,
19 correct?

20 A. Correct.

21 Q. There was a side bar on that?

22 A. Correct.

23 Q. And but you did not request a curative instruction,
24 correct?

25 A. Right, because I think that brought more attention

1 to it. I was hoping the jury wasn't paying attention at that
2 point. But once you have an instruction, then the jury knows
3 exactly what you are saying. So I wanted to let it slide,
4 that part.

5 Q. Bottom of page 430, line 21 and 22, you did request
6 a mistrial, and it was denied, correct?

7 A. Yes.

8 Q. In return for the State intending not to talk about
9 those items we just mentioned, what you gave up, however, was
10 the fact that there was a revolver found in the Impala and
11 all five shell casings had been fired, correct?

12 A. Repeat that.

13 Q. Sure. One of the things you gave up in the
14 stipulation was, you were not going to be able to talk about
15 the revolver found in the Impala, five-shot revolver, all
16 five had been fired?

17 A. Correct.

18 Q. Additionally, you were not going to be able to talk
19 about the fact that the three occupants of the Impala, the
20 deceased, Mr. Wilson, Mr. Bryant and Mr. Wittrell, who
21 testified, you gave up the opportunity to talk about the fact
22 that they were found with the gunshots residue on their
23 hands, correct?

24 A. Correct.

25 Q. I would like to turn your attention to page 85. And

1 before I give you an exact line number, your biggest concern
2 was Mr. Durant was going to talk about this continuation of
3 this shootout, and in front of the jury, attempt to implicate
4 Mr. Washington, even though he's not charged with murder,
5 implicate him in the murder; that was your fear, correct?

6 A. Yes.

7 Q. Page 85, beginning on Line 4, and I will let you
8 read down through line 11. And then I've got a question for
9 you.

10 A. Okay.

11 Q. So Mr. Durant was not going to make that argument,
12 he specifically tells the Court that he is not going to
13 allege that Mr. Washington fired the fatal shot?

14 A. This was -- this is a conversation that he, if you
15 look, he was having with Mr. Kozelski on the record. So I
16 think you need to ask those questions to him, because --

17 Q. But it's fair that the court, Judge Jefferson, was
18 involved in that conversation?

19 A. She was involved in it. But that is what he,
20 Mr. Kozelski, is explaining, is why we didn't want that in.
21 And I think he goes into great length with that.

22 Q. I will ask a simpler question. In those seven
23 lines, Mr. Durant indicates that he is not going to make the
24 argument that Mr. Washington fired the fatal shot; is that
25 fair?

1 A. Yes.

2 THE COURT: Where is that?

3 MR. DAVIS: Page 85, lines 4 through 11.

4 THE COURT: It says just the opposite: We are
5 alleging this defendant shot him with a 9-millimeter
6 bullet.

7 MR. DAVIS: At the Kangaroo, Your Honor. And may I
8 follow up with another question, Your Honor?

9 BY MR. DAVIS:

10 Q. You recall in the discovery that the fatal shot from
11 forensic evidence was a higher caliber rifle, fired from a
12 rifle, as opposed to a 9-millimeter handgun; do you recall
13 that?

14 A. I don't.

15 Q. Do you recall reviewing the transcript from the
16 preliminary hearing that I would have handled?

17 A. No. As I said, when we received our PCR packet, it
18 said that he didn't know what his allegations were going to
19 be until today. So I didn't really know what you wanted me
20 to look at.

21 Q. Do you recall when you received the case and it had
22 already been reduced from the defense a murder to attempted
23 murder as to Mr. -- as to the victim, Antwan Wilson? Do you
24 recall that?

25 A. Yes. And back to your previous question, when we

1 were arguing this with Judge Jefferson, the stipulation, I
2 think Mr. Kozelski says, I think it is the same victim that
3 he's accused of attempting to murder is later murdered right
4 down the street. And so that was our big concern. Because
5 they are saying, the State is saying he shot him at the gas
6 station. And then two minutes later, he's found dead in a
7 car where somebody takes off from the gas station.

8 And that is why during this whole trial we were
9 trying to keep that out. And at first we thought Judge
10 Jefferson was going to let it in. She was undecided for a
11 while. She said, well, we will get to it later, which sort
12 of confused, I think, Mr. Durant and I, because she didn't
13 rule on it at the beginning. And so we weren't sure if it
14 was going to come in or not. But our main goal was to keep
15 that out, because we thought it was going to be very
16 prejudicial to the jury to assume that the person that they
17 say he was shooting at, which we didn't believe he was
18 shooting at, died three minutes later from a gunshot.

19 Q. A separate gunshot to the back of his head from a
20 different caliber weapon?

21 A. Right, right. But I'm sure they would have argued
22 that there were other guns in the car. But we just still
23 felt that that should not -- we thought it was too
24 prejudicial.

25 THE COURT: There was no evidence that

1 Mr. Washington shot the deceased, was there?

2 THE WITNESS: I don't know.

3 THE COURT: I mean, at trial?

4 THE WITNESS: Oh, at trial? I don't think it ever
5 came out at trial. I think -- because they never found the
6 car that did the shooting, if I remember.

7 THE COURT: The gold Impala?

8 THE WITNESS: No. The gold Impala wrecked. And
9 that's where the deceased was. And I think, from my
10 understanding, a gold truck -- they never found out who was
11 in the car that shot at the gold Impala.

12 BY MR. DAVIS:

13 Q. After the gas station?

14 A. Yes, because they don't -- when everybody ran in the
15 gas station, they weren't sure, I don't think, which car
16 Domoneik got into.

17 THE COURT: So he got into a car also?

18 THE WITNESS: I think everybody fled.

19 THE COURT: He didn't flee on foot?

20 THE WITNESS: No. So I think that's what we were
21 trying to keep all of that out. Because --

22 THE COURT: So he could have been the one in the
23 car?

24 THE WITNESS: The jury could have inferred that, if
25 I recall. And also, after that, the people that supposedly

1 shot the people in the gold Impala, kept going. And that's
2 where the shootout was again on St. Andrews Boulevard. So it
3 was a lengthy shootout.

4 THE COURT: Okay.

5 BY MR. DAVIS:.

6 Q. The three indictments against Domoneik, were all
7 three for attempted murder, correct?

8 A. The first one was for murder.

9 Q. At trial?

10 A. Trial, yes.

11 Q. At trial, three counts of attempted murder, correct?

12 A. Yes.

13 Q. Three occupants of the gold Impala, correct?

14 A. Pardon?

15 Q. The victims were the three in the gold Impala?

16 A. Oh, yes, yes.

17 Q. It's your understanding that each of those charges
18 dealt with conduct that Domoneik was alleged to have done at
19 the gas station?

20 A. Correct.

21 Q. So the State getting into subsequent shootings, you
22 felt was irrelevant and prejudicial?

23 A. Highly prejudicial, considering it happened in such
24 I was close amount of time. I think it was a couple of
25 minutes.

1 Q. But at trial, you were not defending Domoneik from
2 the subsequent shooting? That's not the substance of the
3 indictments?

4 A. Correct.

5 Q. Nor were you defending him against murder?

6 A. Right.

7 MR. DAVIS: Judge, hopefully, I can just reference
8 the second page of the transcript. It appears the State
9 called 13 witnesses. I'm counting from Will Muerhead (ph) to
10 Ellen Rhymer (ph).

11 BY MR. DAVIS:

12 Q. Is it fair to say, Ms. Proctor, that one of the, if
13 not the most crucial witness, was Ms. Robinson, the employee
14 of the gas station?

15 A. Yes.

16 Q. Had a pretrial hearing about her identification of
17 Domoneik, right?

18 A. Yes.

19 Q. And then the judge, I believe at the end of that --
20 anyway, she was allowed to testify about the identification
21 in front of the jury, correct?

22 A. Correct.

23 Q. Let me -- and Mr. Durant would have handled the
24 direct examination of all of the witnesses?

25 A. Of his witnesses, yes. I don't remember if he had a

1 co-counsel or not. I think he did all of them himself.

2 Q. I asked this before just as a lead-in. You tried
3 multiple serious cases with Mr. Durant as the lead solicitor?

4 A. Yes.

5 Q. You are familiar with his style of prosecution?

6 A. Yes.

7 Q. Is it fair to say that, when possible, he tells a
8 story? He leads the witnesses even on direct?

9 THE COURT: You are on the record.

10 THE WITNESS: I mean, I can't remember. I mean, I'm
11 sure -- I can't answer that question.

12 BY MR. DAVIS:

13 Q. Would it surprise you that during the entirety of
14 Ms. Robinson, the employee from the gas station, some 20
15 pages of direct testimony, that you made no leading
16 objections? Would that surprise you?

17 A. I would have to reread her whole testimony.

18 MR. DAVIS: And, Judge, obviously --

19 A. I haven't looked at it since then, so I didn't know
20 that was an allegation. If you want, I can stop and read her
21 testimony. I don't know if I objected or not.

22 Q. If the record reflects that you did not, that
23 would -- you would rely on the accuracy of the record?

24 A. Yes.

25 Q. Edward Wittrell was one of the occupants of the gold

1 Impala, correct?

2 A. Yes.

3 Q. And so he was one of the accusers, one of the
4 victims in the indictments?

5 A. Yes.

6 Q. You recall he also testified at trial? And I will
7 help you on that one.

8 A. Yes, page 1, yes.

9 Q. And I will direct you to page 197, line 22, 22
10 through 25.

11 A. I'm sorry, page 197?

12 Q. Yes, line 22 through 25.

13 A. Oh, we are asking Bruce not to lead.

14 Q. You did object to those line numbers?

15 A. Yes.

16 Q. And on page 199, line 6 through 9?

17 A. Yes.

18 Q. Another objection to leading?

19 A. Yes.

20 Q. And this is to Mr. Wittrell, Wittrell one of the
21 alleged victims in the case?

22 A. Yes.

23 Q. And then on page 203, line 22 through 24, even
24 during an in-camera portion of the testimony, did you object
25 to leading?

1 A. Yes.

2 Q. If the record reflect that's the only three times
3 during Mr. Wittrell's testimony you objected to leading, you
4 would rely on the accuracy of the record?

5 A. Yes.

6 Q. There's another E. Robinson who testified. Do you
7 remember Ervette Robinson who was a witness at the scene who
8 also testified? Do you recall that gentleman?

9 A. If you can tell me which page?

10 Q. Sure. I'm sorry. Large number page 225.

11 A. Yes.

12 Q. And do you recall he was, to refresh your memory, he
13 was there on the scene with his girlfriend, Ms. Truesdale?
14 Do you recall the two of them being there and testifying?

15 A. I don't recall, but I see that is in here.

16 Q. Do you recall during Mr. Ervette Robinson's
17 testimony, he identified Domoneik being on the scene?

18 A. Yes.

19 Q. And I will direct you to page 231.

20 A. Where I object again to leading?

21 Q. Line 7.

22 A. Yes.

23 Q. There's an objection to leading, and on page 235,
24 line 4?

25 MS. OLIVE: Your Honor, I'm going to object at this

1 point. If Mr. Davis is trying to point to specific instances
2 in the record where there's a failure to object, I think he
3 needs to point to those specific instances. Moreover, there
4 was never any specific allegation of failure to object. And
5 now we are going through the whole record.

6 MR. DAVIS: This is the last question, Your Honor.

7 THE COURT: Overruled.

8 MS. OLIVE: Thank you, Your Honor.

9 BY MR. DAVIS:

10 Q. Page 235, line 4, an objection to leading?

11 A. Yes.

12 Q. And if the record shows that those are the only two
13 times you objected during Mr. Robinson's testimony, would you
14 agree with the accuracy of the record?

15 A. I would have to look, but if that's what you say,
16 then that's true.

17 MR. DAVIS: And, Judge, I will note each time there
18 was an objection, except for the one in-camera, it was
19 sustained as a proper objection. If I can have just one
20 moment.

21 BY MR. DAVIS:

22 Q. Ms. Proctor, in concluding the case, since
23 Mr. Washington did not testify, did that alter your closing
24 argument?

25 A. I don't understand your question.

1 Q. All along, this had been a self-defense trial,
2 correct?

3 A. Yes.

4 Q. But in closing, instead of arguing that he was -- in
5 closing, you argued that he was shooting at a separate
6 vehicle, a blue vehicle, correct?

7 A. Correct.

8 Q. Not the gold Impala?

9 A. Right.

10 Q. Was it not your understanding from talking to your
11 client throughout the whole lead-up to this case, that it was
12 his direction to you that he was defending from shots that he
13 perceived coming from the gold Impala?

14 A. I will be honest, I don't remember. I do not recall
15 at this time. I would have to look at my notes and reread
16 this. As I said, if I knew about that before, I would have
17 known to look at that. So at this moment, I just can't
18 remember.

19 Q. I guess I will flip then. Do you recall any
20 conversation with your client that he said, I was firing
21 shots at the blue car, not the gold car? Do you recall him
22 ever telling you that?

23 A. I don't remember. He could have.

24 Q. I'm sorry.

25 A. What was that question again, now that I'm thinking

1 about it?

2 Q. That's all right. Do you recall Mr. Washington ever
3 telling you that he fired shots at the blue vehicle, not the
4 gold vehicle?

5 A. I want to say yes, but I would have to relook at my
6 notes. Because I think that's what the video -- what's on
7 the video, if I recall, that it was the blue car. But I will
8 be honest, I just can't remember. I would have to look
9 through all that. If I knew about it sooner, I would have
10 looked at my notes. I just cannot remember.

11 Q. Certainly, your argument was because of the way the
12 camera was situated --

13 A. Yes.

14 Q. -- that it refracted things, and where exactly he
15 was pointing was the issue?

16 A. As a matter of fact, we hired an expert to slow down
17 the video. And we spent most of our time on that video. As
18 I said, Mr. Kozelski found an expert that could slow it down,
19 because the video was the most damaging to his case. And
20 that's what we were trying to show, where he was shooting and
21 which angle, which was very hard from the way the cameras
22 were at the Kangaroo.

23 I remember we went out there one night and tried to
24 look at all the bullet holes, because there were quite a few,
25 to see where everybody was shooting.

1 Q. Do you recall during conversations with Judge
2 Jefferson about charges, not getting the self-defense charge?

3 A. I remember asking for it. And if I recall, she said
4 no. But I know we talked about self-defense, a charge of it.
5 And she didn't believe that there's any self-defense, so she
6 said no.

7 MR. DAVIS: Ms. Proctor, thank you. No other
8 questions.

9 Thank you, Your Honor.

10 MS. OLIVE: May it please the Court.

11 CROSS-EXAMINATION

12 BY MS. OLIVE:

13 Q. Ms. Proctor, thank you for being here today.

14 Generally, do you recall how many times you met with
15 Mr. Washington prior to trial?

16 A. I do not. I knew we met a lot. We were able to
17 reserve a room at the jail so that I was able to take the
18 video and show him. And he and I went through the video
19 quite a few times. And there were a lot of pictures. We
20 were able to do that. So I was able to show him the video.

21 Q. Did you discuss any possible -- well, did you
22 discuss possible defenses with Mr. Washington, specifically
23 the defense of self-defense?

24 A. Yes.

25 Q. Were there any other defenses available to him, to

1 your knowledge?

2 A. I don't believe so, because of the video.

3 Q. And, again, you said that that video was a big
4 problem?

5 A. Yes.

6 Q. And why was that?

7 A. Because he was on the video. It was -- the video I
8 knew was the State's biggest piece of evidence. And it
9 showed, unfortunately, showed Mr. Washington in the video.
10 But you didn't see things that were happening on the side.
11 But I think it was enough for the jury to see what happened.
12 It was a lengthy video.

13 Q. Was it important for your defense to be consistent
14 with what was depicted in the video?

15 A. Yes.

16 Q. Is that something you would have discussed with
17 Mr. Washington?

18 A. Yes.

19 Q. And, Ms. Proctor, just to refresh your recollection
20 concerning the stipulation and those discussions that
21 happened with you and Mr. Kozelski and the solicitor and the
22 judge, I'm going to refer you to pages 88 through 89. And
23 will just ask that you look over that to yourself just to
24 sort of refresh your memory about those discussions, as well
25 as page 91.

1 A. Are these pretrial hearings?

2 Q. Yes.

3 A. Okay.

4 Q. Was your theory at trial ever going to be that
5 Mr. Washington was shooting -- well, let me ask you this.
6 Leading up to this trial, what exactly was your theory of
7 self-defense?

8 A. That he was being shot at.

9 Q. Okay. By who?

10 A. I think the people in the blue car, if I can
11 remember. I think it was people in the blue car.

12 Q. Okay.

13 A. I think.

14 Q. How would it have affected this case if the theory
15 had been that Mr. Washington was defending himself against
16 individuals in the gold Impala?

17 A. I'm sorry, I was reading. Pardon?

18 Q. I'm sorry. How would it have affected this case if
19 the theory that you proceeded on at trial was that
20 Mr. Washington was shooting in self-defense against the
21 individuals in the gold Impala?

22 A. I would have to reread this, because I can't -- I
23 will be honest, I cannot recall at the time, because this --
24 what I'm reading right now is what Mr. Kozelski's arguing
25 with the judge. So I think that question needs to be asked

1 of him, because this is what they were arguing about, his
2 brief that we were trying to keep -- make sure that the
3 judge -- we weren't sure what Judge Jefferson was going to
4 let in at the beginning of trial, to be honest. I think that
5 was one of the problems.

6 And I knew that Mr. Durant wanted it to come in.
7 And the judge didn't really rule on it. So we really weren't
8 sure what she was going to let in. It was, more or less,
9 let's see what's going to happen. And so we were concerned
10 about that, because we had -- John had written a memo about
11 it, because we were very concerned that that was going to be
12 very confusing to the jury if they are saying -- if the
13 defense is -- I mean, if the State is alleging that he is
14 shooting at somebody in the gold Impala, and then three
15 minutes later, they are dead from a shot being at a shootout,
16 so we were very concerned about that.

17 So when we started the trial, we weren't quite sure
18 what was coming in and what wasn't. And I think that's why
19 we made quite a few arguments. And as the trial went on, we
20 never really did get a ruling on that, I don't think.
21 Because I think Judge Jefferson was, like, well, let me see
22 how the trial goes. Because she was, like, you are just
23 wasting time, let's get moving. So I don't think we ever did
24 answer that. So that was one thing we were concerned about.

25 Q. Ultimately, that was resolved through the

1 stipulation, right?

2 A. Yes, later on, yes. It was complicated because
3 there were so many gunshots, so many people shooting. I
4 think they found 28 gun holes and gunshots. So it was hard
5 to narrow this down to what we were saying Mr. Washington was
6 involved in. And, unfortunately, he was on video. So we
7 sort of had to work around that.

8 Q. And, Ms. Proctor, were you the lead attorney on this
9 case?

10 A. Yes.

11 Q. But Mr. Kozelski dealt with the issue concerning
12 the -- keeping out the evidence of the later chase?

13 A. Yes.

14 Q. Did you have discussions with Mr. Washington
15 concerning his right to testify?

16 A. Yes.

17 Q. Did you advise him on whether or not to testify?

18 A. Yes.

19 Q. And did you advise him -- what was that advice; do
20 you recall?

21 A. He didn't testify. So I don't recall, but I'm sure
22 we talked about it and left the decision up to him. But,
23 again, I think he knew that if he testified, then that the
24 State -- it was whether or not -- what he would open the door
25 to. And I think --

1 THE COURT: Even with the stipulation?

2 THE WITNESS: Yes, yes. I think -- this was, like I
3 say, it was very complicated. So it was trying to keep out
4 certain things from the jury, unfortunately. But I know we
5 had talked about whether or not he would testify, and he did
6 not want to testify.

7 THE COURT: Well, he testified here today that that
8 was based on your recommendation.

9 THE WITNESS: Well, we, obviously, discussed it.
10 And I'm sure that Mr. Kozelski and I explained to him if he
11 did testify, what questions could be asked, what would
12 happen.

13 THE COURT: Let me -- I've sort of been waiting for
14 this answer. Here you've got a client with no impeachable
15 record. I don't know what his personal life was like in
16 terms of his appearance to the jury. I don't know anything
17 about that. But you've got this stipulation. There's
18 nothing coming in about the later shooting. Is it simply --
19 the only thing I've heard is that we just can't put him up in
20 front of the solicitor. But I don't know what the solicitor,
21 or what you perceived would be the damning or damaging
22 evidence when you've got a client who has no record. You
23 can't impeach him.

24 We've got a stipulation saying he didn't shoot the
25 decedent. Seems to me, if you are alleging self-defense, why

1 would you not let him make that case?

2 THE WITNESS: Judge, I will be very honest with you,
3 I do not remember. I don't know whether he didn't want to
4 testify. I can go through all my notes again. I do not
5 recall. I can go through everything. As I said, I don't
6 recall him ever saying he wanted to testify. I would have to
7 look, but I don't know whether he said, I don't want to
8 testify.

9 THE COURT: But couldn't you say then, if you are
10 really serious that this is a self-defense case, maybe you
11 should testify?

12 THE WITNESS: I can't recall. I didn't know that
13 was -- like I said, you've seen our PCR application. It was
14 blank. So --

15 THE COURT: I understand.

16 THE WITNESS: -- I didn't go through my whole box of
17 notes. But I'm sure that somewhere in there, we came to a
18 conclusion that he wouldn't. But I would have to -- I will
19 be honest, I don't remember why. But at the time, obviously,
20 if we thought it was going to help the case, we would have
21 had him testify. But I don't recall why. I don't remember
22 why he didn't.

23 THE COURT: Okay. I understand.

24 THE WITNESS: Maybe I can talk to my co-counsel. I
25 just don't remember. I've had so many cases since then.

1 THE COURT: Maybe we will hear from him.

2 THE WITNESS: I can look. I don't remember why.

3 THE COURT: I understand. Go ahead.

4 THE WITNESS: But I will be glad to look and see
5 what my notes say.

6 BY MS. OLIVE:

7 Q. You just testified if you thought it would help your
8 case, you would have encouraged him to testify?

9 A. Sure. Yes. I have had a lot of clients testify.
10 So there had to be a reason why he did not. And I don't know
11 at the time whether he didn't want to or what the reason was,
12 but I will look. I just cannot remember in this specific
13 case why he did not.

14 Q. And, again, this video at the gas station clearly
15 shows the gold Impala?

16 A. Yes.

17 THE COURT: Let's move along.

18 MS. OLIVE: Thank you, Your Honor.

19 BY MS. OLIVE:

20 Q. Ms. Proctor, do you always object to leading
21 questions?

22 A. Usually, yes.

23 Q. Even leading questions that are permitted, such as,
24 for background, that sort of thing?

25 A. Oh, no. I mean, what was -- no.

1 Q. I mean, not --

2 A. If they are permitted --

3 Q. Is every single -- if an answer -- excuse me. If a
4 question is asked in a leading manner, is it always
5 objectionable?

6 A. No.

7 Q. If you felt something -- do you generally object to
8 questions that you feel are objectionable?

9 A. Yes.

10 MS. OLIVE: Beg the Court's indulgence, Your Honor.

11 Thank you. That's all the questions I have.

12 THE COURT: Mr. Davis.

13 REDIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q. May it please the Court. I know I mentioned one
16 witness. I want to make sure I got the other on the record.

17 The stipulation was to protect things from coming
18 in. If you will turn to page 399, line 10, this is during
19 the direct examination of Susan Cromer by Mr. Durant.

20 Do you recall her being one of the collectors of
21 evidence in the case, for lack of a better way to describe
22 what this witness did?

23 A. Yes.

24 Q. And on Line 10, does she mention autopsy?

25 A. Yes.

1 Q. And you object or approached to object to that,
2 correct?

3 A. Yes.

4 Q. No curative instruction, no mistrial request at that
5 time; is that right?

6 A. No.

7 Q. And then one final housekeeping matter. On page
8 355, at the bottom starting on line 22 and continuing onto
9 the next page for a few lines, that's a moment where you are
10 having Domoneik add his signature to the stipulation that had
11 already been agreed upon. Is that what's going on between
12 the Court and the attorneys at that point?

13 A. Yes.

14 Q. In fact, the court asks: Why are you having the
15 defendant sign the stipulation; on Line 24, page 355?

16 A. Yes.

17 Q. You answer, the solicitor asked me to.

18 A. He said -- Mr. Durant said I had them both sign it,
19 yes.

20 Q. Can you recall in 32 years ever including your
21 client on a signature on stipulation other than this time?

22 A. Oh, I can't. I don't even -- I can't remember. I
23 mean, I could have. I'm not saying I haven't. Which
24 stipulation are we talking about here that we are signing?

25 Q. The stipulation --

1 A. I don't have a copy. Remember, I don't have a copy
2 it.

3 Q. They made the one he signed a court exhibit. Do you
4 recall that from the subsequent testimony there on page 357?

5 A. May I see the stipulation we are talking about?

6 Q. I do not have that. It was not part of the record,
7 but it was read into the record.

8 So on Line 12 of page 357, Mr. Durant is saying:
9 We'll mark this one as a Court's exhibit, Your Honor.

10 And the original stayed as the joint exhibit.

11 A. Okay. What is your question?

12 Q. My question was, other than this time, in 32 years,
13 do you recall ever having a client sign a stipulation that
14 was agreed to by the attorneys?

15 A. I will be honest, I do not remember if I ever have
16 or haven't. I don't know. I could have.

17 MR. DAVIS: No other questions, Your Honor.

18 THE COURT: Recross?

19 MS. OLIVE: Just briefly you, Your Honor.

20 RE CROSS-EXAMINATION

21 BY MS. OLIVE:

22 Q. Mr. Davis questioned you regarding requesting a
23 curative instruction. Didn't you testify before you didn't
24 ask for a curative instruction because you didn't want more
25 attention being drawn to that?

1 A. Correct. To me, doesn't seem great to keep bringing
2 it up.

3 THE COURT: All right. You may come down. Thank
4 you very much.

5 MR. DAVIS: May I have just a moment, Your Honor?

6 Your Honor, I would ask to re-call Mr. Washington
7 for a couple of questions based on that testimony. And that
8 would be the end of our presentation.

9 THE COURT: Are you calling --

10 MR. DAVIS: I want to re-call Mr. Washington for
11 just a couple of questions based on that testimony.

12 THE COURT: Okay. Come on up.

13 While he's coming up, Mr. Davis, I think you stated
14 in your opening that the State filed an Anders brief in this
15 case. They did file -- but they did file an arguable brief?

16 MR. DAVIS: The AG is the one that presented that.
17 If I didn't correct that, I apologize.

18 THE COURT: I'm sorry. The AG said that?

19 MR. DAVIS: Yes.

20 THE COURT: It's pursuant to Anders, but they did
21 brief an arguable legal issue which arose during the course
22 of trial. So the Court of Appeals did have that to consider
23 in their deliberations?

24 MR. DAVIS: That's correct. And I apologize if I
25 did not --

1 THE COURT: Mr. Washington, you are still under
2 oath. You may proceed.

3 DOMONEIK WASHINGTON,
4 having been previously sworn, testifies as follows:

5 FURTHER EXAMINATION

6 BY MR. DAVIS:

7 Q. During the entire time that Ms. Proctor and
8 Mr. Kozelski were your attorneys, did you ever indicate to
9 them that in defending yourself, you fired at the blue car?

10 A. No, sir.

11 MR. DAVIS: That's all I have, Your Honor. Thank
12 you.

13 THE COURT: Anything further?

14 MS. OLIVE: No questions, Your Honor.

15 THE COURT: Okay. Come on down. Thank you very
16 much.

17 MR. DAVIS: Judge, that would be the applicant's
18 case.

19 THE COURT: Anything on behalf of the State?

20 MS. OLIVE: Yes, Your Honor. The State would call
21 John Kozelski.

22 JOHN KOZELSKI,
23 having been duly sworn, testifies as follows:

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

1 THE WITNESS: John Kozelski, K-o-z-e-l-s-k-i.

2 DIRECT EXAMINATION

3 BY MS. OLIVE:

4 Q. Good afternoon, Mr. Kozelski. I apologize for
5 keeping you here so long. I appreciate you being with us.

6 You sat second chair in/Mr. Washington's case at
7 trial?

8 A. I did.

9 Q. And you prepared -- did you have strategy
10 discussions with Mr. Washington prior to trial?

11 A. We talked about strategy a little bit with
12 Mr. Washington. I think most of my strategy talk was with
13 Ms. Proctor.

14 Q. And you briefed this issue concerning the -- what
15 ultimately led to the stipulation about the later shooting?

16 A. Yes.

17 Q. Okay. What was the basis of your argument for
18 keeping that information out?

19 A. Well, mainly, we thought that the six-mile crime
20 scene that followed everything that happened at the Kangaroo
21 gas station was going to be highly prejudicial to
22 Mr. Washington. I think as Ms. Proctor elucidated up here
23 earlier, one of the things that I brought up to the court was
24 the fact that the same person who Mr. Washington was being
25 accused of attempting to murder was subsequently murdered two

1 miles down the road. And I did think that that was an
2 opportunity for Mr. Durant to sort of backdoor a murder
3 conviction into the trial.

4 Q. Do you recall Mr. Durant providing -- when y'all
5 were discussing this prior to trial, do you recall Mr. Durant
6 providing the court with the reasons why he was trying to
7 keep that evidence in?

8 A. I believe he did write a response to my memorandum
9 briefly, but I think the main thrust of his argument is that
10 it was part of the res gestae of the crime.

11 Q. Did it have anything to do with the fact that y'all
12 were planning to present self-defense as a defense?

13 A. I believe that Mr. Durant knew that our defense was
14 self-defense. But I do not believe he understood who we were
15 defending against, our argument, I guess, was against.

16 Q. And what was your argument of self-defense?

17 A. Well, basically, we were keeping everything down to
18 what happened at the Kangaroo gas station. It was all on
19 video. We thought that the charges could go forward. The
20 totality of the crime could go forward based just on that
21 video and nothing else. And looking at the video, it was
22 hard for us to see whether or not there were actual shots
23 coming from the gold Impala.

24 There was also testimony of some of the witnesses --
25 I don't think all of them testified -- but in the discovery

1 that there were bullets coming from the blue car that was
2 directly adjacent to the gold Impala. So we thought that the
3 best angle to take would be from the car that was also
4 shooting.

5 I mean, there were numerous shots, probably 25 to 30
6 gunshots, in the matter of a few seconds.

7 Q. Do you recall whether any occupants from the gold
8 Impala testified at trial?

9 A. There was one. I believe he did show up. The
10 driver was deceased. And then the other witness, I believe,
11 refused to testify.

12 Q. So was there any testimony at that trial that any
13 shots were fired from the gold Impala?

14 A. No. We sort of backed ourselves into a corner with
15 the trial strategy that we took. Essentially, I believe the
16 judge made some sort of comment that we couldn't have our
17 cake and eat it too, in the sense that we couldn't then later
18 argue that people were shooting from the gold Impala, even
19 though there was a gun located and gun shell casings that had
20 been spent in there, because that could have happened down
21 the road. We couldn't put a time on to it.

22 So if we were going to talk about the gun and the
23 Impala, we would open the door to everything that happened
24 subsequent to the Kangaroo gas station.

25 Q. And you testified that you were trying to keep

1 everything down to what happened at the gas station. And
2 there, again, was a video of the gas station. Did it appear
3 from the video that guns were being fired from the gold
4 Impala?

5 A. It is really hard to say. I think I've watched that
6 video 500 times. And it's just too hard to tell. It wasn't
7 definitive, I will tell you that.

8 Q. Do you recall a conversation with Mr. Washington
9 concerning his right to testify?

10 A. Vaguely.

11 Q. Would that have been a conversation that you had or
12 is that Ms. Proctor had with him?

13 A. I certainly would have been in the discussion to
14 somewhat help advise him as to whether or not it was the
15 right thing to do.

16 Q. Do you recall whether you had an opinion, or whether
17 an opinion was given to him about whether he should testify?

18 A. I honestly cannot remember whether I advised for him
19 to not testify or to testify.

20 Q. Do you recall what would have affected your advice
21 to him to testify or not testify?

22 A. I'm not sure. I think if we had known at the time
23 that the judge was not going to give a self-defense charge,
24 that that certainly would have affected our discussions. I
25 think we relied heavily on the video to show that evidence of

1 self-defense. But the judge clearly did not buy that. But
2 specifics to us giving him advice as to whether or not he
3 should testify, I honestly don't remember.

4 Q. But you testified your theory of self-defense were
5 that there were guns being fired from the blue car, right?

6 A. Yes. Our theory was that there were guns being
7 fired from multiple people and multiple directions. But,
8 yes, the blue car was directly towards Mr. Washington.

9 Q. And do you recall whether someone from that blue car
10 testified at trial?

11 A. There were -- I believe there was one of the
12 passengers in the car that did testify. There was another
13 that was on Mr. Durant's witness list that did not end up
14 testifying.

15 Q. Do you remember whether that affected any subsequent
16 decisions that were made at trial?

17 A. I think that the passenger of the blue car that did
18 testify wasn't as forthcoming with there being guns in the
19 car and gunfire in the car, but I don't know that that
20 affected how we went about the trial. It would have been one
21 of the very last witnesses, I would assume.

22 Q. Do you recall whether anyone testified at trial --
23 do you recall whether an occupant from the blue car testified
24 as to whether or not anyone from that car fired shots?

25 A. From my recollection of events, and I have not

1 reviewed the entire record, I do not believe anyone -- I
2 don't believe the person who testified in the blue car
3 testified that he shot any shots.

4 Q. Were you expecting their testimony to be different
5 than what they testified to at trial?

6 A. I think I was expecting them to be a little more
7 forthcoming. I think one of the witnesses in the car had
8 given multiple statements to police that people in that car
9 were firing over him. But Mr. Durant chose not to call him
10 at trial.

11 Q. That witness that gave statements that there were
12 multiple people firing in that car was not called to testify
13 at trial?

14 A. Exactly.

15 Q. Do you recall -- going back to Mr. Washington's
16 decision not to testify, do you recall whether he had a
17 desire to testify or not?

18 A. I do not recall whether or not he had a desire or
19 not.

20 MS. OLIVE: Beg the Court's indulgence, Your Honor.

21 BY MS. OLIVE:

22 Q. Do you recall whether you had discussions with
23 Mr. Washington about whether you would be preparing him to
24 testify in his own defense if he chose to testify?

25 A. I don't remember having any specific conversations

1 about preparing him. I don't think I would have been the one
2 to prepare him, so I can't say yes or no.

3 MS. OLIVE: That is all the questions I have. Thank
4 you.

5 RECROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q. In July of 2013, when this case went to trial, how
8 long had you been an attorney September of 18th?

9 A. Year and a half, two years.

10 Q. No doubt, Ms. Proctor was lead attorney in this
11 case?

12 A. No doubt.

13 Q. But you took the lead on this unique issue about
14 trying to block irrelevant subsequent prejudicial evidence,
15 correct?

16 A. I did. I enjoy writing.

17 Q. To summarize -- or to go back, you were afraid the
18 State would backdoor murder of the case into this trial; that
19 is your testimony, correct?

20 A. Yes.

21 Q. He was not charged with murder at the time of trial,
22 was he, Mr. Washington?

23 A. Not at the time of trial.

24 Q. So I will ask the open-ended question. How did
25 you -- what was your fear that the State would have brought

1 murder into a trial that had no murder charge pending?

2 A. Well, I do believe that Mr. Durant felt that
3 Mr. Washington was the right person, but did not have enough
4 evidence to do that. And I believe Mr. Washington testified
5 of this earlier, I did tell him several times that I think if
6 they see a dead body, a dead person, and that person being
7 the same person they are accusing you of attempting to murder
8 minutes before, that the jury would be inclined to see this
9 sort of shootout that went six miles long, where a person is
10 dead, and they might feel, well, maybe he got away with
11 murder, but we will give him the lesser-included of attempted
12 murder, even though he wasn't charged with it at the time.

13 And we did have vigorous debates about this, Ms.
14 Proctor and I, as to whether or not that was the right trial
15 strategy to have. But I did feel that it was the best at
16 that time.

17 Q. And the memo you would have filed would have been
18 filed prior to the trial, prior to this transcript?

19 A. Yes.

20 Q. During the conversations pretrial with Judge
21 Jefferson, do you recall quite a bit back and forth on this
22 issue, correct?

23 A. Yes.

24 Q. And do you recall that she refused to rule on the
25 pretrial, wanted to take it up when it came up through

1 testimony, correct?

2 A. That's correct.

3 Q. And in the discussions in pretrial, did the State
4 not concede two justifications for wanting to talk about it,
5 meaning, one, to explain why Wilson wasn't there to testify?
6 Wasn't that one of their justification for wanting to get
7 into this?

8 A. Yes. And I think that led to part of the
9 stipulation.

10 Q. And, secondly, and again -- do you have a copy of
11 the transcript?

12 A. I do.

13 Q. On page 85, beginning at line 4 -- and, again, these
14 discussions continue for quite some time, correct?

15 A. Correct.

16 Q. So I don't -- if there's something that you recall,
17 that's fine, but I'm going to reference you to 4 through 11
18 where Mr. Durant is talking. If you will take a look at
19 those seven lines.

20 Does Mr. Durant not concede there that he is not
21 going to do the very thing that you were afraid of, which is
22 backdoor a murder conviction into this trial?

23 A. I believe that is what Mr. Durant told the court.

24 Q. Mr. Wittrell, which was one of the passengers in the
25 gold Impala, testified, correct?

1 A. Yes.

2 Q. He was actually shot, if you recall, correct?

3 A. He was. I believe all of them were.

4 Q. Okay. Mr. Bryant, I think he talked about this with
5 the attorney general, Mr. Bryant did not testify?

6 A. That's correct.

7 Q. There was some discussion, I believe, in-camera
8 about his unwillingness to testify, or Mr. Durant informed
9 the court, correct?

10 A. Yes, that's true.

11 Q. Defense brought that up in closing, that he wasn't
12 there to testify. Do you recall Ms. Proctor bringing that up
13 in closing?

14 A. I believe that was a point that we made up.

15 Q. Mr. Wilson, of course, deceased, could not
16 testify?

17 A. That's correct.

18 Q. You don't recall any testimony of shots from the
19 blue sedan, correct?

20 A. I don't recall it coming out in testimony, or at
21 least not as clear as we would have liked. I think it could
22 have been eluded to, but it wasn't -- I don't think there was
23 a clear indication.

24 Q. And Mr. Manigault and Mr. Hazel, do you recall those
25 being the occupants that testified?

1 A. I believe Manigault might have been the crime scene
2 technician.

3 Q. There were two Manigaults.

4 A. Oh, okay. Okay. That could be the case.

5 Q. I will refer you to the very first page of the
6 index, there was a Don Manigault, as opposed to Paul
7 Manigault?

8 A. Paul Manigault.

9 Q. Do you recall Don Manigault and Laval Hazel, two
10 witnesses for the State, being occupants of the blue sedan?

11 A. Yes, yes. I do believe they testified. I'm not
12 sure if one or either admitted to shooting in the car.

13 Q. So despite the fact that there's no testimony about
14 shots from that car, and despite the defense protestation,
15 there are bullet holes in the blue Impala. The defense was,
16 Domoneik shot at the blue car, not the gold car?

17 A. I still think, through the testimony, we could have
18 argued through the video that there were shots being fired
19 from the blue car, especially -- we matched that up with the
20 forensics that were found, the shell casings that were found
21 around the Kangaroo and the path of the blue car. I don't
22 know if we did a good enough job drawing those lines for the
23 jurors to connect. But we tried to avoid the gold Impala at
24 all costs.

25 MR. DAVIS: No other questions. Thank you.'

1 MS. OLIVE: No questions?

2 THE COURT: You may come down.

3 MS. OLIVE: Your Honor, the State would move to hold
4 the record open for an opportunity for Ms. Proctor to review
5 her notes concerning whether or not she has anything in her
6 file pertaining to advising Mr. Washington of his right to
7 testify. Respectfully, Your Honor, I have requested for
8 Mr. Rodney -- excuse me, Mr. Davis --

9 THE COURT: Who?

10 MS. OLIVE: Mr. Davis, I called him Mr. Rodney. I
11 apologize.

12 I did request specific allegations of ineffective of
13 counsel from him a couple of weeks ago. And in candor with
14 the Court, Your Honor, I received that information this
15 morning. Ms. Proctor indicated she's not had sufficient time
16 to review her file. I am not asking for an extraordinary
17 amount of time, just enough time for her to see if he might
18 be able to locate some sort of notes in her file and perhaps
19 re-call her to testify.

20 THE COURT: I will be here this week.

21 MS. OLIVE: Thank you, Your Honor.

22 THE COURT: So as a matter of fact, I beg your
23 pardon, I will be here through Thursday. Shouldn't take long
24 to do that.

25 MR. DAVIS: Your Honor, with that, would you allow,

1 I will withhold argument until there's anything that could be
2 added.

3 THE COURT: I will be glad to listen to your
4 argument now if you are prepared to do that.

5 MR. DAVIS: I apologize. Was that the State's case?
6 I may have jumped ahead.

7 MS. OLIVE: I am.

8 MR. DAVIS: May it please the Court, Your Honor. We
9 will actually start with Mr. Kozelski's very last comment,
10 "tried to avoid the gold Impala at all costs." That may best
11 sum up my argument on behalf of Domoneik. His defense,
12 despite him telling them, I defended myself against shots
13 that I thought came from the gold Impala, despite that he
14 testified to that, clearly, there's been no refuting of that
15 from his attorneys.

16 Certainly, this was a complicated factual scenario,
17 both for the attorneys then, for Judge Jefferson, for us
18 today to sort through. It's a factually complicated
19 situation.

20 In their attempt to block testimony about the
21 ongoing shootout, they left crucial evidence, prevented
22 crucial evidence from being presented to the jury on
23 self-defense. Not only did they leave gunshots residue,
24 positive tests from the occupants of the Impala, they left
25 out the fact that a revolver five-shot revolver with every

1 round fired that was found in the Impala, those two major
2 pieces of evidence were never presented to the jury.

3 And what they gained was simply no reference to the
4 deceased. Well, Mr. Durant said on the record Mr. Wittrell
5 was injured. He showed up and testified. Mr. Bryant didn't
6 want to have any part of this, didn't want to testify. He
7 was shot at and injured, didn't want to testify. The defense
8 used that against the State, or tried to use that against the
9 State in closing. Mr. Durant said, I just want to explain to
10 the jury why Mr. Wilson isn't coming in here and testifying.
11 He's deceased. We are not claiming Domoneik killed him. We
12 are just saying he shot at the car three times, attempted
13 murder at the gas station. But, Judge, let me talk about
14 what happened a few minutes later that caused him to be
15 deceased that he can't come in and testify to. Let me close
16 that up.

17 The stipulation was an attempt to resolve that
18 matter. But we would argue that defense gave too much away.
19 When you couple that with the fact that he was a guy, 27
20 years old, 11th grade expelled, has not got diploma or GED,
21 first time in any type of a trial, given the seriousness of
22 this is his first time in any trial, he's advised by his
23 attorneys you better not testify. He doesn't testify to
24 self-defense. They don't get a self-defense charge. And
25 they argue he fired at a car that he never wanted him to make

1 that argument.

2 Judge, based on that burden, we would argue that his
3 attorneys were ineffective in that sense. One thing I want
4 to brush on, this is something that Domoneik has been
5 stressing throughout. I would argue that's the thrust of our
6 case, but I want to fully represent my client.

7 The employee of the gas station, Ms. Robinson,
8 testified from pages 155 through 176, approximately 20 pages.
9 The record will reflect there's no objection to leading
10 throughout that whole process. I know the State had
11 objection to the way I handled it. I did it in reverse. I
12 showed the very few times she did. The record speaks for
13 itself. You can see in the record how many times it's a
14 leading yes-or-no-answer question. Throughout the entirety
15 of Mr. Robinson's testimony, there's no objection to leading.

16 During Mr. Wittrell, one of the victims, during his
17 testimony, there are two objections in front of the jury, one
18 in-camera. That's the only one that's overruled.

19 Then during another eyewitness, one that says
20 Mr. Washington was out there and firing a gun, Mr. Ervette
21 Robinson, during his testimony, there's only two objections.
22 I noted what she did to highlight the absence of her
23 objections.

24 We would argue that his attorneys were ineffective
25 in presenting his defense case as he chose and informed them

1 he wanted to make his self-defense claim. And it fits with
2 the evidence that even is on the video.

3 Most fresh in my mind, together with Mr. Kozelski's
4 testimony that the video is -- hard to say if shots were
5 fired from the Impala from the video. It's not definitive.
6 They could have made the argument against the vehicle, where
7 the three victims came from, the vehicle with bullet holes in
8 it, as opposed to the other one, which would have been in
9 keeping with what Mr. Washington told them, what
10 Mr. Washington wanted to testify to.

11 He was young, without experience in the court
12 system, relied on his attorneys, and we will argue to his
13 detriment. Also, we would argue if he would have been
14 allowed to present his testimony and the State would have not
15 agreed to the stipulation preventing testimony about gunshots
16 residue and a fired weapon in the gold Impala, given that
17 additional evidence, the State -- or the jury would have most
18 likely either found him not guilty by self-defense or, Judge,
19 I think we can even argue certainly would have caused enough
20 doubt in at least one juror's mind to hang it up. If we can
21 show either one of those two outcome, it's a different
22 outcome than what actually happened, and we would argue we
23 have met our burden.

24 That's the, obviously, summary. I will not belabor
25 all the testimony of all the different witnesses, but that is

1 the thrust of our argument, Your Honor. Thank you very much.

2 MS. OLIVE: Thank you, Your Honor. Your Honor,
3 Mr. Washington has to prove both deficiency and prejudice in
4 order to prevail on any ineffective assistance of counsel
5 claim. He has this burden of proof.

6 Your Honor, there's a presumption that all
7 significant decisions made are made -- sorry.

8 Your Honor, Ms. Proctor has been practicing law for
9 32 years. She testified she's been with the public
10 defender's office for all of that time. Clearly, this was
11 not her first trial. And Your Honor has to presume that --
12 well, Mr. Washington testified that they advised him not to
13 testify. However, neither of his attorneys can recall
14 specifically what the discussion was with him. But Ms.
15 Proctor did testify that she would have encouraged him to
16 testify if she thought his testimony would have been helpful.
17 He -- no one -- no one prevented him from testifying, if
18 that's what he wanted to do.

19 In terms of counsel being ineffective for not
20 presenting the defense that Mr. Washington wanted them to, I
21 mean, that's why they are his attorneys. That's their job.
22 Their job is to look at the evidence and determine not only
23 based on what Mr. Washington tells them, but the story that
24 the evidence tells as well, what evidence -- what the
25 evidence is going to show at trial and what they can argue

1 based on what evidence is presented at trial.

2 Your Honor, the State argues there's no deficiency
3 concerning the stipulation that the State would not be
4 allowed to go into this chase. And we are not looking at the
5 full picture here, because there is an argument that's put
6 before the Court and, unfortunately, neither Ms. Proctor nor
7 Mr. Kozelski could quite recall, but the reason why the State
8 wanted -- did not want to exclude this evidence about the
9 subsequent shooting was because the State said, I assumed
10 that they are going to be presenting a self-defense claim.
11 This is on -- I believe is pages 88 through 91.

12 And what would have happened, if they would have
13 presented this evidence that someone was shooting from the
14 gold Impala, including there's been discussions about the gun
15 and shell casings in the Impala, the State would have
16 countered that evidence by saying the gun and the bullets and
17 the casings that were in the Impala came from the subsequent
18 shootout, because they were being shot at as they were
19 driving down the road, and they were defending themselves.

20 In addition, you have an individual from the Impala
21 testify. The jury saw the video of this gas station. They
22 saw this entire thing go down. His attorneys had to take all
23 of that information and craft the best possible defense. And
24 it's our position that there was no deficiency or prejudice
25 in excluding this evidence concerning the gold Impala because

1 it would have been inconsistent with the other evidence that
2 was presented at trial and still would not have -- there's
3 just simply no evidence of self-defense in this case.

4 The witnesses testified that -- the testimony is
5 consistent with Mr. Washington being the initial aggressor.
6 The eyewitness testimony was consistent with that.

7 Mr. Kozelski testified that there was another
8 individual that they expected to testify who was an occupant
9 in the blue car that would have supported their theory of
10 self-defense of the shots being fired from the blue car.
11 Mr. Kozelski testified that the substance of their
12 self-defense strategy was that the shots were being fired
13 from the blue car. He testified that was consistent with
14 what was being seen on the video.

15 Your Honor, we would also argue there's no
16 deficiency -- he showed no deficiency concerning his -- the
17 advice that his attorneys gave him concerning his right to
18 testify. And he showed no prejudice because, based on the
19 testimony he presented today, he would have testified that
20 shots were being fired on him from the gold Impala. And it's
21 our position that that -- he's not been able to show
22 prejudice with that. His testimony would not have made a
23 difference in the outcome of trial, considering there's
24 multiple eyewitnesses that testified from the scene. It's
25 not clear that there are shots being fired from the gold

1 Impala. But what does appear to happen from the video is
2 that there are shots being fired from the blue Lincoln.

3 Your Honor, that would be our argument.

4 THE COURT: All right. I will leave the record open
5 until Thursday at noon. And after that, I expect proposed
6 orders within 30 days.

7 MS. OLIVE: Thank you, Your Honor.

8 MR. DAVIS: Thank you, Your Honor.

9 (Whereupon, the proceedings were adjourned.)

10 (Whereupon, the following was continued on December
11 8, 2016.)

12 MS. OLIVE: Your Honor, the State had requested some
13 time to hold the record open for Ms. Proctor to more
14 thoroughly review her file to see if she had any notes
15 concerning --

16 THE COURT: Jury selection?

17 MS. OLIVE: This was Mr. Washington's decision to
18 testify or not testify.

19 MR. DAVIS: This was the shootout at the gas station
20 up to road that whole convoluted factual scenario. And they
21 had asked for more time to see if there's any notes about
22 discussion about his decision to testify or not. And, of
23 course, he didn't. He testified he wished he had.

24 MS. OLIVE: And she informed me she was unable to
25 find any notes in her file. So we would request that the

1 record be closed at this point.

2 THE COURT: Okay. Any objection?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: Okay. Record is closed on that case.

5 Do you want to put a number on it, what number is it?

6 MS. OLIVE: Yes, Your Honor. Sorry. It is
7 2015-CP-10-2257. And that was from Tuesday, December 6th
8 hearing.

9 THE COURT: All right. Record is closed.

10 (Whereupon, the proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Domoneik Antwan Washington, #359194,

2015-CP-10-2257

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED
2019 FEB 11 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court Applicants *pro se* application for post-conviction relief filed on April 20, 2015. Respondent made a Return to the application on February 5, 2016. On December 6, 2016, the matter was heard before this Court. Applicant was present and represented by his court-appointed counsel Rodney D. Davis.¹ The Respondent was represented by Assistant Attorney General Alicia Olive. Testimony at the hearing was received from the Applicant and his trial counsel Assistant Public Defenders Lorelle Proctor and John Kozelski. At the conclusion of the hearing, the Court took the matter under advisement. This Court has also received the transcript of the Record on Appeal and proposed Orders from both sides. This Order dismissing the Application follows.

PROCEDURAL HISTORY

Applicant, Domoneik Washington, #359194, is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of

¹ At the outset of the PCR hearing, it was brought to this Court's attention that Mr. Davis had handled Washington's preliminary hearing after the arrest in 2011, but did not continue to work on the case after that matter according to the records of the Public Defender's Office. Applicant asserted that he had no objection to Mr. Davis continuing to handle the post-conviction matter.

Court. Applicant was indicted at the November 2011 term of the Charleston County Grand Jury for three (3) counts of Attempted Murder (2011-GS-10-6881(victim Antwan Wilson), 6882 (victim Edward Wittrell, Jr.), 6883 (victim Ronald Bryant). Public Defenders Lorelle Proctor and John J. Kozelski represented him. Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for attempted murder and lesser included offenses of assault and battery of a high and aggravated nature. The Honorable Deadra L. Jefferson sentenced Applicant to incarceration for twenty (20) years for all three convictions, each to run concurrently.

A notice Appeal was filed on Applicant's behalf and the Appeal perfected. In the Appeal, Applicant was represented by LaNelle DuRant. On March 14, 2014, appellate counsel filed an *Anders* brief and requested to be relieved asserting as the sole arguable ground the following:

Did the trial court err in denying Appellant Washington's motion for a mistrial when one state's witness referred to the autopsy of Antwon Wilson, who was one of the victims of the attempted murder charge, and another state's witness referred to Wilson as the decedent after the state and defense had agreed to a stipulation that no mention would be made of the subsequent death of Wilson because there was no connection between the death of Wilson and Appellant Washington?

Anders Brief of Appellant

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Washington*, 2014-UP-434 (Filed on December 3, 2014). The Remittitur was issued on December 22, 2014.

ALLEGATIONS

In his April 20, 2015 *pro se* application, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. "Will explain at hearing;"
2. "Due Process 14th Amendment."

- a. "Will explain at hearing."
- 3. "Denied of Six(sic) Amendment at Trial:"
 - a. "Will explain at hearing."

During the PCR hearing, Applicant appeared to raise the following issues:

I. Ineffective Assistance of Counsel.

- a. Applicant rejected an 18 year plea offer because he thought the shooting was in self-defense.
- b. Applicant did not know his counsel's defense theory was that he was a shooter at a blue Lincoln rather than the gold Impala.
 - i. Applicant asserts that he was shooting at the gold Impala, not the blue car (note – stipulation that no one from the gold Impala shot at Applicant at the Kangaroo on March 30, 2011.)
 - ii. Applicant claims he learned of the "blue car" theory in the defense counsel's closing argument.
 - iii. Applicant denied at the PCR hearing that he shot at the blue car.
- c. Applicant asserts that the prosecution asked leading questions of witnesses without objection from counsel.
 - i. Applicant asserts that leading questions were asked of Edward Wittrell at pages 197, 199, 203.
 - ii. Applicant asserts that leading questions were asked of Evette Robinson at pages 231, 235.
- d. Counsel advised Applicant to not testify.
 - i. Applicant claims he should have testified and asserted that someone in the gold Impala shot at him and Applicant shot back.
 - ii. There was evidence from a 911 call that someone in the gold Impala was shooting and defense counsel knew about the call.
 - iii. Applicant's prior record had been suppressed by the Court which did not preclude his testifying and counsel should have recognized this fact in their strategy on advising Applicant whether or not to testify.
- e. Counsel was deficient in agreeing with the stipulation (even though it kept out the later shooting that resulted in a death.).

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- i. Counsel was aware that the gold Impala had gunshot residue, a gun, casings and DNA evidence.
- ii. Counsel was deficient because the jury learned that a victim was dead.

Upon review of the Record on Appeal, including the trial transcript, *State v. Washington*, 2014-US-434 (Filed on December 3, 2014), and the PCR hearing transcript, this Court DENIES the application for post-conviction relief. The Court makes the following findings of fact and conclusions of law pursuant to S.C. Code §17-27-80.

Trial Record

Prior to trial, the State offered Applicant a plea deal for 18 years and concurrent sentences. Applicant stated, upon inquiry by the trial judge, he rejected the offer and confirmed he was not forced to reject the plea.

Defense Counsel's Opening Statement

In his opening statement, defense counsel Kozelski specifically asserted that Domoneik did shoot that night and that "he shot because somebody was shooting at him." He stated that when somebody shoots a gun at you "you have the absolute right to shoot back as long as you were not the first aggressor." He further stated the following without objection:

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... And I encourage all of you to pay very close attention to what is going on in that video and even at the end of this trial when you go back to your jury rooms you are going to be able to take that video back with you. And no matter how many times you watch it from different angles, on different speeds, it is not going to be able to tell you the events that led up to this night. It is not going to be able to reveal who shot the first shot. What it shows is chaos. And about midway through that chaos Domoneik can be seen running and shooting at a person he believes is shooting at him.

This is natural law. Self-defense has always existed. And it will continue to exist to preserve the most fundamental aspect of our society, human life. Saving his life was why Domoneik shot. Saving his life is why Domoneik ran.

The Trial

On March 30, 2011, a famous rapper named Lil Phat was to perform at the Palm Tree Club on James Island in Charleston County. About 2:30 in the morning a fight broke out between some James Island people, which included Applicant and three people from downtown Charleston, the victims in this case: Antwan Wilson, Edward Wittrell, and Ronald Bryant.

The club closed after the fight, and a crowd gathered at the Kangaroo station nearby. The three "downtown" men pulled up in a gold Impala to get gas. Shots rang out from the adjacent car wash. Applicant then appeared and began arguing with the men in the gold Impala. He pulled a gun and fired shots that went into the Impala where Antwan Wilson, Edward Wittrell, and Ronald Bryant were seated. The only person hit was the driver, Antwan Wilson, who was shot in the leg. The gold Impala then left heading towards town. All of this was caught on the store's video. No testimony was presented that any shots came from the gold Impala. A later shooting on Folly Road led to Antwan Wilson's death.

Equette Robinson, the clerk at the Kangaroo station during the incident, testified at trial. She identified Applicant as the person who shot at the gold Impala on March 30, 2011. She had seen him come in the Kangaroo almost every Saturday for over a year, usually late at night after the clubs closed. She did not know his name. When Applicant came to the door of the station just



prior to the shooting, she was going to ask him to pay for a hot dog he had stolen the previous Saturday. He did not come into the store, but began arguing with the men in the gold Impala. She saw Applicant shoot into the Impala and at the people inside it.

Edward Wittrell, one of the men from Charleston, was a passenger in the gold Impala. He testified the men had been to the Palm Tree Club to celebrate his birthday. They were involved in the earlier fight at the club. They left and went to the Kangaroo when the club closed. Wittrell admitted that he was intoxicated that night and did not remember much. He did remember Antwan Wilson getting shot at the Kangaroo station. He stated they left to go downtown to the hospital because Antwan was shot in the leg. According to Wittrell, neither he, Antwan, nor Ronald Bryant fired any shots while at the Kangaroo station.

In an *in camera* hearing, Wittrell explained that as they were on the way to the hospital, traveling down Folly Road, someone started shooting at them from behind. Their car wrecked because Antwan, who was driving, was shot in the back of his head and died. Wittrell was shot in his shoulder, and Bryant was shot in his head but survived. A gun was found in the Impala but Wittrell did not remember anyone shooting from the Impala.

Defense counsel objected to any testimony concerning this subsequent chase and shooting as it was not relevant to whether Applicant shot at and allegedly attempted to murder the "downtown men". The defense also argued it was too prejudicial, even if the trial court found it relevant. The State conceded that there was no evidence Applicant was associated with either the subsequent shooting or the vehicle from which the later shooting came. However, the state argued, it was part of the *res gestae* and should be admitted because the jury needed to know Antwan Wilson was dead and that was the reason he was not present at trial. The State also wanted to show that the gun and shell casings found in the gold Impala were from the shooting during the chase,



not at the Kangaroo station, because Applicant was claiming self-defense from the incident at the Kangaroo. The men in the Impala had gunshot residue on them as well.²

Contrary to the version of Applicant at the PCR hearing, defense counsel argued that their theory was not that the gold Impala occupants shot at Applicant at the Kangaroo station, but other people were shooting at him, and he was shooting back in self-defense. At least twenty-seven shots were fired during this "shoot-out."

The trial judge asked the State and defense to work out a stipulation that both could agree to since the defense was not arguing the victims were shooting at Applicant.³ The State agreed to

² The underlying issue of self-defense was discussed throughout the trial as decisions were made on stipulations and argument as a result of the opening statement by the defense. During the discussions leading up to the stipulations about the subsequent event involving the gold Impala, Judge Jefferson noted that whether individuals shot a gun from the gold Impala was relevant based upon what the defense said in opening statement. At that point the prosecution was trying to argue that they wanted to offer testimony about the guns being fired in the subsequent car chase to rebut the potential claim of self-defense at the Kangaroo. Deputy Solicitor DuRant feared that the defense would claim that the fired weapon in the Impala with 5 empty shells, would be used to suggest it was done at the Kangaroo, when it was the state's contention that it was likely used in the car chase. However, Kozelski was asserting that they did not need the gun in the Impala. When asked by the trial judge what their contention of self-defense was, counsel Proctor noted that it was based upon the video where there were a lot of people shooting. The trial judge then inquired about the defense's willingness to enter into a stipulation so that there was "no confusion about your contention that Antwan, Ronald and Edward did not shoot guns at the Kangaroo and that you are not going to mention anything about gunshot residue on their hands or anything about a gun in their car with spent shells."

³ The trial judge clarified her concerns about the limitations:

THE COURT: You said one thing. Now you are saying something else. You know, I - in terms of strategy and how y'all are going to try this case, I am not an advocate. My only job is to make sure there is a level playing field. And he is correct. I am not going to let you argue to this jury that only gunshots happened at this Kangaroo if they happened someplace else and there was alternate theories as to when those guns — that gun was shot.

Because the State has the burden of disproving self-defense. You have no burden. And I am not going to hamstring them in presenting their case and then

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say Antwan was killed in an unrelated incident. The State wanted to call the medical examiner to illicit testimony about into the bullet removed from Antwan's leg, but not the cause of Antwan's death.

The parties agreed on a stipulation which provided:

1. The parties agree that no one from the gold Impala shot at the defendant, Domoneik Washington, at the Kangaroo station in the early morning of March 30, 2011.
2. The parties agree that Antwan Wilson died from causes unrelated to being shot at the Kangaroo station and is not available to testify.

The agreement was also that:

"...there will be no mention by either party on direct or cross-examination or argument of any weapon found in the gold Impala after the crash or any positive gunshot residue tests performed on the occupants of the gold Impala."

Defense counsel Proctor stated she had explained the stipulation to Applicant and he agreed to the stipulation and agreement.

Witness Ervette Robinson testified he went to the Palm Tree club that evening where a fight broke out. He stated Shawn Walker drove him to the Kangaroo station. He stated he was

allow you to argue a completely opposite theory when the case is done and they can't present any testimony to refute self-defense.

Kozelski responded: "we are not arguing that the gold shot ...shot him."

MR. KOZELSKI: When, we mentioned self-defense in our opening you were saying that they — as an explanation for why Mr. Washington was shooting his gun in the first place, that people were shooting at him, he was shooting in self-defense.

THE COURT: So you are not going to say these people were shooting at him?

MR. KOZELSKI: No, Your Honor.

sitting in the back seat and Zadio Truesdale was sitting in the front. He stated they pulled in first, but subsequently moved the car so it wouldn't be jammed in. Robinson stated that while there, he talked to the Applicant who was yelling. Robinson did not know who Applicant was talking to. He stated he was trying to talk some sense into Applicant to get him to "chill out". Robinson said he was not able to see who started the shooting because he had his back turned. He stated he heard people calling for Applicant by his nickname "Chip".

Witness Zadio Truesdale testified she went to the Palm Tree club with Ervete Robinson and Shawn. She testified she saw her best friend's son, Ronald Bryant, taken from the club. She recognized that he was with Antwan Wilson. She said she tried to get Bryant to come in the car with her because he was from downtown. She stated there was always a "beef" between the people from downtown and James Island. She said Bryant left with Wilson. She left with her girlfriends to go to the Kangaroo station. She said she was on the telephone with Ronald's mother to tell her to come get him because she couldn't get him to go with her. She testified "I knew something was going to happen." She stated she saw a gold Impala arrive. She also saw people from the "Westchester" area show up. These included Applicant (Chip), Javon, Ishmael Lemon and James Washington. She said she had known them for years, but did not associate with them. She said they parked at the car wash. After both groups got there, "they were just acting real rowdy." At some point, there was fighting. She said when Applicant realized the guys from the club were in the gold Impala, he started shouting "y'all mother fuckers looking for me or some[thing] in that nature." When Applicant confronted them, she went into the Kangaroo while on the phone with Bryant's mom. She stated she went in because she saw that Applicant had a gun. She told the clerk she needed to call the police because something was about to happen. When she came back outside they were still fighting. She saw Applicant walking toward the gold Impala. She said she



heard a shot fired in the air and saw that James Washington shot upwards from the car wash. When the shooting started, she said she "hailed ass." She testified she did not see anyone else with guns because she left when she heard the gunshots.

Witness Don Manigault testified he was at the Palm Tree club with friends. They drove in John (Poppa John) Pendergrass's blue Lincoln. He stated he went to the club with Laval Hazel, Poppa John, and Jim. He said fights broke out at the club and everyone left because the club closed. They went to the Kangaroo station. In viewing the surveillance video, he pointed out the location of the blue Lincoln he was in, and a gold Impala parked next to them. He stated he did not know the people in the gold Impala by name. He recalled there were no shots coming from the gold Impala. He stated after they drove off, they heard shots in the background. However, Manigault confirmed that "a guy in my car shot back." He stated that when they were about to leave, a guy in his car shot back, but he did not know where he was shooting because he was ducking and in the back seat. Manigault stated he did not see who shot first. He stated that Hazel fired the shot "way after the first shot went off."

Witness Laval Hazel testified that he had gone to the club in the blue Lincoln to see the rapper. He stated while he was at the Kangaroo, a gold Impala pulled up in front of them. He stated nobody from that car was causing any problems and he recalled seeing them at the club. He recalled seeing a person start arguing with the people in the Impala, but he didn't pay attention to what they were arguing about. He recalled one of them saying "y'all are going to pay or y'all going to play." At that point all of them started arguing. Then shots were fired from the carwash area. He stated that he did not see any of the shots come from the gold Impala. He denied seeing anyone shooting a gun that night, but asserted he heard 4 or 5 shots come from the carwash area. He stated they took off after they heard the gunshots.



On cross examination, Hazel confirmed that he was in the blue Lincoln that night. He stated that the next day he talked to the police after he met with a lawyer. He learned from Joe McKelvey that McKelvey told the detectives Hazel had been shooting at the scene and that a detective was looking for him. Hazel gave the police a four-page statement at that time. In the statement he did not include any information that he had been shooting a gun that night. In his testimony, Hazel denied that he shot a gun that night.

In limine the crime scene investigator, Kathy Kjellman, with the Sheriff's Department testified she located shell casings and projectiles at the Kangaroo station parking lot. The shell casings were either .380 shell casings manufactured by TulAmmo, Blazer 9 millimeter shell casings, or GFI .380 shell casings. The gold Impala was subsequently searched and 4 bullet holes were found consistent with the area where the video showed someone shooting at the car. Further a projectile was located in the floorboard of the Impala. An objection was made for lack of foundation describing where the shots came from. The investigator testified the bullet holes in the vehicle were entrance as opposed to exit holes near the driver's side door. The Court sustained the objection to the extent that the witness could not testify as to what direction she perceived the bullets came from after reviewing the video.

The stipulation, signed by Applicant, was introduced, but not published at that time.

Kjellman testified that she had examined vehicles previously that were shot with gunfire. She opined that that three bullet holes on the driver's side door of the gold Impala originated from outside the car. She said the front windshield was struck by a bullet from outside and that she recovered a projectile from the driver's side floorboard.

Kjellman, using a diagram, placed the casings she found in the locations on the diagram. She testified that TulAmmo .380 shell casings were located together in one area. The Blazer nine

millimeter casings were located in a different area. The GFI shells casing were located in other identified areas.

SLED firearm and tool mark examiner, Susan Cromer, testified that the shell cases from each group were fired from the same weapon within each group, and different weapons between the groups of casings.⁴ She testified that the bullet found in Wilson's right thigh, the projectiles from the Kangaroo parking lot and the projectile from the floorboard of the Impala were all fired from one firearm. She opined it was a .38 caliber including possibly a 9 millimeter Luger, a .38 special, or .357 magnum. She further opined that based upon her review of the casings and other projectiles, there were at least four different weapons that night.

The Stipulation for the Jury

The state then proffered the stipulation to which the parties had agreed, to the jury. The stipulation was read which provided:

1. "The parties agree that no one from the gold Impala shot at the defendant, Domoneik Washington, at the Kangaroo in the early morning of March 30, 2011.
2. The parties agree that Antwan Wilson died from causes unrelated to being shot at the Kangaroo and is not available to testify."

Waiver of Right to Testify and Testimony

The Applicant waived his right to testify after inquiry by the trial judge. No evidence was presented by the defense.

⁴ During the testimony of Suzanne Cromer, the SLED expert in fire arms' identification, she referred to the bullet removed from Antwan Wilson during his autopsy. Defense counsel objected at a bench conference because the use of the word "autopsy" by the witness was outside their agreement and should be in the stipulation. Defense counsel said it was out of the bag, and she moved for a mistrial. The judge denied the motion but offered to give a curative instruction which defense counsel rejected.

Charge Conference about Self-Defense

During a charge conference, Judge Jefferson inquired whether Applicant was planning to assert any defenses because she had not heard any testimony about self-defense. No argument was raised by counsel about the need for a self-defense instruction.

A motion for directed verdict by the defense was denied. The trial judge then explained the instructions she was giving (which did not include self-defense). Defense counsel did not have any further objections or requests concerning the charge.

Closing Arguments

At the outset of his argument, Deputy Solicitor DuRant argued Applicant did not act in self-defense:

Defense counsel tells you that Mr. Washington was there and he was acting in self-defense. You have now heard two days of testimony in this case. And what you have not heard is one shred of evidence indicating that this defendant was acting in self-defense. Not one shred.

They have now entered into a stipulation which will go back to you in the jury room where they have agreed that no one from the gold Impala shot at the defendant, Domoneik Washington, at the Kangaroo that night. That matter has been decided. It is not an issue for you. Nor is self-defense an issue for you in this case. It is out of the case. Forget about it. It is time to move on. So what you need to decide next is whether or not this man, Domoneik Washington, was the one shooting the rounds into that gold Impala. And all the evidence points to the fact that he was.

The Solicitor's closing argument, through the use of the surveillance video, revealed that no one from the gold Impala shot at Applicant.

The argument by defense counsel Proctor sought to create a different version of the events based upon the viewing of the video. She contended that the State was asking the jury to make assumptions based upon seeing Applicant shoot into the gold Impala. She noted that Manigault and Hazel were in the blue Lincoln and that Manigault had stated that Hazel was shooting a gun.

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[- "a guy in my car shot back. . . a guy in my car did a couple shots back at them too"]. She pointed out that Hazel denied shooting in his testimony but the shell casings found indicated otherwise. She asserted the first thing he did was hire a lawyer before talking with the police. Proctor argued the blue car shooting was at the Kangaroo station.

Counsel then stated:

"And who were they shooting at? They were shooting at Domoneik Washington. Domoneik- Washington shot back at them because they were shooting at him. And the State has just assumed. When Mr. Kozelski gave his opening argument he said he shot in self-defense. So the State just again they assumed he must be talking about the gold Impala. But he wasn't. He is talking about the blue car that was shooting."

Proctor then played the video and asserted that Applicant enters the picture as the blue Lincoln was leaving. She further asserts that the video revealed that the Applicant's arm is up and he is not shooting down at the Impala's door. Proctor claimed Applicant was shooting at the blue car that was shooting at him and that there is evidence in the record that someone in the blue car was shooting. Counsel stated that the video reveals who was shooting. Laval Hazel and James Washington also had guns. Counsel claimed that the only reason Applicant was in court rather than the others, is because he was the only one on the video.

Counsel concluded her argument stressing that Applicant was shooting at the blue Lincoln, not the gold Impala.

Applicant was convicted of two counts of attempted murder and one count assault and battery of a high and aggravated nature. A motion for new trial was denied.

POST-CONVICTION RELIEF TESTIMONY

Applicant



Domoneik Washington testified he was represented at trial by Lorelle Proctor and John Kozelski of the Charleston County Public Defender's Office. He stated that after his conviction he was sentenced to 20 years. He stated that prior to trial he had been offered an 18 year sentence if he pled to all three charges. Although his attorney advice was to take the offer, Washington stated he rejected it because "I just didn't felt guilty or whatever and I wasn't going to plead to 18 years."

Applicant stated that counsel's advice about the success at trial was "50/50." However, he said his attorneys really did not say whether they would win or lose, but just that he needed to take the plea offer. Applicant stated that counsel Proctor met with him often. When they were getting close to trial, Proctor advised him it was not a good idea to go to trial and to take the plea offer. Applicant confirmed that he was provided a copy of the Rule 5 discovery material. He stated this material was reviewed with him by counsel. Applicant stated that counsel advised him of the potential punishment he was facing for attempted murder was 30 years. Applicant did not recall discussions about whether his charges could be run consecutive. He stated that he was aware the offenses carried sentences that required 85% service.

Applicant estimated that he met with counsel around 6 or 8 times. Although he had not been through a jury trial before, Applicant indicated that counsel had discussions with him about the process of a trial. He stated counsel discussed what defenses were available including self-defense. Applicant stated he suggested self-defense and not the attorneys. Applicant acknowledged there were stumbling blocks with this defense, but they got over it and agreed to self-defense. He testified there were several discussions about self-defense and how it would be presented at trial. Applicant stated counsel had not fully explained how they were going to argue self-defense, "besides the trial strategy." He claimed that he knew the theory of self-defense, but not the details.

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Waiver of Right to Testify

Applicant testified he told the judge that he was waiving the right to testify. He stated that counsel Proctor told him that it was not a good idea to testify because he would be examined by Solicitor DuRant. Applicant stated he did not know why counsel thought it would be a bad idea. However, after the discussions, Applicant admitted that he knew that he could have testified and ultimately told Judge Jefferson that he was not going to testify.

Self-Defense

Applicant claimed if he had testified the jury would have understood what happened that night.

Applicant stated he would have told the jury he had acted in self-defense after "some guys in a gold Impala, they started shooting at random people and I shot back in self-defense." He acknowledged that this would have been his testimony even though no trial witnesses said they observed any shooting coming from the Impala. He claimed that if he had "that witness" (who made a 911 call), the result would have been different. He confirmed that he spoke with counsel Proctor about the 911 call. However, he testified that counsel Proctor stated that the 911 call was irrelevant because the State could say the murder happened down Folly Road.

The Stipulation

Applicant stated that his counsel and the solicitor entered into a stipulation about evidence from the gold Impala. He said counsel Kozelski insisted to Applicant that if a jury saw a dead body, the jury would automatically find him guilty. He stated solicitor DuRant wanted to keep out evidence about the GSR and gun found in the gold Impala and his attorneys wanted to keep out

what happened down Folly Road. Applicant claimed he had no issue with the State talking about the later shooting and Antwan Wilson being dead and advised his attorneys of that position.

Applicant opined the information the defense attorneys gave up by the stipulation was the GSR, the gun found in the gold Impala, the five spent shell casings in the car, the positive DNA and GSR on the victim's hands. He felt that these would have given him a basis for a self-defense claim.

In hindsight, Applicant claims he wished that he would have testified in his defense. He stated that he did not because his lawyers felt he would be asked a lot of questions about other things. He had a prior record for two marijuana possession convictions. However, Judge Jefferson had already excluded those if he had testified.

Defense Counsel Lorelle Proctor

Counsel Proctor testified she had been an attorney with the Public Defender for around 33 years. She stated that after she received the file from Mr. Davis, it became clear this was not going to resolve itself as a guilty plea. She confirmed that there were discussions about self-defense and Applicant intended for his counsel to defend the case as a self-defense case. She confirmed that the majority of witnesses did not see where the shots came from and did not see shots coming from the gold Impala. She stated the biggest problem for the defense was the video. She confirmed there was more than one witness asserting that Applicant was there and shooting into the gold Impala. Proctor did not remember if she advised Applicant to not testify. She was sure that if he said he wanted to testify, she would have agreed to it. She was sure she would have gone over the pros and cons with him if he happened to testify, "but that's always their decision."



She stated that she had tried prior cases with Deputy Solicitor DuRant . She confirmed that his cross-examination tactics would have been a concern. She confirmed that given the complexity of the case, there was a concern that Applicant's testimony would open the door to otherwise inadmissible testimony. Counsel opined that she met many of times with the Applicant. She recalled reserving a room at the jail where they watched the video and reviewed many pictures. She recalled specifically discussing self-defense with Applicant and that no other defenses were available because of the video. She felt the video was state's biggest piece of evidence because the Applicant was on the video. She testified that they discussed with Applicant that the defense had to be consistent with the video.

Counsel Proctor confirmed the theory at trial was that Applicant was being shot at by the people in the blue Lincoln. She again stated that the reason for the stipulation was to keep from the jury the fact that the victim died shortly after the Applicant was alleged to have shot him. It was resolved by the stipulation.

Counsel again confirmed she discussed the Applicant's right to testify and but left the decision up to Applicant. Counsel stated that Applicant knew that if he testified, he opened the door to matters outside the stipulation. She was sure that the Applicant and counsel came to the conclusion that Applicant would not testify. She said that if they thought it was going to help the case, they would have had him testify.

Defense Counsel John Kozelski

Counsel Kozelski testified that he was second chair in the case. He stated that he briefed the issue to limit the crime scene to the Kangaroo station and exclude the car chase and shoot out that followed. He believed this information was highly prejudicial to his client.



Counsel stated that on the video, it was hard for him to see whether or not shots were coming from the gold Impala. Importantly, Kozelski opined that there were witnesses within the discovery that stated there were bullets coming from the blue Lincoln that was directly adjacent to the gold Impala. Further, counsel stated that there were no witnesses at trial who testified that any shots were fired from the gold Impala.

He vaguely recalled discussing the Applicant's right to testify, but could not recall if he advised him to testify or not. He thinks that if they were aware the judge was not going to charge self-defense, it would have affected their discussions. The theory rested upon the video and the fact that guns were being fired from multiple people and from multiple directions.

On cross-examination, Kozelski opined that DuRant thought Applicant was the person who killed Wilson but could not prove it. Kozelski expressed his fear that the dead body would make the jury think that Applicant may get away with murder and see the later shootout as an extension of the crime. Kozelski insisted the video showed shots were from the blue car. This matched up with the forensics and the path of the blue car. As Kozelski stated, "we tried to avoid the gold Impala at all costs."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INEFFECTIVE ASSISTANCE OF COUNSEL

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

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"We begin, as we always begin, with the presumption that counsel was effective." Greiner v. Wells, 417 F.3d 305, 320 (2d Cir.2005). "Actions or omissions by counsel that 'might be considered sound trial strategy' do not constitute ineffective assistance." Strickland, 466 U.S. at 690. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

Pertinent to this case is the issue concerning presenting inconsistent defense theories. The choice of defense theories is a tactical decision. Tactical decisions in aid of trial strategy are at the core of a lawyer's exercise of professional judgment. Only rarely will a court second-guess those choices and find that they constituted ineffective assistance of counsel. Strickland, *supra*, at 689, 104 S.Ct. at 2065. A lawyer is not required by the Sixth Amendment to present a single, coherent defense theory. Hendricks v. Calderon, 70 F.3d 1032, 1041 (9th Cir.1995), cert. denied, 517 U.S. 1111, 116 S.Ct. 1335, 134 L.Ed.2d 485 (1996). Counsel for a criminal defendant may, in the exercise of his or her professional judgment, present inconsistent defense theories without running

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the risk that such tactics will later be deemed ineffective assistance of counsel. Brown v. Dixon, 891 F.2d 490, 495 (4th Cir.1989), cert. denied, 495 U.S. 953, 110 S.Ct. 2220, 109 L.Ed.2d 545 (1990); see also White v. Singletary, 972 F.2d 1218, 1221 (11th Cir.1992), cert. denied, 515 U.S. 1170, 115 S.Ct. 2636, 132 L.Ed.2d 875 (1995) (rejecting claim that trial counsel's decision not to present inconsistent defense theories constituted ineffective assistance of counsel); Jones v. Kemp, 678 F.2d 929, 931 (11th Cir.1982) (same), cert. denied, 459 U.S. 1113, 103 S.Ct. 745, 74 L.Ed.2d 965 (1983); Fritchie v. McCarthy, 664 F.2d 208, 214 (9th Cir.1981) (same).

Claim of Self-Defense

This Court must determine whether the Applicant is credible in his assertion that his defense was that he was shooting at the gold Impala after its occupants had fired at him. This Court must find that the theory of self-defense intended by defense counsel and Applicant was knowingly presented to the jury. Counsel's theory was that Applicant was shooting into the blue Lincoln after an occupant had fired shots. Contrary to the PCR testimony of Applicant, a review of the testimony and trial record supports this conclusion. The record only appears confusing because, at trial, the prosecution was anticipating the Applicant was going to claim he was firing in self-defense at the occupants of the gold Impala. All the other testimony was that the Kangaroo station video revealed no shots being fired from the gold Impala prior to the Applicant firing his weapon. After the verdict, Judge Jefferson acknowledged that "the video certainly doesn't show them shooting". During the state's closing argument, the video was replayed showing the position of the occupants of the gold Impala and that no one from the car shot.

This conclusion is supported by testimony from state witness Don Manigault who was in "Poppa John" Pendergrass's blue Lincoln. He testified that an occupant in the Lincoln shot from

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the vehicle. Manigault confirmed that "a guy in my car shot back." Manigault stated that he did not see who shot the first shot but that Hazel fired a shot "way after the first shot went off," even though Hazel denied it in his testimony. Manigault recalled that there were no shots fired from the gold Impala.

The defense's intent to present the "blue car" theory is supported by counsel Kozelski's opening statement when he stresses to the jury to watch the video closely because they intended to show that Applicant shot, "because somebody was shooting at him." This is supported by the credible testimony of counsel Proctor and Kozelski. Contrary to Applicant's claim, the gold Impala defense claim, Proctor testified that she thought her client told her that he fired shots at the blue car, "because that's what's on the video." She did not recall whether Applicant had ever told her about shooting at the gold Impala in response to being fired upon. She admitted that the video of the shooting was the critical piece of evidence that they had to deal with at trial. She recalled specifically discussing self-defense with Applicant and that no other defenses were available because of the video. She confirmed that their theory at trial was that Applicant was being shot at by the people in the blue Lincoln. Kozelski testified that there were witnesses within the discovery that indicated there were bullets coming from the blue car. In addition he recalled there were no witnesses who testified that any shots were fired from the gold Impala.

Contrary to his presentation before this Court, Applicant acknowledged that the "blue car" self-defense theory was discussed before the trial when discussing strategy. Contrary to the Applicant's assertions, he also confirmed that Proctor's closing argument was not the first time that he had heard that theory.

This Court rejects Applicant's claim that he never told his counsel that he was firing at the blue car in self-defense. Further, the Applicant's assertion that the people in the gold

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Impala started shooting at random people and "I shot back in self-defense" is what he intended to tell the jury if he testified at trial, is found not credible.

In his testimony before this Court, Applicant suggests that he was never aware that counsel was going to present the "blue car" defense theory until just before the trial. Counsel Proctor testified that there were discussions prior to trial and that they had met frequently. She asserted that the "blue car" matter came up at least when she reviewed the videos with Applicant if not before. Her testimony was that they met with Applicant in a room at the jail and went through the video a number of times. She stated that the defense was consistent with what was on the video. Kozelski confirmed that it was hard to say from the video that any shots were being fired from the gold Impala having watched it "over 500 times". Kozelski stated the defense that Applicant shot at the blue Lincoln was consistent with the video. He stated, "we tried to avoid the gold Impala at all costs." The theory rested upon the video and the fact that guns were being fired from multiple people and multiple directions.

Even if Applicant learned of the manner that his counsel were going to present the theory of self-defense related to the blue car just before the trial, that would not entitle him to relief. As noted above, there was a factual basis for the "blue car" defense and counsel was reasonable in presenting this defense at the trial. Although the defense's expectation was that the State would call more witnesses from the scene to corroborate that there was shooting from the blue Lincoln based upon the witness list, this does not suggest any deficiency on the part of defense counsel. A review of the record reveals the defense theory was consistently presented throughout the trial. Counsel believed there was a significant strategic advantage in having the last argument because of the prosecution's mistaken belief. The defense was never claiming that

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shots came from the gold Impala. Thus, the defense lost nothing by the stipulation under their actual theory of the case.

Further, as counsel Proctor noted at sentencing,

"...I think from the video you saw and through the number of shots being fired, he was not the instigator of this shooting. He did not start shooting first. And there had already been at least 12 to 13 shots before he fired his gun."

In conclusion, this Court finds that defense counsel did not present a defense theory contrary to the Applicant's wishes. He was informed and it was consistent with his expectation of the strategy that they were presenting at his trial.⁵

Agreement Concerning the Stipulation

Under Strickland v. Washington, the Court looks to standards for the handling of criminal defense cases. "Prevailing norms of practice as reflected in American Bar Association standards ... are guides to determining what is reasonable, but they are only guides." Strickland, 466 U.S. at 688.

Standard 4- 5.2 Control and Direction of the Case.

(a) Certain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with counsel include:

(i) what pleas to enter;

⁵Applicant notes that the trial judge did not instruct on self-defense to suggest that there was no evidence. However, that determination was made before the "blue car" defense was revealed. The trial court and prosecution thought the self-defense was related to the gold car. Although it is correct that the instruction was not given, the Applicant's counsel was not precluded in his opening or his closing from presenting the argument that he was acting in self-defense based upon the evidence that was presented. Applicant is now claiming the evidence should have been different at trial, not that counsel should have revealed their "blue car" defense to the prosecution and received an instruction, or requested such an instruction, after the closing argument.

- (ii) whether to accept a plea agreement;
- (iii) whether to waive jury trial;
- (iv) whether to testify in his or her own behalf; and
- (v) whether to appeal.

(b) Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced.

(c) If a disagreement on significant matters of tactics or strategy arises between defense counsel and the client, defense counsel should make a record of the circumstances, counsel's advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

ABA Standards for Criminal Justice, Defense Function, § 4-5.2 (2d ed.1980)).

The Applicant questions the decision to enter the stipulation that excluded evidence from the gold Impala involving the GSR of the occupants, a weapon, the shell casings and the fact of Wilson's death. This Court concludes that counsel was not deficient in seeking to exclude those matters in return for the exclusion of evidence of Wilson's death.. The defense prepared a memorandum to exclude this evidence prior to the trial - it was a strategic decision they acknowledged they had discussed in trying to keep Wilson's death a from being presented. This supported the strategic decision and maintained a consistent defense theory. The jury had the video of the Kangaroo station event which did not reveal any shots from the gold Impala. To have pursued alternative theories to the jury about the focus of Applicant's intentional shooting would

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not be consistent in counsel's mind and less persuasive.⁶ This strategic decision was reasonable and not deficient.

Advice about Testifying

This Court finds that counsel's advice about testifying was not deficient. The record shows the Applicant was questioned by Judge Jefferson about his right to testify after the court concluded that his prior convictions for possession of marijuana could not be used to impeach him. The Applicant affirmed under oath that he understood his rights including his right to testify, his right to not testify and that a jury instruction would be given that his failure to testify was not be considered and that the State has the burden of proof. He confirmed he had discussed this decision with his lawyers. He was told he would be given overnight to decide. The next day, Judge again inquired of the Applicant. Applicant advised the court that he had a full opportunity to discuss his right to testify with counsel overnight. He stated he did not wish to testify. The court then inquired of counsel Proctor whether Applicant understood her conversations with him about his right to testify. She indicated that he did and confirmed that his answer was correct. Counsel Proctor then confirmed that she did not feel that the Applicant had been coerced or forced not to testify. Judge Jefferson returned to the Applicant who responded that he had not been forced to testify or not testify and that he was making the decision freely and voluntarily of his own free will. Importantly the following occurred:

THE COURT: Did they place any duress or try to discourage you from testifying?

WASHINGTON: No, ma'am.

⁶ As noted above, this Court acknowledges that defense counsel is permitted to present inconsistent defensive theories in a trial. See Mathews v. United States, 485 U.S. 58, 64, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988)).

"Solemn declarations in open court carry a strong presumption of verity," forming a "formidable barrier in any subsequent collateral proceedings." Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). A criminal defendant has a fundamental constitutional right to testify on his own behalf at trial, a right that cannot be waived by defense counsel. United States v. Teague, 953 F.2d 1525, 1532 (11th Cir. 1992) (en banc). "A claim that a defendant's right to testify was violated by defense counsel is analyzed as a claim of ineffective assistance of counsel." Teague, 953 F.2d at 1534). "Defense counsel bears the primary responsibility for advising the defendant of his right to testify or not to testify, the strategic implications of each choice, and that it is ultimately for the defendant himself to decide.... Counsel may advise the client in the strongest possible terms not to testify, but the choice whether to testify lies with the defendant.... Counsel has the responsibility of ensuring that any waiver of the right to testify is knowing and voluntary." *Id.* (internal citations omitted).

As found previously by the Court, the Applicant was aware, at the time these questions were asked by Judge Jefferson, that the basis of self-defense that was being presented was a strategy that Applicant was shooting in response to shots from the blue car, not the gold Impala. He claims now that he wanted to testify concerning his PCR assertion that shots came from the gold Impala. However, it is clear that his statements to Judge Jefferson were much different about his desires testify. Applicant has failed to give this Court a cogent reason why he should not held to the truth of his statements before Judge Jefferson.

This Court finds that Applicant freely and voluntarily waived his right to testify about his own theory of self-defense. Because the record conclusively refutes Applicant's allegation that counsel deprived or coerced him of his right to testify, he cannot establish Strickland's first requirement that counsel's performance was deficient. Further, testimony from both trial counsel

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supports the conclusion that the decision to not testify was the Applicant's. However, counsel felt that if they thought it was going to help the case, they would have allowed him testify. Kozelski recalled discussing the Applicant's right to testify, but could not recall if he advised him to testify or not. See United States v. Nohara, 3 F.3d 1239, 1243-44 (9th Cir. 1993) (defendant's waiver of his right to testify foreclosed claim of ineffective assistance of counsel); *see also Dows v. Wood*, 211 F.3d 480, 487 (9th Cir. 2000) (petitioner failed to prove deficient performance or prejudice from counsel's alleged pressure on him not to testify where, in part, "at no time during the trial did [petitioner] ever indicate that he wanted to testify or that he was prevented from doing so by counsel").⁷ Petitioner therefore cannot now claim ineffective assistance of counsel because they did not call him as a witness. See McElvain v. Lewis, 283 F. Supp. 2d 1104, 1118 (C.D. Cal. 2003).

The Strategy Failed to Secure a Self-Defense Instruction

The Applicant argues that the alleged failure to present Applicant's PCR assertion that he was shooting at the gold Impala in self-defense was error because it did not allow him

⁷ It is disingenuous for Applicant to claim that counsel deprived him of his right to testify. As the trial transcript shows, Applicant declared under oath that he understood his right to testify, that he discussed the decision whether or not to testify with counsel, that it was his own decision not to testify, and that his decision in this regard was of his own free will. "Solemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977) "[I]f an accused desires to exercise [his] constitutional right to testify the accused must act affirmatively and express to the court [his] desire to do so at the appropriate time or a knowing and voluntary waiver of the right is deemed to have occurred." *United States v. Kamerud*, 326 F.3d 1008, 1017 (8th Cir. 2003) (citation omitted). Further, he fails to demonstrate prejudice by showing a reasonable possibility that the results of the proceeding would have been different had he testified. See Fishbone v. Sec'y for Dep't. of Corrs., 165 Fed.Appx. 800, 801-02 (11th Cir. 2006) (defendant not prejudiced by trial counsel's alleged ineffective assistance in failing to inform him he had the right to testify when, even in light of defendant's proposed testimony, there was no reasonable possibility that result of proceedings would have differed had defendant testified).

to secure a self-defense instruction. This assertion is rejected. As noted above, the defense strategy, agreed to by the Applicant, was that he was firing at the blue Lincoln in self-defense and hit the occupants of the gold Impala. This finding of fact precludes the basis for his argument that his version of the facts would have been supported by evidence based on the items found within the wrecked Impala and the GSR on its occupants. The problem with this argument is that it must re-write history and the strategic decisions that were made by counsel. The defense presented was different and Applicant fails to prove that at the time of the trial he would have testified.⁸ As stated above, his sworn statements to the Court were that he did not want to testify and had not been discouraged from counsel about testifying. If Applicant, contrary to the earlier findings by this Court, testified he was firing at the blue car because its occupants were shooting at him, it could have supported a self-defense instruction. However, the Applicant knowingly and voluntarily waived that right to testify.

Counsel Not Deficient in not Objecting to Leading Questions.

In the PCR proceeding, Applicant contended counsel Proctor was deficient in failing to object to the leading questions from the prosecution. However, Applicant presented evidence that she did object to leading questions and that her objections were sustained. Applicant is making a conclusory assertion that there were other unspecified leading questions that counsel should have objected to. With respect to leading questions to which counsel would or should

⁸ The Applicant also claimed in his PCR testimony that he had a witness to support his self-defense claim. He claimed that he had a 911 call saying "there was a guy, a gold Impala shooting at a guy with a white t-shirt on foot." He claimed that if he had that witness (who made the 911 call) the result would have been different. He confirmed that he spoke with counsel Proctor about the 911 call. Applicant testified that counsel Proctor stated that the 911 call was irrelevant because the State could say that happened down Folly Road. Evidence about any 911 call was not presented at trial or in the PCR proceeding. The strategic decision by counsel in not presenting that evidence must be determined to be reasonable.

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have objected, Applicant gives few cites. Even in hindsight, this Court cannot make for Applicant objections that may have been helpful at trial. See State v. Strodtman, 399 N.W.2d 610, 616 (Minn. Ct. App. 1987). This Court must conclude that the Applicant, has failed in his burden of proof of showing deficient performance or prejudice under Strickland. The Applicant fails to prove that counsel was deficient.

Whether to interrupt testimony by repeatedly objecting to leading questions is a strategic decision best left to counsel, one that the Court cannot second guess. However, even if the failure to object to leading questions satisfied the first prong of the Strickland test, which this Court does not find, Applicant is unable to show that the second prong of prejudice is satisfied. United States v. Gibson, 690 F.2d 697, 703-04 (9th Cir.1982) (failure to make evidentiary objections does not render assistance ineffective unless challenged errors can be shown to have prejudiced the defense.) Applicant did not show that the lack of objection to leading questions allowed testimony into trial that would not have otherwise been admitted, and, that because of that, there was a reasonable probability the testimony would have resulted in a different outcome. See Clark v. Collins, 19 F.3d 959, 966 (5th Cir.1994) ("Failure to raise meritless objections is not ineffective lawyering; it is the very opposite."):

Such speculation and conjectural allegations do not demonstrate that counsel's performance was not reasonable or affirmatively prove that Applicant was prejudiced. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693, 104 S.Ct. at 2067. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

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been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S.Ct. at 2068.⁹

Rejected Plea Offer

The Applicant testified during the PCR hearing that he rejected a plea offer because he thought he acted in self-defense. This Court finds that any assertion of ineffective assistance about the offer has been abandoned. Although the attorney's advice was to take the offer, Applicant stated that he rejected it because "I just didn't felt guilty or whatever and I wasn't going to plead to 18 years." The record shows the state offered Applicant a plea deal for 18 years and concurrent sentences. The Applicant in open court stated, upon inquiry by the trial judge, that he rejected it and confirmed that he was not forced to reject the offer. These statements prior to trial carry a presumption of verity. This assertion is dismissed.

CONCLUSION

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

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d

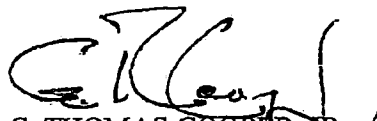
⁹ Even if this Court assumes, *arguendo*, that counsel's performance was deficient for not lodging an objection in unidentified instances, Applicant would still not be entitled to relief because his claim fails under the prejudice prong of *Strickland*. This Court finds the Petitioner has simply failed to provide this Court with any evidence, aside from the blanket statement that the Petitioner was prejudiced, to show there is a reasonable probability that but for Counsel's failure to object to the cited leading questions, there is a reasonable probability that the Petitioner would have been acquitted.

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on his behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of February


G. THOMAS COOPER, JR.
Presiding Circuit Court Judge

CLAUDE, South Carolina

DBD20110402158

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605012

DATE OF ARREST

May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

J. O.
Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

Michelle
Foreperson of Petit Jury

Date: 7/17/2013

INDICT.DOT

DOCKET NO. 2011GS1006881

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON

DOB: 1986

B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

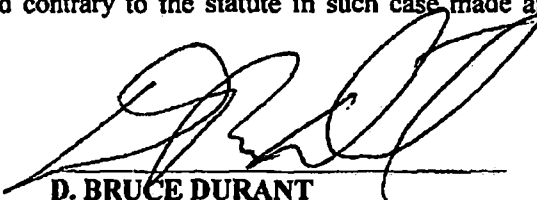
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County on or about March 30, 2011, the defendant, **DOMONEIK ANTWAN WASHINGTON**, with intent to kill and malice aforethought, attempt to kill Antwan Devon Wilson, also known as Brian Revon Wilson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20110402158

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605013

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2011GS1006882

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON
DOB: 1986-
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

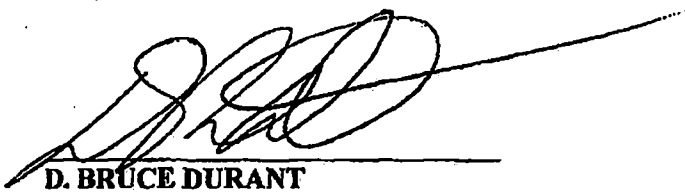
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Edward Jerome Wittrell Jr. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20110402158

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605014

DATE OF ARREST

May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

J. F.
Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

W. H. H. H.
Foreperson of Petit Jury

Date: 7/11/2013

INDICT.DOT

DOCKET NO. 2011GS1006883

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON

DOB: 1986-
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

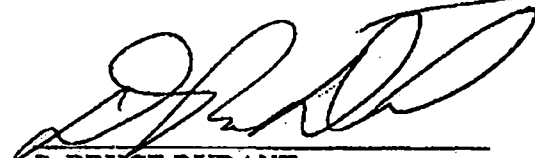
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Ronald Cornell Bryant III. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Domoneik Antwan Washington

AKA:

Race: BLACK Sex: M Age: 27DOB: -1986Address: Seacroft RoadCity, State, Zip: Charleston, SC 294120000DL#: SC01631964*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1006881A/W#: M605012Date of Offense: 3/30/2011S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

DuRant, D. Bruce1801
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
 of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-6882, 6883
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>47.90</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Phyllis Norton

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

Presiding Judge

Judge Code: 2128Sentence Date: 7/17/2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Domoneik Antwan Washington

AKA:

Race: BLACK Sex: M Age: 27DOB: 1986 SS#: [REDACTED]Address: Seacroft RoadCity, State, Zip: Charleston, SC 294120000DL#: [REDACTED] SID#: SC01631964*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery of a High and Aggravated Nature

INDICTMENT/CASE#: 2011GS1006882A/W#: M605013Date of Offense: 3/30/2011S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

DuRant, D. BruceSC Bar# 1801

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-6881 6883
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Recipient:

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

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

Clerk of Court/ Deputy Clerk

Court Reporter: Phyllis Norton

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2128Sentence Date: 7/17/2013

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.
Domoneik Antwan Washington

AKA:

Race: BLACK Sex: M Age: 27DOB: 1986 SS# Address: Seacroft RoadCity, State, Zip: Charleston, SC 294120000DL#: SID#: SC01631964*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1006883A/W#: M605014Date of Offense: 3/30/2011S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

DuRant, D. BruceSC Bar# 1801

Defendant -

Attorney for Defendant

SC Bar#

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and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
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☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

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during probation.

Presiding Judge MR JeffersonJudge Code: 2128Sentence Date: 7/17/2013