

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Thomas A. Russo, Circuit Court Judge

HAROLD LEE JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001089

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 20-23, 2009	1
FINAL BRIEF OF APPELLANT	588
<u>STATE V. JACKSON</u> , UNPUBLISHED OPINION NO. 2012-UP-038, (FILED JANUARY 25, 2012)	605
APPLICATION FOR POST-CONVICTION RELIEF	607
RETURN	614
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 11, 2017	620
ORDER OF DISMISSAL	703
INDICTMENTS	716

1 second --

2 THE COURT: That makes a difference, as
3 you understand. That makes a difference as to the
4 voluntary manslaughter charge, if it occurred at the
5 time of the actual killing or if it occurred before
6 and he left and came back.

7 THE COURT: Solicitor, let him finish.

8 MR. COLONGELI: I agree with you. But I
9 think that, to err on the side of caution here, that
10 in light of the hopes obviously that we all have as
11 far as a clean result here, that there is testimony
12 that there was an argument, based on Nazarene and
13 Shella's testimony, that day that was going on
14 throughout the day into the time they got there.

15 Everyone was aware of it. That there in
16 and of itself we think is sufficient -- to be
17 arguably sufficient legal provocation on the part of
18 what actually occurred that night, whether it
19 happened then or after.

20 There's testimony they were arguing when
21 they got home, when they came back in the house.
22 And as I said, I continue to resort to the fact that
23 those are questions of fact for the jury to either
24 believe or disbelieve.

25 THE COURT: All right. Respectfully, I

1 don't want to hear any more on this issue. I can
2 tell you that I've researched it. We've all sat
3 through the trial for the last two and a half days
4 or so.

5 So, out of an abundance of caution, I am
6 going to charge voluntary manslaughter, just to make
7 sure we have covered all our bases. I do think in
8 some way the Court of Appeals of the Supreme Court
9 would believe it would be appropriate.

10 So I am going to go ahead and charge it.
11 But, again, I'm not charging self-defense. It
12 simply doesn't meet the elements of it.

13 With that said, I want both of you to take
14 a look at the verdict form and see if there any
15 objections to it. And I want to go through with you
16 all just what my general charge is.

17 I believe you both have tried cases in
18 front of me. So I know the Solicitor well knows
19 what I charge. It's the standard that we all charge
20 as Circuit Court Judges.

21 The first is I just go through and say
22 obviously the indictment is not evidence. In this
23 case, there are multiple charges, and that each
24 indictment must be considered to be a separate and
25 distinct offense.

501

1 And they need to decide guilty or not
2 guilty as to each of them. Certainly, the
3 presumption of innocence, the reasonable doubt
4 charge, duties of the jury and the trial judge.

5 They are the judge of the facts. I'm the
6 judge of the law. Direct and circumstantial
7 evidence, expert testimony, how to weigh or view the
8 credibility of the witnesses, the defendant choosing
9 not to testify. They cannot discuss it back in the
10 jury room. It wouldn't be appropriate.

11 And then I'll go through and talk about
12 the three indictments -- obviously, one count of
13 murder. And I will also charge, as I said, if you
14 find that he is not guilty of murder, then you need
15 to consider the lesser included offense of voluntary
16 manslaughter.

17 So we'll go through that and then the
18 assault and battery with intent to kill. And I'll
19 go ahead and give the charge on that and just the
20 end charge of go back there, and must be a unanimous
21 verdict.

22 Anything else, Mr. Colongeli?

23 MR. COLONGELI: And I believe you
24 mentioned this, but obviously an instruction as to
25 the defendant's right not to testify, that

1 summation.

2 THE COURT: I am steadily writing.

3 MR. COLONGELI: And I apologize for
4 bringing this up so late, but it was my intention
5 yesterday. Also, we're asking you to consider
6 possibly the lesser of assault and battery of a high
7 and aggravated nature as to Nazarene, as to the
8 count involving Nazarene.

9 And that's based upon the evidence which I
10 believe was admitted as evidence that they can look
11 at themselves as far as the pictures of Nazarene and
12 the testimony that was presented as far as what she
13 said as opposed to what they're going to see in
14 evidence. I know this is a late request. I
15 apologize --

16 THE COURT: She had 12 or 13 staples in
17 her head, is that not correct?

18 MR. COLONGELI: That's Shella.

19 MS. TANNER: So did Nazarene.

20 THE COURT: So did Nazarene. If I am
21 correct, I believe both of them had a number. And,
22 Solicitor, clear me up. How many? We can pull the
23 pictures. But I on both of them saw a number of
24 staples.

25 MS. TANNER: I believe she had 13. But

503

1 she also testified that he told her, "I'm going to"

2 --

3 THE COURT: Kill you.

4 MS. TANNER: -- "kill you tonight, and you
5 don't have to worry about no God." And that was a
6 statement before he hit her with the bat.

7 THE COURT: Right.

8 MS. TANNER: So I think there's ample
9 evidence for --

10 THE COURT: Respectfully, I'm going to
11 deny your request, Mr. Colongeli. This is either
12 ABWIK or nothing, okay?

13 MR. COLONGELI: Thank you, Your Honor.

14 THE COURT: Anything further? Any other
15 further requests to charge, Mr. Colongeli?

16 MR. COLONGELI: I don't believe so, Your
17 Honor.

18 THE COURT: Solicitor?

19 MS. TANNER: No, ma'am.

20 THE COURT: How long do you intend on
21 arguing, Solicitor?

22 MS. TANNER: Maybe 15 minutes.

23 THE COURT: You're pretty short, usually.

24 All right, Mr. Colongeli, do you have any
25 idea?

1 MR. COLONGELI: I don't, Your Honor.

2 THE COURT: And I'm never going to limit
3 you --

4 MR. COLONGELI: Thank you.

5 THE COURT: -- unless you are going on and
6 on, and you are losing your jury. And I will let
7 you know by the Judge Buckner knock, all right?

8 MS. TANNER: And the defense goes first,
9 because they have entered evidence in the case?

10 THE COURT: They have.

11 You have entered evidence, Mr. Colongeli.

12 MS. TANNER: So I guess my next question
13 would be if he's going to require me to open on the
14 law, or if he would waive that?

15 THE COURT: Mr. Colongeli? Do you want to
16 think about that for five minutes --

17 MR. COLONGELI: Yes, I would.

18 THE COURT: -- while we're waiting for the
19 jury to come in? Obviously, it's whether or not you
20 want her to get two bites of the apple. It's up to
21 you.

22 Strategically, she's just avoiding that if
23 she doesn't do anything when she opens, you sit
24 down, and then she can't say anything either.

25 MR. COLONGELI: If I could just have two

1 minutes on that, Your Honor.

2 THE COURT: Absolutely, absolutely. You
3 just decide what you would prefer to do.

4 Do we have all the jurors?

5 BAILIFF: We can find out.

6 THE COURT: We don't even know. So let's
7 just take five minutes. Again, depending on how
8 long you argue, I believe I will probably go
9 straight into my charge, unless this jury looks
10 tired and we need to take a stretch, or if I feel
11 for some reason I need to send them back. But I
12 intend on going straight through, okay?

13 BAILIFF: They're are all here, Judge.

14 THE COURT: Thank you.

15 All right, let me go ahead and give you
16 five or ten minutes, Mr. Colongeli. And you
17 determine whether or not you want to make the
18 Solicitor open in full on the law.

19 MR. COLONGELI: I appreciate that, Your
20 Honor.

21 THE COURT: Absolutely.

22 MR. COLONGELI: Just to defer to the
23 Court, I believe that I will renew my motions after
24 I rest, is that correct?

25 THE COURT: Absolutely. Let's go ahead

1 and just do it for the record. We can do it ahead
2 of time so we don't have to send the jury back out.

3 Obviously, you tell me that you intend on
4 resting your case, so you can renew your directed
5 verdict motions, is that correct, sir --

6 MR. COLONGELI: That's correct.

7 THE COURT: -- based on all the prior
8 grounds?

9 MR. COLONGELI: For purposes of preserving
10 the record, Your Honor, at this point, obviously, I
11 would like to renew any and all motions that were
12 made throughout the course of this trial,
13 specifically my directed verdict motion, also any
14 and all previous motions and objections made during
15 the proceedings, specifically including the motion
16 for mistrial.

17 THE COURT: Thank you, Mr. Colongeli. I
18 appreciate that. Again, based on the same reasons
19 as before, I'm going to respectfully deny that
20 motion.

21 I believe there's evidence certainly in
22 the record that this jury could conclude that Mr.
23 Jackson committed the crimes that he's charged with.

24 So, respectfully, I'm going to deny that
25 motion. But I appreciate you putting that on the

507

1 record. And I will also state that I'm allowing you
2 to do that ahead of time just so we don't have to
3 send the jury back. So you are protected for appeal
4 purposes, sir.

5 MR. COLONGELI: Thank you, Your Honor.

6 THE COURT: Anything further?

7 MS. TANNER: Nothing further.

8 THE COURT: All right, I'll be back in
9 about ten minutes.

10 Mr. Colongeli, you let me know when we
11 come back, okay?

12 MR. COLONGELI: Thank you.

13 THE COURT: Yes, sir.

14 (Recess taken.)

15 MR. COLONGELI: Your Honor, we were just
16 talking, I am surprised that I would have to argue
17 first.

18 THE COURT: Okay, about those exhibits, defense
19 eight and eleven, respectfully, Mr. Colongeli, you
20 did put those exhibits into evidence last argument.
21 I think it's pretty clear.

22 All right, Solicitor, are you ready?

23 MS. TANNER: The State is ready.

24 THE COURT: Defense, are you ready?

25 MR. COLONGELI: Ready, Your Honor.

1 THE COURT: All right, let's go ahead and
2 bring the jury in, Norman.

3 BAILIFF: Yes, ma'am.

4 THE COURT: And I'll remind you, Mr.
5 Colongeli, that you're going to officially rest in
6 front of this jury when they come in.

7 MR. COLONGELI: Yes, ma'am.

8 THE COURT: Thank you.

9 Ladies and gentlemen, for those of you
10 that are in the gallery, certainly during my jury
11 charge, no one comes or goes in a courtroom.

12 But, additionally, out of respect for the
13 attorneys in presenting their arguments, I ask that
14 no one leave or go while they make their arguments
15 so the jury can focus on the attorneys as opposed to
16 whoever is moving in the gallery. I appreciate it
17 you respecting that.

18 BAILIFF: The jurors are entering, Your
19 Honor.

20 THE COURT: Thank you.

21 (Whereupon, the jury
22 returned to the courtroom at 10:07 a.m. after which
23 the following proceedings were had:)

24 BAILIFF: Your Honor, the jury is seated.

25 THE COURT: Welcome and good morning.

1 THE JURY: Good morning.

2 THE COURT: Mr. Colongeli, do you want to
3 go ahead and rest for the record, sir?

4 MR. COLONGELI: At this point in time,
5 Your Honor, the defense rests.

6 THE COURT: Thank you, sir.

7 Ladies and gentlemen, at this time you've
8 heard all the evidence in this case. The attorneys
9 will now make their closing arguments to you.

10 With that said, Mr. Colongeli?

11 MR. COLONGELI: Thank you, Your Honor.
12 May it please the Court?

13 CLOSING ARGUMENT

14 BY MR. COLONGELI

15 THE COURT: Yes, sir.

16 MR. COLONGELI: Good morning.

17 THE JURY: Good morning.

18 MR. COLONGELI: I never had an opportunity
19 in my opening remarks to thank you for being here
20 for the last few days and listening to all the
21 testimony that you've heard.

22 I also had the ability to extend my
23 sympathies to Shella. I would also at this time
24 like to extend my sympathies to Josh Pringle's
25 family for what happened here.

1 If you recall in my opening remarks, my
2 goal in this whole process of what I believe to be
3 justice is not to shade the truth, not to try to
4 hide the truth or distort the truth, but to
5 hopefully arrive at the truth.

6 And as I had told you in my opening, I
7 closed with the remarks that there is nothing often
8 so powerful as the truth. But when it's found,
9 often there's nothing so strange.

10 I'm extremely troubled and concerned by
11 what we've heard over the course of the last few
12 days in attempting to arrive at that truth.

13 I'm concerned by the awesome power of the
14 State, the government, being the Solicitor's Office
15 and law enforcement, to come before you with a case
16 that is over two years old and basically bring you
17 testimony that, in my opinion, if I remember
18 correctly, most of the State's witnesses as far as
19 law enforcement were prepped as recently as three or
20 four weeks ago.

21 The whole issue having to do with the lead
22 criminal investigative officer and the issue
23 surrounding why he wasn't here, some may believe to
24 be subterfuge on my part to detract or steer you
25 away from what actually opened.

Closing Argument by Mr. Colongeli

511

1 But please remember that in my opening
2 remarks, I never tried to say that something
3 terribly bad occurred on January 3, 2007, that
4 people suffered injuries, serious injuries, some
5 that ultimately were fatal.

6 I never tried to tell you that wasn't the
7 case. And what I can hope is that the State could
8 come before you in their opening, and instead of
9 saying that this is an extremely serious case --
10 it's going to be not too long, it may be short --
11 but that Harold Jackson intentionally went out there
12 with malice aforethought and went on this killing
13 spree involving Nazarene, Shella Laurent, and Josh
14 Pringle, instead of bringing to your attention right
15 then and there, in the hopes of achieving justice,
16 saying, "Look, ladies and gentlemen, we're going to
17 have some problems here that we want to address to
18 you right now.

19 "And that is that our lead criminal
20 investigative officer, in a case as serious as the
21 charge of murder, made admissions to the use of
22 cocaine and, in fact, tested positive for the use of
23 cocaine directly around the same time frame this
24 case was investigated."

25 They had the ability to do that. And as

Closing Argument by Mr. Colongeli

512

1 you saw during the course of the testimony, I'll go
2 so far as to say that the last thing they
3 anticipated was my ability to bring that to your
4 attention.

5 We came back the following day, and Master
6 Sgt. Purdy got on the stand and went to great
7 efforts to address and try to minimize or justify
8 that issue.

9 And we feel that that is critical as to
10 what you've seen here presented to you and being not
11 only the lack of Lester Williams being here, which
12 is something they could have easily done or
13 addressed to you.

14 If he did his job fine, why couldn't they
15 have had him here for you? And these are questions
16 that you're entitled to ask. As a matter of fact,
17 we learned so much that it's the impression of law
18 enforcement that he's still in law enforcement, for
19 doing something that other people would have to
20 answer to, to the extent of an actual crime and
21 possibly whatever would flow from that.

22 If he did nothing wrong, why didn't they
23 bring him here to tell you that, and why didn't they
24 tell you that from the beginning?

25 We've got items in evidence that are

Closing Argument by Mr. Colongeli

513

1 missing. We have a two-year lapse in time from when
2 this happened.

3 When I asked the master sergeant,
4 "Couldn't you, in light of this serious problem,
5 have gone back, reopened this case, and actually
6 done what it is we all want to have happen here, is
7 to have justice ring true -- to find out for sure
8 that we've left no holes uncovered, that we've
9 analyzed all the evidence correctly, that there was
10 no contamination, that there was no inappropriate
11 conduct done on-scene?"

12 And I don't believe I ever got an answer
13 to that. But what we do know is that two years go
14 by, and approximately three to four weeks before the
15 trial of this case, the State goes out and finds
16 officers who have not submitted one report with
17 their name signed on it to let us know that they
18 were, in fact, there.

19 Call me crazy, but in life in general and
20 in business in general, and in something as serious
21 as a man charged with murder, don't you think we all
22 expect or deserve better?

23 I want to make it clear that I have a
24 great deal of respect for law enforcement in
25 general. And I have even a greater degree of

Closing Argument by Mr. Colongeli

514

1 respect for the Beaufort County Sheriff's Office.

2 I've known these guys for a long time.

3 And the fellows they used here today and that we
4 talked with, I have the utmost respect.

5 But one of the other things I love about
6 law enforcement and cops in general is the fact that
7 you cannot deny the loyalty among them -- the
8 loyalty among them.

9 And the fact that, as difficult as it was
10 for Master Sgt. Purdy to address this issue, I can't
11 fault him for not going to the extent of saying
12 "Look, there's a possibility he didn't do something
13 right in his investigation" -- not "He did
14 everything right. I don't think he did anything
15 wrong" -- even though the ultimate conclusion was he
16 left in a state of disgrace because of what that
17 impugned on this department.

18 The other thing that concerns me -- and
19 I've said this -- is officers that I respect as much
20 as Eric Calendine, I believe were put in a position
21 on that stand to go out of the way to not answer my
22 question as to whether or not a case over two years
23 old, that they were relying just on rote memory.

24 And the fact that he was doing his best to
25 get out of answer my question "Isn't it true that

Closing Argument by Mr. Colongeli

515

1 you relied on this man's report in order to refresh
2 your memory as to what happened that day?" not only
3 Eric Calendine but Sgt. Rodriguez being substituted
4 for the initial responding officer, who could have
5 come here today, even though he's in the state of
6 Michigan, to tell us exactly what he saw and what he
7 heard when he got on the scene.

8 Those are all seasoned professional
9 officers that were scrambled together at the last
10 minute to come in on something as serious as this
11 and convince you all that beyond a reasonable doubt,
12 Harold Jackson had the intent, the malice
13 aforethought, to murder Josh Pringle and had the
14 intent to kill Nazarene Laurent and Shella Laurent.

15 In sticking with the investigation of this
16 case as far as the criminal investigation, other
17 things that concern me are one of the last witnesses
18 we heard yesterday, being that of Mr. Ortuno, I
19 believe, the DNA expert.

20 And one of the things that came as a
21 surprise to me -- and I think the State would admit
22 was a surprise to them -- was the fact that out of
23 all this DNA evidence that the State felt the need
24 to go into and show you, in my opinion to inflame
25 your passion as to what occurred here, that there

Closing Argument by Mr. Colongeli

516

1 was no DNA of Shella -- no DNA evidence of Shella
2 Laurent.

3 And that goes back to a compromised and
4 what I believe contaminated investigation from the
5 beginning. And are those things that could have
6 been addressed over the last two years?

7 You're darn right, they could have been.
8 Does that mean that I still stand here and try to
9 deny that something terrible happened and that
10 people suffered injuries? No.

11 I'm trying to get to the truth, and I hope
12 that the Solicitor is, too. And she's obviously
13 going to have an opportunity here to make some last
14 remarks to you and address these issues that I'm
15 asking you. And I don't think that she can.

16 But back to Ortuno, one of the other last
17 things he said is, "As far as the stick that has
18 come into question" -- and I'll get more onto
19 Nazarene and Shella, too.

20 But you've seen pictures in evidence, and
21 you'll have them to go back and deliberate over, the
22 stick, a stick that obviously the State also didn't
23 feel important enough to show you, a stick that I
24 felt important enough to bring to your attention
25 that Nazarene admitted, in my opinion, that she had

Closing Argument by Mr. Colongeli

517

1 possession of, prior to Harold ever having the bat.

2 You've got Shella, who now says two years
3 later, "I don't know what you're talking about."
4 And, yet, going to the transcripts that I impeached
5 her on, she also admitted that Nazarene had this
6 stick.

7 And specifically as to what SLED Agent
8 Ortuno said, for some reason, on October 21st, he
9 gets a call from a Capt. Bob Ramage, who we didn't
10 even know was involved in this case, who says,
11 "Don't analyze the blood on that stick."

12 Why? Am I required in defending Mr.
13 Jackson to supply those answers to you? No. The
14 State is. I'd like to know why. We may never know
15 why, most probably won't know.

16 Another thing that concerns me greatly is
17 what I believe this case to be overall based in
18 light of the criminal investigation that I feel was
19 extremely compromised and tainted, is that what we
20 have here is a complete rush to judgment with the
21 most serious charge they could find for what we do
22 admit was a horrible tragedy, and that being the
23 death of Josh Pringle, bringing the charge of murder
24 as opposed to going out of your way and out of an
25 abundance of caution to rule out any other

1 possibilities as to what actually transpired there
2 that day and that night.

3 The State did not bring other officers,
4 specifically Henry Chris, who would have been able
5 to let us know the condition Harold Jackson was in
6 when he voluntarily turned himself in after driving
7 to his cousin's house and going directly to the
8 Jasper County Sheriff's Office.

9 You've heard testimony, and Master Sgt.
10 Purdy attested to this and did not say that it was
11 untrue, that Harold Jackson repeatedly said over and
12 over again, "They tried to kill me."

13 Now, as bizarre as that may sound and as
14 much as you may have to draw into that, that is
15 still something that I would think anyone would want
16 to either investigate a little further in order to
17 actually rule out, but it never was.

18 And it never was to the extent that once
19 they got their hands on Harold Jackson -- they
20 didn't have to get their hands on, because he
21 brought himself to them -- they never conducted any
22 sort of physical examination as to whether or not he
23 was seriously hurt.

24 Now, from appearances, obviously, as Sgt.
25 Brian Baird said, it didn't appear that he was hurt.

Closing Argument by Mr. Colongeli

519

1 And the State went so far as to try to allude to the
2 fact "Well, Harold could have brought that to their
3 attention."

4 But one of the things we're forgetting
5 here in trying to achieve justice is that Harold
6 Jackson didn't have to say anything, just as any of
7 us would facing the possibility of being charged
8 with the most serious crime out there wouldn't have
9 to say anything.

10 It's up to law enforcement and prosecutors
11 not to just seek convictions but to seek justice.
12 And what we're trying to do here and what I'm trying
13 to do here is just that.

14 It's not to just overlook all the facts
15 and all the questions. Matter of fact, Ms. Tanner
16 went into issues as to no one is ever going to know
17 why. Well, I think we're entitled to delve into
18 why.

19 I think we're entitled to a little bit
20 more than bringing in officers that we don't have
21 proof were there, although I don't deny that. But I
22 think we deserve a little bit better of a
23 professional investigation than just resorting to a
24 two-, three-, four-week, month-out scramble to put
25 together a case, because they know they've got their

Closing Argument by Mr. Colongeli

520

1 man, he's guilty of murder in their opinion.

2 They're not going to ask any more
3 questions. Case over. Sgt. Brian Baird -- and
4 whether I was ever able to bring this up -- he
5 wasn't aware of a Code Blue that occurred in the
6 detention center before he got there that morning.

7 He didn't inquire any further as to
8 whether Harold Jackson was spitting up blood at the
9 detention center that night. And the investigation
10 didn't do anything to determine that or rule that
11 out.

12 And I think they are obligated to do that.
13 And it's not so much for Harold Jackson. It's for
14 all of us -- in the same type of scenario, if it
15 ever came up, that everyone gets a fair shake as to
16 what ultimately they are responsible for and for
17 ultimately they actually as a collective group here
18 you determine they did.

19 I think and I hope that what you see from
20 the evidence that was presented here today, and as I
21 said to you before and as difficult as it for me to
22 get up here and try to direct the lane on an
23 individual who I feel could have prevented all this
24 from happening -- but I hope you see now, based on
25 what you've heard, is that Nazarene was in a

1 horrible relationship with Harold Jackson.

2 I don't think there's any question as to
3 that. And maybe "horrible" is too big a word, but
4 it was one of those types of relationships that you
5 hear about so often riddled with head games, drama,
6 control, jealousy.

7 And it was no surprise to either Nazarene
8 or Shella in her testimony that both of them know
9 that day that they -- that Nazarene specifically was
10 agitated with Harold Jackson, agitated with him from
11 text messages more or less that said "Love ya, baby.
12 It's going to be better this year," not "Who you
13 with?" or "What you doing?" I'll give you as much
14 as the fact that "Maybe you can get back with your
15 husband and be one happy family again. Love ya,
16 Boo."

17 But this one woman had made up in her mind
18 "I've had enough of this. And when I get home
19 tonight, I'm not going to engage him like I normally
20 do. I'm going to ignore him. I'm going to push him
21 to the limit so he just leaves me alone."

22 And what happened? It backfired. When
23 Shella Laurent gets up on the stand -- and with all
24 due respect to her and what she suffered that night
25 -- she tells us that everything she told Sgt. Chris

Closing Argument by Mr. Colongeli

522

1 Wilson, who also wasn't here today, wasn't
2 necessarily true, that what she's telling us now two
3 years later is true, and then, "Oh, by the way, yes,
4 I'm suing my mother and blaming her in a wrongful
5 death action for the death of my fiancé."

6 And she goes so far as to tell you that
7 she's consulted with her civil attorney on that.
8 And doesn't that lead you to believe -- and you're
9 entitled to believe this; you're entitled to believe
10 all, part, or none of any of the witnesses that
11 testified here throughout the last three days.

12 But doesn't that lead one to believe that
13 possibly, all of a sudden, she just had a change of
14 heart because of the civil wrongful death action
15 where she stands to gain, whether it be principle,
16 whether it be money, but she stands to gain.

17 And it's obvious that, based on their
18 relationship now, they're not even talking. And 'I
19 hate to make Nazarene feel any more guilty than she
20 probably does. But does she deserve some of that
21 guilt? I would definitely say yes.

22 And does that negate that what Harold
23 Jackson did possibly was wrong, that something very
24 wrong happened? No. But what it doesn't amount to
25 is that what Harold Jackson did that night equaled

Closing Argument by Mr. Colongeli

523

1 the intentional killing of another with malice
2 aforethought.

3 And to wrap things up, ladies and
4 gentlemen, what you I hope can put together based on
5 everything that you've heard is that obviously a
6 verbal altercation became physical.

7 It started with Nazarene and Harold, and
8 both -- and, Ms. Tanner, if I could, I have notes
9 from when she gave her opening that are consistent
10 with what Shella said that I think are extremely
11 important -- is that once this verbal altercation,
12 which we are led to believe by Nazarene became
13 physical, and Nazarene begins screaming for help,
14 Shella begged Josh, "Let's just call for help.

15 "Don't go there and get involved in
16 someone else's business, even though that's my
17 mother. We've got our baby here." And what did
18 Josh say?

19 According to Ms. Tanner, he stepped up
20 like a man. He stepped up a man. And if I remember
21 correctly, what Shella said is "Josh said, 'I wasn't
22 raised that way. I'm going to handle this myself.'"

23 And he attempted to. And if you recall as
24 far as this bat goes, once Shella got down there
25 after Josh did, Josh handled it like a man to the

1 extent he had that bat.

2 And the State's going to want to lead you
3 to believe that Josh came running down there with
4 Shella, and Harold, who in her opinion in her
5 opening statement went on this killing spree, just
6 said, "Oh, it's all good. It's fine. Everything's
7 calmed down. Everything's good."

8 That doesn't make any sense. What does
9 make sense is that when Josh stepped up like a man
10 and went down there and intervened, he pinned Harold
11 up, gave Nazarene the opportunity to get out that
12 door.

13 And that's when this life-and-death
14 struggle over that bat continued. I believe that
15 it's very skeptical and questionable on all our
16 parts as to whether we can believe Shella when she
17 says that in her mind, Harold left the house and
18 then mysteriously came back in without the bat,
19 found it, and snuck up behind Josh Pringle, and hit
20 him in the head, behind the head.

21 All of the evidence from the medical
22 experts here didn't go into once the State
23 specifically showing that the first injury Josh
24 suffered was behind the head. Correct me if I'm
25 wrong.

Closing Argument by Mr. Colongeli

525

1 And as a matter of fact, they can't deny
2 that Josh Pringle suffered horrible injuries and
3 lacerations to his -- and I don't know the medical
4 term but the frontal area of his face and skull.

5 What makes sense to me is that is a toe-
6 to-toe struggle with a baseball bat involved. And
7 it's not impossible or implausible to consider that
8 if someone's swinging at you with a baseball bat,
9 what you're going to do, short of turning and
10 running, is at least turn one way or the other.

11 And with a baseball bat, you don't have to
12 come up right behind somebody to hit what probably
13 was the fatal blow. Only a few more things, ladies
14 and gentlemen. There's so much I want to tell you.

15 I think, and I pray, and I hope that
16 you've seen enough and that you've heard enough to
17 render a fair verdict. And that's all that we're
18 asking for here.

19 But whether or not you can make much sense
20 of Harold Jackson repeatedly telling police that
21 "They tried to kill me," I think what you can make
22 sense of in trying to determine whether or not he's,
23 in fact, guilty of murder is something else Master
24 Sgt. Purdy attested to in Lester Williams' report
25 that in the little bit of investigation that went on

Closing Argument by Mr. Colongeli

526

1 with Harold's cousin, Sheree Wright, that Sheree
2 Wright said that Harold said, "They tried to kill
3 me. I hit them with a bat, and I don't know if
4 they're dead."

5 I don't think in and of itself implies
6 that he had the intent to kill anyone that night.
7 And after informing her of such a terrible
8 situation, he brought himself to the Sheriff's
9 Department and turned himself in.

10 End of story, rush to judgment, and here
11 we are -- a family torn apart, a young man's life
12 taken away, and a civil suit embroiling over the
13 estate of Josh Pringle.

14 The State has the burden of proof beyond a
15 reasonable doubt. And this presumption of innocence
16 is something that a lot of lawyers like to go in
17 depth in their opening about.

18 The only thing I will tell you now is
19 obviously we do not believe that the State has
20 overcome Harold's presumption of innocence. If you
21 in your determinations think that Harold Jackson is
22 probably guilty of murder, then the only accurate
23 outcome of that is not guilty, because probably
24 guilty isn't enough.

25 And in closing, ladies and gentlemen, I

Closing Argument by Mr. Colongeli

527

1 will say this idea as far as the presumption of
2 innocence is a fundamental, basic tenet of our
3 criminal justice system, and rightly so. It dates
4 back to Deuteronomy, Sparta, and Athens.

5 And obviously it's the presumption that
6 ensures government, which has the enormous power to
7 take away someone's freedom, assumes the burden to
8 prove its accusation beyond a reasonable doubt,
9 properly demanding legal standards in a criminal
10 proceeding.

11 I want to thank you for your attention.
12 And I can only hope and pray, as I have said, that
13 at the end that you will render what would speak the
14 truth, what the Solicitor is asking you to do, is
15 search for the truth, speak the truth, and render a
16 fair verdict. Thank you very much.

17 THE COURT: Thank you, Mr. Colongeli.

18 Ms. Tanner?

19 MS. TANNER: Thank you, Your Honor. May it
20 please the Court --

21 THE COURT: Yes, ma'am.

22 MS. TANNER: -- Mr. Colongeli? Good morning.

23 THE JURY: Good morning.

1

2

CLOSING ARGUMENT

3

BY MS. TANNER

4

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7

MS. TANNER: Ladies and gentlemen, the burden is on the State. We have to present the evidence, good or bad. Whatever we have, we have to present to you.

8

9

10

11

12

And we have to prove beyond a reasonable doubt that this defendant is guilty of the crime. The defense doesn't have to say a thing. That leaves them a lot of time to put up smoke and mirrors.

13

14

15

16

17

And I guess down in the Lowcountry, it might be better put, especially with my accent, muddy water. Living in the Lowcountry, when it rains, you go outside, there's often puddles of water.

18

19

20

21

22

If you look down into that puddle of water, you'll see to the bottom of it -- that is, unless someone comes along with, let's say, a stick and just muddies it up and makes it difficult to see the bottom.

23

24

25

And that's what defense has done in this case. It's muddied the water a little bit. You've heard about this stick in the bedroom. You've seen

Closing Argument by Ms. Tanner

529

1 the picture with a little drop of what looks like
2 blood on it.

3 You've heard that we didn't ask that it be
4 analyzed. You've heard the analyst from SLED, who
5 takes in evidence from all around the state, say,
6 "We've got to prioritize. You tell us what's
7 important."

8 Well, ladies and gentlemen, is it more
9 important to you that the defendant's clothing had
10 two victims' blood on it or a stick laying on the
11 floor of a bedroom, where we already know Nazarene's
12 blood was collected, got analyzed? That's just
13 muddy water.

14 What about this argument over keys or the
15 domestic between Nazarene and Harold? What does
16 that matter when he beats two people with a beat and
17 kills a third? It's muddy water.

18 And what about this officer who left in
19 disgrace? Did we want to bring that out as evidence
20 in this case? No. Did I want to embarrass an
21 individual in the department when it has nothing to
22 do with the evidence in this case, it's had nothing
23 to do with Harold Jackson?

24 That officer screwed up his own life, and
25 he's been dealt with. But it doesn't affect this

1 case. It was only presented in this case by defense
2 to muddy the water.

3 "Don't look at Harold Jackson. Look at
4 Lester Williams. Look at the stick. Look!" Ladies
5 and gentlemen, Harold Jackson, that's what this case
6 is about. That's what your verdict is about,
7 getting to the bottom of that muddy puddle.

8 See through the muddy water and see
9 through the evidence. See to the bottom of it. The
10 truth is and what your verdict is about is that on
11 January 3, 2007, Harold Jackson decided to destroy
12 everything in his path.

13 And he brought himself to this courtroom
14 for judgment day. He did, not Lester Williams.
15 Harold Jackson brought himself here.

16 He got into a fight with his girlfriend,
17 is how it started. It started while she was at
18 work. He sent an angry text message. Matter of
19 fact, he's jealous of the ex-husband, probably
20 brought on by the fact that the ex-husband's
21 daughter is in the house now.

22 Shella's visiting. His jealousy's
23 building up, building up all day while she's at
24 work. And she's not really responding to him
25 because she's working, and it's building, and it's

Closing Argument by Ms. Tanner

531

1 building.

2 She gets off work at 8:30, and there he
3 is. He picks her up because he's had the car all
4 day. And now he's really mad. He wants to talk
5 about. She doesn't want to talk about it.

6 So now it's really building. He can't get
7 it off his chest because she won't engage him in a
8 fight. And now he's really angry. And they get
9 home, and it escalates until he beats her with a
10 bat.

11 He beats her in the head. He beats her on
12 her arm. He beats her on her leg. He beats her
13 bloody. Her blood's in the bedroom. Her blood's on
14 his clothes. Her blood's on the front door.

15 He beats her bloody with a baseball bat.
16 And then she leaves the house for help. And then he
17 follows her outside with the baseball bat. She told
18 you she watched him from under the neighbor's
19 trailer, pacing, looking for her, had the bat in his
20 hand.

21 She heard it hitting the ground. He's
22 looking for her. And he doesn't find her. What
23 does that do to the anger level? That's got to ramp
24 it up.

25 He now can't find his target. So what's

1 he going to do with this anger now? He's got the
2 bat. He's beyond angry. Now what? Now he goes
3 back in the house.

4 He goes back in through a back door. He
5 heard Shella. Before she can tell Joshua "Look
6 out!" before he even realizes he's in the house, he
7 takes a swing at the back of his head.

8 And make no mistake, that's the back of
9 Josh Pringle's head. Harold Jackson swung a bat at
10 Josh Pringle's head before he knew he was even
11 there.

12 Remember the photographs of his hands --
13 no injuries on his hand, Josh Pringle's hand. If
14 you're in a fight, if you know someone's swinging a
15 baseball bat at you, what's your natural human
16 instinct?

17 He would have at least -- at the least --
18 had an injury to his hands from self-defense had he
19 known the bat was coming. He didn't know the bat
20 was coming. He didn't even have time to do this.

21 He went down. He went down when he was
22 hit from behind. And remember, ladies and
23 gentlemen, remember the blood splatter expert? The
24 first slap across the wall, you see it going down.
25 It's in a diagonal toward the floor.

Closing Argument by Ms. Tanner

533

1 He said that he was probably about here
2 when this strike occurred. And then what else?
3 Then you move forward a step, a puddle and more
4 splatter to a doorway.

5 What did he say about that? He was on his
6 hands and knees. He was hit on his hands and knees.
7 That meant Harold Jackson -- not Lester Williams,
8 not the stick, not Nazarene -- Harold Jackson hit
9 him on his hands and knees with a baseball bat.

10 And then there's another step forward.
11 You saw contact blood on the wall, Joshua's last
12 contact. His head rolls down the wall. It's where
13 they find him. It's where EMS tries to help him.

14 And remember what they said about his
15 head. You could feel it. You could feel the bones
16 crushed. They didn't look at him once. They did it
17 twice. They did it three times.

18 Really, the pathologist said he thinks
19 there were about six fractures, but it's real hard
20 because everything was just so cracked up. And at
21 the hospital, staples were trying to hold his scalp
22 together.

23 And the neurologist said that his injuries
24 made his brain swell almost or over six times normal
25 pressure. Normal is 15, and his was 70. That's the

1 kind of injuries he had that day. He never woke up.

2 And Harold Jackson, he stood in Josh's
3 blood. On Harold Jackson's shoes, you heard the DNA
4 expert say, "This is Josh's blood." He stood in
5 Josh Pringle's blood, bashing his skull in.

6 And then he walked through Josh Pringle's
7 blood to chase Shella out of the house. He chased
8 Shella across the street. He chased Shella into a
9 neighbor's yard, where she balled up on the ground
10 and she begged for her life while he beat her with
11 the baseball bat. That's what Harold Jackson did.

12 You've got three separate charges to
13 consider in this case, ladies and gentlemen. First,
14 you're going to have to consider whether or not
15 Harold Jackson is guilty of assault and battery with
16 intent to kill Nazarene Laurent.

17 That's his girlfriend. That's the
18 girlfriend he beat with the baseball bat. Did he
19 beat her in the attempt to kill her? Well, let's
20 see. Before he beat her, he said, "Don't you worry
21 about your God. I'm going to kill you today."

22 And he beat on her until Josh and Shella
23 got in the room. So you decide, ladies and
24 gentlemen. If the fact that she maybe aggravated
25 him by not wanting to argue or the fact that there's

Closing Argument by Ms. Tanner

535

1 a stick on her bedroom floor, if you think that
2 excuses that and that justifies the beating with a
3 bat, then you find him not guilty.

4 The second charge you've got to consider
5 is whether he committed assault and battery with
6 intent to kill on Shella. This is the girl he
7 chases into a neighbor's yard, has her ball up on
8 the ground and beg for her life while he beats her.

9 If you think that all 50 pounds of her --
10 you saw her. If you think all 50 pounds of her
11 balled up on the ground in a neighbor's yard,
12 begging for her life, posed some kind of threat to
13 him and that he chased her out of that house for any
14 other reason than to kill her, then you find him not
15 guilty.

16 Your third charge, ladies and gentlemen,
17 is murder. You must decide whether or not Harold
18 Jackson murdered Josh Pringle. Well, we know he
19 struck him several times in the back of the head
20 with a baseball bat.

21 If it was some sort of fight, don't you
22 think that first one handled it. The next one, and
23 the next one, and the next one, that was with the
24 intent to kill. And murder is malice. It's a
25 killing with malice.

1 We're talking about a 21-year-old boy who
2 was pretty good-sized, according to the EMS people.
3 He put up a fight. He's been involved in an
4 altercation with Harold Jackson.

5 How did Harold Jackson beat three people
6 and walk away unscathed if they were attacking him?
7 There was malice. He was angry. He went in to
8 kill, and he did.

9 He killed. He killed Josh Pringle. But
10 if you think that getting beat in the back of the
11 head while you're on your hands and knees, or you
12 think that stopping a domestic situation between Mr.
13 Jackson and Nazarene justified getting beat to death
14 -- because, remember, he said, "I wasn't raised that
15 way."

16 Mr. Colongeli wants you to think that
17 means "I'm going to go fight." Remember what Shella
18 said. What Shella said was, "I told him don't go
19 down there," after they heard the screaming.

20 He said, "No, I wasn't raised that way. I
21 wasn't raised to let a woman get beat. I'm going to
22 go help." So if you think that because he was
23 raised that way, to stop domestic violence, that he
24 deserved to get beat in the back of the head with a
25 baseball bat, then you find him not guilty.

Closing Argument by Ms. Tanner

537

1 If you think that's justified, then that
2 should be your verdict. But, ladies and gentlemen,
3 your verdict must speak the truth -- the truth.

4 You must come back, and you must not be
5 distracted by mud. Remember the testimony of the
6 survivors. Look at the physical evidence. Look at
7 the photographs of the scene.

8 The truth is Harold Jackson is guilty --
9 he is guilty -- of assault and battery with intent
10 to kill Nazarene, he is guilty of assault and
11 battery with intent to kill Shella Laurent, and he
12 is guilty of murder of Josh Pringle.

13 You're going to be given an option of a
14 lesser offense called manslaughter. If you believe
15 all the stuff the defense lawyer said about fighting
16 -- the killing happened in a fight -- you can
17 consider manslaughter.

18 But Josh Pringle died because of malice,
19 because of anger. He was hit from behind. He
20 didn't have an opportunity to fight. Not only did
21 he not have an opportunity to fight, he didn't have
22 an opportunity to defend himself, which is beyond
23 fight.

24 In closing, ladies and gentlemen, verdict
25 speaks the truth. That's your duty today. Your

Closing Argument by Ms. Tanner

538

1 duty is to get to the bottom of this. And you've
2 heard the evidence.

3 You've seen evidence. And I ask that you
4 come back with a verdict that reflects the truth.
5 Thank you.

6 THE COURT: Thank you, Ms. Tanner.

7 CHARGE OF THE COURT

8 Mr. Foreperson and members of the jury,
9 you followed very patiently and listened very
10 attentively to the presentation of the evidence in
11 this case, and I want to thank you for that, and
12 also the able arguments made by Solicitor Angie
13 Tanner on the part of the State and Mr. Donald
14 Colongeli on behalf of the defendant.

15 It now becomes the duty of the Trial Judge
16 under the Constitution of this state to charge and
17 instruct you in the law that's applicable to this
18 case. It's your duty as jurors to accept and apply
19 the law as the Court will now state it to you.

20 As jurors, it's your exclusive duty to
21 determine all issues of fact in this case. You must
22 determine the effect, the value, the weight, and the
23 truth of the evidence. Both the State and the
24 defendant have the right to expect that you will
25 carefully consider and evaluate the evidence and

Charge of the Court

539

1 apply the law of the case to that evidence.

2 By doing so, both the State of South
3 Carolina and the defendant, Mr. Jackson, will
4 receive and obtain a fair and impartial trial in
5 this matter.

6 Ladies and gentlemen, the State of South
7 Carolina by the bills of indictment in this case
8 charge the defendant, Harold Jackson, with three
9 counts, the first of which is murder.

10 The indictment reads as follows, that
11 Harold Lee Jackson did in Beaufort County, on or
12 about January 3, 2007, feloniously, willfully, and
13 with malice aforethought kill Josh Pringle by means
14 of blunt force trauma and that the said victim died
15 of the injuries which was a proximate result
16 thereof.

17 As to the charge of assault and battery
18 with intent to kill, this indictment states that
19 Harold Lee Jackson did in Beaufort County, on or
20 about January 3, 2007, with malice aforethought
21 commit an assault and battery with intent to kill
22 upon one Shella Laurent.

23 And, lastly, again an indictment for
24 assault and battery with intent to kill, this
25 indictment states that Harold Lee Jackson did in

Charge of the Court

540

1 Beaufort County, on or about January 3, 2007, with
2 malice aforethought commit an assault and battery
3 with intent to kill upon one Nazarene Laurent.

4 Ladies and gentlemen of the jury, I remind
5 you that the fact that the defendant was arrested,
6 charged, and indicted in this case is not evidence
7 in this case and cannot be considered by you as
8 evidence of guilt in this case, nor does it create
9 any presumption or inference of guilt.

10 The indictments are simply the formal
11 written instruments which contain the charges made
12 against the defendant. It's the formal documents by
13 which this case is brought here into this courtroom.

14 Now, ladies and gentlemen, these three
15 indictments allege different charges. Each
16 indictment is a separate and distinct offense. You
17 must decide each indictment separately on the
18 evidence and the law applicable to it, uninfluenced
19 by your decisions as to any other indictment.

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

24 Now, ladies and gentlemen, the defendant
25 has pled not guilty to these indictments. And that

Charge of the Court

541

1 plea puts the burden on the State to prove the
2 defendant guilty beyond a reasonable doubt.

3 A person charged with committing a crime
4 in South Carolina is never required to prove himself
5 innocent. I charge you that it's an important rule
6 of law that the defendant in a criminal trial, no
7 matter what the seriousness of the charge may be,
8 will always be presumed innocent of the crime for
9 which the indictment is issued unless guilt has been
10 proven by evidence satisfying you, the jury, of that
11 guilt beyond a reasonable doubt.

12 Ladies and gentlemen, this presumption of
13 innocence does not end when you begin your
14 deliberations, but it accompanies the defendant
15 throughout the trial until you reach a verdict of
16 guilt based on evidence satisfying you of that guilt
17 beyond a reasonable doubt.

18 Ladies and gentlemen, the presumption of
19 innocence is like a robe of righteousness that's
20 placed about the shoulders of the defendant, and it
21 remains with the defendant until it's been stripped
22 from him by evidence satisfying you, the jury, of
23 the defendant's guilt beyond a reasonable doubt.

24 Please understand, the presumption of
25 innocence is not a mere legal theory. It's not just

Charge of the Court

542

1 a legal phrase we use. It is a substantial right to
2 which every defendant is entitled unless you, the
3 jury, are satisfied from the evidence of the
4 defendant's guilt beyond a reasonable doubt.

5 Now, as I've said, the State has the
6 burden of proving the defendant guilty beyond a
7 reasonable doubt. The term "reasonable doubt" must
8 be given its plain and ordinary meaning.

9 However, to the extent that I may define
10 it for you, a reasonable doubt is the kind of doubt
11 that would cause a reasonable person to hesitate to
12 act in the most important of their personal
13 decisions.

14 Ladies and gentlemen, the defendant is
15 entitled to every reasonable doubt arising in the
16 whole case. If upon any issue of fact essential to
17 conviction you have a reasonable doubt as to how
18 that issue should be resolved, you must resolve that
19 reasonable doubt in favor of the defendant.

20 Now, some of you may have served as jurors
21 in civil cases where you were told that it's only
22 necessary to prove that a fact is more likely true
23 than not true. We call that by the greater weight
24 of the evidence or the preponderance of the
25 evidence.

Charge of the Court

543

1 In criminal cases, the State's proof must
2 be more powerful than that. It must be beyond a
3 reasonable doubt. Proof beyond a reasonable doubt
4 is proof that leaves you firmly convinced of the
5 defendant's guilt.

6 Now, ladies and gentlemen, there are very
7 few things in this world that we know with absolute
8 certainty. And in criminal cases, the law does not
9 require proof that overcomes every possible doubt.

10 If based upon your consideration of the
11 evidence you are firmly convinced the defendant is
12 guilty of the crime or crimes charged, you must find
13 the defendant guilty.

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

18 Ladies and gentlemen, I remind you that
19 during this trial, you and I have certain duties to
20 perform. As the Trial Judge, it's my responsibility
21 to preside over the trial of the case, and I also
22 have the duty to rule on the admissibility of the
23 evidence that's offered during the trial.

24 Ladies and gentlemen, you are to consider
25 only the competent evidence that's before you. You

Charge of the Court

544

1 are to consider only the testimony which has been
2 presented from the witness stand and any exhibits
3 which have been made a part of the record of this
4 case.

5 I have the additional duty to charge you
6 the law that's applicable to this case. As the
7 presiding judge, I am the sole judge of the law of
8 this case. And it's your duty as jurors to accept
9 and apply the law as I now state it to you.

10 If you have any idea as to what the law is
11 or what the law ought to be and it does not agree
12 with what I now tell you the law is, you must
13 abandon this idea, because you are sworn to accept
14 the law and apply the law exactly as I state it to
15 you.

16 In every case that's tried in this Court
17 before a jury, the jury becomes the sole and
18 exclusive judge of the facts. A trial judge can't
19 intimate, state, comment on, or make any statement
20 to a trial jury about the facts in the case.

21 Since you, the jury, are the sole judges
22 of the facts in this case, you are not to infer from
23 anything that I've said during the progress of the
24 trial, in ruling upon the admissibility of evidence
25 or otherwise, or anything that I say now during the

Charge of the Court

545

1 course of this instruction to you that I have any
2 opinion about the facts of this case.

3 The law does not allow me to have an
4 opinion about the facts in this case. This is a
5 matter solely for you, the jury, to determine. As
6 jurors, it is your duty to determine the effect, the
7 value, the weight, and truth of the evidence that's
8 presented.

9 Now, ladies and gentlemen, there are two
10 types of evidence which are generally presented
11 during a trial. They are direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a
14 person who claims to have actual knowledge of a
15 fact, such as an eyewitness. It's evidence which
16 immediately establishes the main fact to be proved.

17 Circumstantial evidence is proof of a
18 chain of facts and circumstances indicating the
19 existence of a fact. It is evidence which
20 immediately establishes collateral facts from which
21 the main fact may be inferred.

22 Circumstantial evidence is based on
23 inference and not on personal knowledge or
24 observation. Ladies and gentlemen, the law makes
25 absolutely no distinction between the weight or

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

5 You should weigh all the evidence in this
6 case. And after weighing all the evidence, if you
7 are not convinced of the guilt of the defendant
8 beyond a reasonable doubt, you must find him not
9 guilty.

10 Now, ladies and gentlemen, the rules of
11 evidence ordinarily not permit witnesses to testify
12 to opinions or conclusions. An exception to this
13 rule exists for witnesses that we call expert
14 witnesses.

15 A witness who by education or experience
16 has become an expert in some art, science, or
17 profession may give an opinion as to the subject the
18 witness claims to be an expert in. They may also
19 give the reasons for their opinion.

20 You should consider an expert opinion
21 given by a witness and, like any other evidence,
22 give it the weight you think it deserves. If you
23 decide that an expert witness' opinion is not based
24 on sufficient education and experience, or if you
25 decide that the reasons given in support of the

Charge of the Court

547

1 opinion are not sound, or that the opinion is
2 outweighed by other evidence, you may disregard the
3 opinion entirely.

4 An expert witness' testimony is to be
5 given no greater weight than that of other witnesses
6 simply because the witness is an expert. And you do
7 not have to accept an expert's opinion, even though
8 it's uncontradicted.

9 Ladies and gentlemen of the jury, as I
10 told you before, it's your duty to determine the
11 credibility of the witnesses who have testified in
12 this case. Credibility simply means believability.

13 It becomes your duty as jurors to analyze
14 and to evaluate the evidence and determine which
15 evidence convinces you of its truth. In determining
16 the believability of witnesses who have testified in
17 this case, you may believe one witness over several
18 witnesses or several witnesses over one.

19 You may believe a part of the testimony of
20 a witness and reject the remaining part of the
21 testimony of that same witness. You may believe the
22 testimony of a witness in its entirety or reject the
23 testimony of a witness in its entirety.

24 You may consider whether any witness has
25 exhibited to you any interest, any bias, any

1 prejudice or other motive in this case. You may
2 also consider the appearance and manner of a witness
3 while they were on the witness stand.

4 Ladies and gentlemen, I instruct you and
5 emphasize that the fact the defendant did not
6 testify is not a factor to be considered by you in
7 any way in your deliberation and in your
8 consideration on the question of the guilt or
9 innocence of the defendant.

10 It must not be considered by you in any
11 manner whatsoever. A defendant has the
12 constitutional right to remain silent. And the
13 assertion of this right must not be considered by
14 you in your deliberations.

15 I repeat, under your oath, you are to draw
16 no conclusion whatsoever from the fact that the
17 defendant in this case did not testify. The fact
18 that this defendant did not testify should not even
19 be discussed in the jury room.

20 The burden of proof, as I have stated to
21 you, is on the State. The defendant is not required
22 to prove his innocence. The burden of proof remains
23 on the State to prove guilt beyond a reasonable
24 doubt.

25 Now, ladies and gentlemen, I told you the

Charge of the Court

549

1 defendant has been charged in this case with one
2 count of murder and two counts of assault and
3 battery with intent to kill. I'm going to now
4 explain to you the elements or requirements of the
5 charge of murder.

6 Ladies and gentlemen, to prove murder, the
7 State must show beyond a reasonable doubt that the
8 defendant killed another person with malice
9 aforethought. Malice is hatred, ill will, or
10 hostility towards another person.

11 It is the intentional doing of a wrongful
12 act without just cause or excuse and with an intent
13 to inflict an injury or under circumstances that the
14 law will infer an evil intent.

15 Malice aforethought does not require that
16 malice exist for any particular time before the act
17 is committed. But malice must exist in the mind of
18 the defendant just before and at the time that the
19 act is committed.

20 Therefore, there must be a combination of
21 the previous evil intent and the act. Ladies and
22 gentlemen, malice aforethought may be express or
23 inferred. These terms, express and inferred, do not
24 mean different kinds of malice but merely the manner
25 in which malice may be shown to exist.

1 That is either by direct evidence or by
2 inference from the facts and circumstances which are
3 proved. Express malice is shown when a person
4 speaks words which express hatred or ill will for
5 another or when the person prepared beforehand to do
6 the act which was later accomplished.

7 For example, lying in wait for a person or
8 any other acts of preparation going to show that the
9 deed was within the defendant's mind would be
10 express malice.

11 Malice may be inferred from conduct
12 showing total disregard for human life. Inferred
13 malice may also arise when the deed is done with a
14 deadly weapon.

15 A deadly weapon is any article,
16 instrument, or substance which is likely to cause
17 death or great bodily harm. Whether an instrument
18 has been used as a deadly weapon depends on the
19 facts and circumstances of each case.

20 Ladies and gentlemen, the following are
21 examples of instruments which may be deadly weapons:
22 a pistol, a shotgun, a rifle, a dirk, a dagger, a
23 knife, a slingshot, metal knuckles, a razor,
24 gasoline, a fire bomb or a Molotov cocktail, and
25 lighter fluid.

Charge of the Court

551

1 Ladies and gentlemen, ordinary objects may
2 become deadly weapons when the facts show that they
3 have been used to inflict serious bodily harm or
4 death.

5 Ladies and gentlemen, if you find that the
6 State has failed to prove beyond a reasonable doubt
7 that the defendant committed murder, you may
8 consider whether the State has proved beyond a
9 reasonable doubt that the defendant committed
10 voluntary manslaughter.

11 To prove voluntary manslaughter, the State
12 must prove beyond a reasonable doubt the defendant
13 took the life of another in the sudden heat of
14 passion based on sufficient legal provocation.

15 Both heat of passion and sufficient legal
16 provocation must be present at the time of the
17 killing to constitute voluntary manslaughter.
18 Sudden heat of passion may for a time affect a
19 person's self-control and temporarily disturb a
20 person's reason.

21 The sudden heat of passion must be the
22 type that would make an ordinary person unable to
23 coolly reflect on his actions and would produce an
24 uncontrollable impulse to do violence.

25 Sufficient legal provocation must be the

1 type that would make a person of ordinary reason and
2 caution become enraged and to lose control
3 temporarily. The provocation needed for voluntary
4 manslaughter must come from some act of or related
5 to the victim.

6 Ladies and gentlemen, words alone, however
7 vulgar or insulting, are not enough to be legal
8 provocation. Where death is caused by the use of a
9 deadly weapon, the words must be accompanied by some
10 overt threatening act which would have produced the
11 heat of passion.

12 Ladies and gentlemen, the exercise of a
13 legal right, no matter how offensive it is to
14 another, is never sufficient legal provocation for
15 voluntary manslaughter.

16 If the heat of passion had cooled or if
17 there was enough time between the provocation, if
18 any, and the killing for the passion of a reasonable
19 person to cool, the killing would not be voluntary
20 manslaughter.

21 In deciding whether a reasonable person
22 would have had enough time to cool off, you should
23 consider all the circumstances surrounding the
24 killing. You may consider the nature of the
25 provocation, if any, the defendant's mental and

Charge of the Court

553

1 physical state, and the circumstances and
2 relationship between the parties.

3 Now, ladies and gentlemen, the defendant
4 has also been charged with two counts of assault and
5 battery with intent to kill. In order to prove
6 assault and battery with intent to kill, the State
7 must prove beyond a reasonable doubt that the
8 defendant committed an unlawful act of a violent
9 nature to the person of another with malice
10 aforethought.

11 An assault occurs, ladies and gentlemen,
12 when a person unlawfully attempts or offers to
13 commit a violent injury upon another person and had
14 the present ability to complete the attempted
15 injury.

16 An assault is the intentional creation of
17 a reasonable fear of immediate bodily harm. It's
18 not necessary that the attempted injury or harm
19 actually take place.

20 For example, if I walk up to you and I'm
21 within arm's reach of you, and I draw back my fist
22 to hit you, that is an assault. Ladies and
23 gentlemen, a battery is the unlawful touching of
24 another person by a person who has committed the
25 assault.

1 An unlawful touching can be caused by a
2 part of the accused's body or by any object that the
3 accused puts in motion. A battery is the completion
4 of the assault by using or applying force to another
5 person, however slight, in a rude, angry, or
6 resentful manner without legal justification for
7 doing so.

8 Using my earlier example, if I carry
9 through that assault by hitting you, that's the
10 battery. Ladies and gentlemen, malice is hatred,
11 ill will, or hostility towards another person.

12 It's the intentional doing of a wrongful
13 act without just cause or excuse and with an intent
14 to inflict an injury, or there are circumstances
15 that the law will infer an evil intent.

16 Malice aforethought does not require that
17 malice exist for any particular time before the act
18 is committed. But malice must exist in the mind of
19 the defendant just before and at the time that the
20 act is committed.

21 Therefore, there must be a combination of
22 the previous evil intent and the act. Ladies and
23 gentlemen, malice aforethought may be express or
24 inferred.

25 The terms, express and inferred, again do

Charge of the Court

555

1 not mean different kinds of malice but merely the
2 manner in which malice may be shown to exist.
3 That's either by direct evidence or by inference
4 from the facts and circumstances which are proved.

5 Express malice is shown when a person
6 speaks words which express hatred or ill will for
7 another or when the person prepared beforehand to do
8 the act which was later accomplished.

9 For example, lying in wait for a person or
10 any other acts of preparation going to show that the
11 deed was within the defendant's mind would be
12 express malice.

13 Again, malice may be inferred from conduct
14 showing a total disregard for human life. Inferred
15 malice may also arise when a deed is done with a
16 deadly weapon. Again, a deadly is any article,
17 instrument, or substance which is likely to cause
18 death or great bodily harm.

19 Whether an instrument has been used as a
20 deadly weapon depends on the facts and circumstances
21 of each case. Ladies and gentlemen, if facts are
22 proved beyond a reasonable doubt sufficient to raise
23 an inference of malice to your satisfaction, this
24 inference would be simply an evidentiary fact to be
25 considered by you along with the other evidence in

1 the case.

2 And you may give it the weight you decide
3 it should receive. A specific intent to kill is not
4 an element of assault and battery with intent to
5 kill, but there must be a general intent to commit
6 serious bodily injury.

7 Intent means intending the result which
8 actually occurs, not accidentally or involuntary.
9 Intent may be shown by acts and conduct of the
10 defendant and other circumstances from which you may
11 naturally and reasonably infer intent.

12 Evidence of the character of the assault,
13 the character of the instrument used, the manner in
14 which it was used, the purpose to be accomplished,
15 and the resulting wounds or injuries may be
16 considered in determining the intent with which the
17 assault was committed.

18 Intent may be inferred when it's
19 demonstrated the defendant voluntarily and willfully
20 commits an act, the natural tendency of which is to
21 destroy another's life.

22 Mr. Foreperson and members of the jury, as
23 you retire to begin your deliberations, I wish to
24 express the hope that each of you will be mindful of
25 the importance of your responsibility here today.

Charge of the Court

557

1 You're not called upon very often to serve
2 as jurors. And the proper performance of the duty
3 requires that you reach the height of freeing your
4 mind of all improper influences.

5 You and I are acting for the community,
6 and that's what you must see to it that this trial
7 is fair and that the verdict is just. You've
8 observed during the trial of this case that the
9 Court is always addressed as "Your Honor."

10 The reason is that the Court is entrusted
11 with the honor of this community, with the honor of
12 this state, and the honor of this country in seeking
13 that every case tried here in this courtroom
14 receives fair and impartial justice.

15 Now you, the jury, take into your care and
16 keeping the preservation and the honor of this
17 community, the honor of this state, and the honor of
18 this country. Now, please don't get the idea that
19 I'm trying to intimate to you how I might think you
20 should decide this case.

21 As I've already told you, under the laws
22 of our state, you, the jury, are the sole judges of
23 all questions of fact. And it would be highly
24 improper for me to influence you in the performance
25 of that duty.

1 So, again, I'm not trying to tell you what
2 your verdict should find. But as the presiding
3 officer of this Court, I am vitally concerned that
4 whatever verdict you reach will be the result of you
5 going back into that jury room and confining your
6 consideration to the evidence and to the law that
7 you've heard in this courtroom, weighing it fairly
8 and impartially, as I have every confidence you will
9 do.

10 Ladies and gentlemen, everyone is entitled
11 to justice in this case, both the State and the
12 defendant. You owe no support or sympathy to
13 anyone. The Court is of the confirmed opinion that
14 whatever verdict you reach will represent truth and
15 justice for all the parties involved.

16 Mr. Foreperson and members of the jury, I
17 remind you that your verdict must be unanimous. It
18 must be the verdict of all 12 jurors. And to that
19 end, sir, my law clerk has prepared a verdict form.

20 It simply has the case caption and the
21 indictment numbers, and there are three questions on
22 this. The first question states, "As to Indictment
23 Number" -- and it gives the indictment number -- "on
24 the charge of murder of Josh Pringle, we, the jury,
25 unanimously find the defendant, Harold Jackson" --

Charge of the Court

559

1 and it says "guilty" or "not guilty."

2 Question one then goes on to say, "If you
3 find that the defendant, Harold Jackson, is not
4 guilty of murder, you may consider whether or not he
5 has committed the lesser included offense of
6 voluntary manslaughter." And so it asks you that
7 question.

8 Number two, "As to Indictment Number" --
9 "which is the charge of the assault and battery with
10 intent to kill against Shella Laurent, we, the jury,
11 unanimously find the defendant, Harold Jackson" --
12 and, again, you indicate "guilty" or "not guilty."

13 Question number three, again, "As to the
14 Indictment Number" -- "on the charge of assault and
15 battery with intent to kill against Nazarene
16 Laurent, we, the jury, unanimously find the
17 defendant, Harold Jackson, guilty or not guilty."

18 Ladies and gentlemen, please don't infer
19 that from the order I put "guilty" or "not guilty"
20 it means anything. In every trial, I just switch
21 them.

22 Respectfully, Mr. Holliday, at the very
23 end, there is a sentence that just says, "I certify
24 that this is the unanimous decision of the jury."
25 There is a place for Mr. Holliday to sign for us.

Charge of the Court

560

1 It's dated and with the county and state.

2 Ladies and gentlemen, at this time what I
3 am going to do is this. I am going to send you back
4 to your jury room. But for the last time, I'm going
5 to again tell you not to begin your deliberations.

6 And the reason why is I need to ask these
7 attorneys if there is anything further they want to
8 be charged or they want me to charge you on the law.

9 If there is, I'll bring you back out here,
10 and I will charge you further. If there is not, Mr.
11 Foreperson, I'm going to send you the verdict form
12 and all the evidence that's been entered into this
13 case.

14 And that is going to be your signal to
15 begin your deliberations. Respectfully, sir, when
16 you have reached a decision on each of the three
17 questions, I ask that you knock on the door, and the
18 Bailiffs will come alert me, and we'll accept you
19 back into the courtroom, all right?

20 So, with that said, ladies and gentlemen,
21 again, I'm going to excuse you. And do not begin
22 discussing this case until I either bring you back
23 out or you receive the evidence and the verdict
24 form. I appreciate your attention.

25 (Whereupon, the jury left

561

1 the courtroom at 11:16 a.m. to deliberate their
2 verdict.)

3 BAILIFF: The jury is clear, Your Honor.

4 THE COURT: Thank you, Bob.

5 Any exceptions or additions to the charge?

6 MS. TANNER: Nothing that the jury would
7 have to be brought back in for. But the verdict
8 form says April 22nd. Today is the 23rd.

9 THE COURT: I actually fixed it on mine,
10 just by hand. I hope that's okay. I already did
11 it, Solicitor.

12 MS. TANNER: That's fine.

13 THE COURT: I appreciate that. We're
14 going to blame my law clerk for that. But I
15 actually fixed it by hand. As long as there's no
16 objection, Mr. Colongeli, if that's fine with you.

17 MR. COLONGELI: That's no problem, Your
18 Honor.

19 THE COURT: Okay. Anything further as far
20 as charge is concerned?

21 MS. TANNER: Nothing from the State.

22 THE COURT: Any exceptions or additions
23 from the defense?

24 MR. COLONGELI: Nothing from the defense,
25 only I'd ask once again that my objection be noted

1 as to what we had argued as to the self-defense.

2 THE COURT: All right, thank you, Mr.
3 Colongeli. I appreciate that. I will go ahead. I
4 will ask the attorneys to please come forward, go
5 through all the evidence.

6 And, again, let's be very careful about
7 anything that was a Court's exhibit. I also want to
8 commend you both. Those were wonderful closing
9 statements.

10 And I will just tell you, I have had the
11 experience -- and I tell this for the rest of you in
12 this courtroom -- of trying a lot of cases, some
13 good, some bad. And those were excellent closing
14 statements. I appreciate it.

15 MS. TANNER: Thank you.

16 THE COURT: All right.

17 MS. TANNER: The State and the defense
18 have these photographs. They're defense exhibits.
19 Our memory is they were introduced and, in fact,
20 published to the jury. They passed them around and
21 looked at them.

22 THE COURT: Okay.

23 MS. TANNER: They're photographs of
24 Nazarene Laurent, but they're not listed as
25 introduced on the Court Reporter's sheet. I don't

1 know if you remember.

2 MR. COLONGELI: I published them to the
3 jury.

4 MS. TANNER: I know you published them.

5 MR. COLONGELI: It's 12 through 19.

6 MS. TANNER: Right.

7 MR. COLONGELI: I was under the assumption

8 --

9 THE COURT: You were using them to show
10 their injuries weren't as bad as what --

11 MR. COLONGELI: Right.

12 THE COURT: -- the pictures that the
13 Solicitor had shown. I can tell you I believe they
14 were in evidence. They were published to the jury.
15 And if published to the jury, they are in evidence.

16 MR. COLONGELI: That's fine.

17 THE COURT: So I believe they go back
18 there properly. That's also how you lost your last
19 argument.

20 MS. BANNER: I remember you passed them
21 around. Yes, I remember you even showing these to
22 me at the table.

23 THE COURT: All right, we'll be at ease.
24 If you all need anything or need me, just keep
25 close. And maybe, Dawn and the Solicitor, if you

1 all could give Erin your cell phone numbers if you
2 all run out for a minute, just so she can find you
3 if there's any questions or a verdict. I appreciate
4 it.

5 MR. COLONGELI: Anything else? Are you
6 good to go?

7 MS. TANNER: Yes.

8 (Whereupon, another case
9 was heard before the Court at this time.)

10 THE COURT: I have a note from the jury.
11 So let me go ahead and take care of this at this
12 time.

13 THE COURT: For the attorneys in the case
14 before us -- and I apologize, Rema, for jumping all
15 over the record -- I got a note from the jury that
16 says, "Can we get a printout of the definitions of
17 the charges?" And it's signed by our foreperson,
18 Mr. Holliday.

19 What I am presuming is they need the
20 charges on murder, voluntary manslaughter, and
21 assault and battery with intent to kill. You all
22 tell me what you would like to do.

23 I could bring them out here, recharge them
24 on those, or I could send an entire printed copy of
25 my jury charge back to them. What do you all want

1 to do?

2 MS. TANNER: I wouldn't object to either
3 one. For time, just maybe just a printed copy would
4 do.

5 THE COURT: And the reason why I say in
6 its entirety is because, as you know, we can't just
7 piecemeal anything, because certainly I think
8 they're entitled to -- they need to go back, and if
9 they want to, they can look up reasonable doubt and
10 understand certain things.

11 So that would be my proposal. But, Mr.
12 Colongeli, what is your pleasure?

13 MR. COLONGELI: I'm not opposed to having
14 you send those back. I would -- and you may have
15 just said this as far as the reasonable doubt --

16 THE COURT: I'm going to send the whole
17 charge back, not just the murder, voluntary
18 manslaughter, and assault and battery with intent to
19 kill. It would be absolutely every last thing I
20 read from welcome, okay?

21 MR. COLONGELI: That would be fine.

22 THE COURT: I believe that's, in all
23 fairness, the way it should be. Obviously, a charge
24 is read in its totality, not certainly piecemeal.
25 So I think that's appropriate.

1 Just for the record, it's my
2 understanding, Solicitor and Mr. Colongeli, that you
3 both wish for me to send my entire jury charge back,
4 is that correct?

5 MS. TANNER: Yes, ma'am.

6 MR. COLONGELI: Yes, Your Honor.

7 THE COURT: Okay, all right. Well, that's
8 what we will do. Erin is going to go print off a
9 clean copy. I actually had put a couple of commas
10 and crossed out like one thing in the one that I
11 read. So I just have an absolutely perfectly clean
12 copy to send back to them.

13 And, of course, we'll go ahead and make
14 that a Court's exhibit as well afterwards, okay?
15 And I've made the jury's note as Court's Exhibit
16 Number Four, okay?

17 MR. COLONGELI: Your Honor, after that's
18 done, if we could just get a copy?

19 THE COURT: No, we're going to make it a
20 Court's exhibit. I don't make it a habit, Mr.
21 Colongeli. You all can look at it, if you want to,
22 before it goes back. But I've been told that they
23 don't want copies of our charges circulating.

24 MR. COLONGELI: Okay.

25 THE COURT: Okay?

567

1 MR. COLONGELI: That's fine.

2 THE COURT: But I'm happy to have you look
3 at it before it even goes to them, just to make
4 sure. It is verbatim. I always have to tell juries
5 that's why I read it verbatim, is so I can give it
6 back to them exactly as it was charged.

7 MR. COLONGELI: That's not necessary. I
8 can always look at it afterwards.

9 THE COURT: Okay -- as long as you both
10 are fine, okay.

11 (Whereupon, other cases
12 were heard at this time.)

13 THE COURT: Solicitor, Mr. Colongeli, we
14 now finally have a clean printed copy. I'm going to
15 go ahead and send it back to the jury, with your
16 permission, is that correct?

17 MS. TANNER: Yes, ma'am.

18 THE COURT: All right, Mr. Colongeli, any
19 objection?

20 MR. COLONGELI: No, Your Honor.

21 THE COURT: Rema, will you make sure that
22 at the end of this case when we get all the evidence
23 back, we get that charge as well, because it hasn't
24 been marked, and we'll mark it as well. I
25 apologize. I should have let you mark it before I

1 sent it.

2 (Whereupon, other cases
3 were heard at this time.)

4 THE COURT: All right, I understand we
5 have a verdict. I'm just going to caution those of
6 you that are in the courtroom that, if you cannot
7 contain yourselves, now is the time to remove
8 yourself from the courtroom.

9 Unfortunately, if there is an outburst or
10 anything along those lines, I will have to have you
11 removed from the courtroom. So, respectfully, I
12 just wanted to give you that fair warning, all
13 right?

14 With that said, is the State ready?

15 MS. TANNER: The State's ready, Your
16 Honor.

17 THE COURT: Is the defense ready?

18 MR. COLONGELI: Yes, Your Honor.

19 THE COURT: Thank you. All right, let's
20 bring the jury in.

21 BAILIFF: Yes, Your Honor. Jurors
22 entering, Your Honor.

23 THE COURT: Thank you.

24 (The jury returned to the
25 courtroom at 1:47 p.m. with their verdict, after

569

1 which the following proceedings were had:)

2 BAILIFF: Your Honor, the jury is seated.

3 THE COURT: Thank you. Mr. Foreperson, I
4 understand you all have reached a verdict?

5 MR. HOLLIDAY: Yes, we have, Your Honor.

6 THE COURT: Would you please hand it to
7 the Bailiff, sir?

8 BAILIFF: Your Honor.

9 THE COURT: All right, Mike, if you'll
10 publish the verdict.

11 VERDICT OF THE JURY

12 CLERK OF COURT: Yes, ma'am. State of
13 South Carolina, County of Beaufort, in the Court of
14 General Sessions, Indictments Number 2007-GS-07-
15 001174, 2007-GS-07-001175, 2007-GS-07-001176, State
16 of South Carolina versus Harold L. Jackson, verdict.

17 As to Indictment Number 2007-GS-07-174,
18 the charge of murder of Josh Pringle, we, the jury
19 unanimously find the defendant, Harold L. Jackson,
20 guilty.

21 As to Indictment Number 2007-GS-07-175,
22 the charge of assault and battery with intent to
23 kill Shella Laurent, we, the jury, unanimously find
24 the defendant, Harold L. Jackson, guilty.

25 As to Indictment Number 2007-GS-07-00176,

1 the charge of assault and battery with intent to
2 kill Nazarene Laurent, we, the jury, unanimously
3 find the defendant, Harold L. Jackson, guilty.

4 THE COURT: Ladies and gentlemen of the
5 jury, if this is your verdict, please raise your
6 hand. Thank you.

7 Mr. Colongeli, would you like this jury
8 individually polled?

9 MR. COLONGELI: I do not, Your Honor.

10 THE COURT: All right. Is there anything
11 further required of this jury, from the Solicitor?

12 MS. TANNER: Nothing from the State.

13 THE COURT: From the defense?

14 MR. COLONGELI: Nothing from the defense,
15 Your Honor.

16 THE COURT: Ladies and gentlemen of the
17 jury, I want to thank you for your service here this
18 week. I know it's very difficult to sit in judgment
19 of your fellow citizens.

20 And please understand, we don't take this
21 lightly, and I know you don't either. You all have
22 been a wonderful jury. You've paid close attention.
23 You've worked very hard.

24 And I want to extend my gratitude, not
25 only behalf of myself and everyone in this courtroom

571

1 but for the whole system, including everyone in this
2 state.

3 Your job, of course, is to reach a true
4 and just verdict, and I know you did just that under
5 the oath you took. Ladies and gentlemen, at this
6 time it is my duty to sentence Mr. Jackson.

7 You are welcome to stay or not stay while
8 I do this. It is completely up to you. If for some
9 reason you do not wish to stay but you would like to
10 know what the sentence is, you can certainly call
11 back to the Clerk's Office, and someone can give you
12 that information.

13 But, again, if you would like to stay
14 during the sentencing, you're welcome to keep your
15 seats. Ladies and gentlemen, I will also tell you
16 at this time, you may or may not discuss this case.
17 It is completely up to you.

18 It's possible that the attorneys or a
19 possible reporter or someone else may ask you
20 questions in regards to it. If you wish to speak of
21 it, you are permitted to, and you are allowed to.

22 If you do not and someone persists, you
23 call to the Clerk of Court's Office and give them
24 their name. They'll bring it to my attention, and I
25 will take care of that, all right?

1 So, with that said, I can send you off
2 with my thanks. You are excused for the remainder
3 of the week. But, of course, if you would like to
4 stay for the sentencing, you are welcome to keep
5 your seats.

6 At this time, if you would like to go, now
7 is the time. Thank you.

8 (Whereupon, the jury panel
9 was dismissed from the courtroom.)

10 BAILIFF: The jury is clear, Your Honor.

11 THE COURT: All right. Have we prepared
12 sentencing sheets?

13 MS. TANNER: Yes, ma'am.

14 THE COURT: At this time, Mr. Colongeli,
15 if you and your client would like to come forward,
16 sir --

17 MR. COLONGELI: Yes.

18 THE COURT: -- or you can remain there,
19 either way, whichever you're more comfortable with
20 is fine by me.

21 MR. JACKSON: Thank you, Your Honor.

22 MS. TANNER: Your Honor, there are several
23 family members who wish to speak to you at the
24 appropriate time.

25 THE COURT: Okay, thank you, Solicitor.

1 MR. COLONGELI: Your Honor, prior to
2 sentencing, I think it's proper for me to make the
3 standard motion for a new trial. I do have that
4 already prepared that I can file it with the Clerk's
5 Office.

6 THE COURT: Thank you, sir. I appreciate
7 that. I'm assuming it's based on all your previous
8 objections, is that correct, on the record?

9 MR. COLONGELI: That's correct, Your
10 Honor. Thank you.

11 THE COURT: All right. And, respectfully,
12 I'm going to deny it based on the same grounds.

13 MR. COLONGELI: Understood.

14 THE COURT: Thank you.

15 MS. TANNER: I wasn't sure for the
16 purposes of trial if they still needed our Bar
17 number, but I put mine on there in case. I don't
18 know if we need that, Mr. Colongeli.

19 THE COURT: Solicitor, obviously, I've
20 tried this case. I've heard the facts of this case.
21 I know what's occurred, and I certainly understand
22 the jury's verdict.

23 I understand that you have some family
24 members or friends that wish to speak. Now would be
25 the appropriate time.

1 MS. TANNER: Sheila Pringle.

2 THE COURT: Ms. Pringle, I am just going
3 to ask, ma'am, that you address your comments to me
4 and that you give me your full name for the record,
5 please.

6 MS. PRINGLE: Sheila Pringle.

7 THE COURT: Yes, ma'am.

8 MS. PRINGLE: I'm the mother of Joshua
9 Pringle. You cannot bring my son back -- the bottom
10 of my heart is aching.

11 THE COURT: Thank you, Ms. Pringle.

12 MS. TANNER: Anthony Pringle, his brother.

13 THE COURT: Yes, sir.

14 MR. PRINGLE: I'm Anthony Pringle. I'm
15 the baby brother of Joshua Pringle. I just want to
16 say that I forgive Mr. Harold. I'm not holding no
17 grudges. It's tough -- he was my brother. And I'd
18 like to see justice.

19 THE COURT: Thank you, sir.

20 MS. TANNER: Shella -- Shella Laurent.

21 MS. LAURENT: I'm Shella Laurent.

22 THE COURT: Thank you, Ms. Laurent. Well,
23 respectfully to you, Ms. Laurent, I hope you keep
24 that baby safe --

25 MS. LAURENT: I will.

575

1 THE COURT: -- and raise him to be a good
2 man and a good citizen.

3 MS. LAURENT: Yes, ma'am.

4 THE COURT: Anyone else from the family
5 that wishes to speak? I think the family has truly
6 been touched by God's grace. There is no question.
7 I think I'm sure Mr. Jackson appreciates your
8 forgiveness.

9 With that said, Solicitor, anything else
10 from you?

11 MS. TANNER: Just briefly, Your Honor.
12 This is absolutely one of the sweetest families I've
13 had the pleasure of dealing with... It was a true
14 tragedy.

15 It was a 21-year-old boy who, by all
16 accounts, was a complete sweetheart, just had a new
17 baby, had his life ahead of him. And I just -- I
18 can't find any sense in this. I don't know why this
19 happened.

20 And I told the jury I couldn't tell them
21 why. I don't know how it got to that point. It's
22 just so senseless, it's so violent.

23 This isn't a guy who pulled a trigger
24 within a split-second. This was a vicious, vicious
25 beating, not just once, not just twice, but three

1 separate victims.

2 And my concern now, obviously, is for the
3 safety of anyone else that Harold Jackson comes in
4 contact with -- in the state of South Carolina. I
5 would ask this Court to give him life without parole
6 so that he does not come back into society and get
7 another shot.

8 THE COURT: Solicitor, does he have a
9 prior record?

10 MS. TANNER: To prepare for trial, Your
11 Honor, I believe his only prior conviction would be
12 a simple assault and battery.

13 THE COURT: How long ago was that?

14 MS. TANNER: It was in '89.

15 THE COURT: All right, Mr. Colongeli?

16 MR. COLONGELI: Thank you, Your Honor.
17 May it please the Court?

18 MS. TANNER: I'm sorry. He has a pending
19 carrying of a concealed weapon in 2006 with the City
20 of Beaufort.

21 THE COURT: All right, Mr. Colongeli.

22 MR. COLONGELI: Thank you, Your Honor.
23 I'd like to first thank this Court. It's a
24 difficult set of facts and the overall situation
25 that we've had to deal with here. I appreciate how

577

1 professional and how much of a pleasure it was to be
2 in this courtroom trying this case.

3 We've arrived at what the jury obviously
4 has decided. And I can tell you I've known Harold
5 since somewhere in 2007. It's been a long road to
6 get here today.

7 And I could only hope there's some sort of
8 redemption here for everyone. I think it's very
9 gracious of the family as far as where they've
10 gotten to. And I think Harold has wanted to get to
11 this point also as far as closure.

12 I don't think in any way he wanted to test
13 the Court as far as trying to deny his involvement
14 in this, and I hope I tried to make that clear
15 during the trial of this case.

16 We never denied that it was a horrible
17 tragedy. Harold never denied that to me. There was
18 some difficulty in explaining why it all came about
19 and what could have been done to prevent it.

20 And those answers will remain -- those
21 questions will remain unanswered. As you had stated
22 as far as the grace of God touching this family, I
23 can only hope the grace of God also touches this
24 Court to the extent that there's some sort of mercy
25 involved on the part of Harold.

1 He's 39, if not 40 -- 39 years old. He's
2 got three children. One is 17, 18, and I forget the
3 age of the youngest. He was gainfully employed for
4 years.

5 And it didn't come out in the testimony,
6 but I think Nazarene would attest to this and anyone
7 that knows Harold, a very hard-working man. You
8 could hear that his record was minimal.

9 It's a horrible tragedy. I would only
10 respectfully ask and urge you some sort of mercy
11 here as opposed to a life sentence. Obviously,
12 prior to this going to trial, there were some
13 discussions and possible negotiations.

14 And I know we're aware of those. But I
15 would respectfully ask and urge you to consider
16 something short of life. Even at 30 years on one
17 charge of murder, obviously, he's looking at being
18 70 years old, if he makes it that far. That's all I
19 have, Your Honor.

20 THE COURT: Mr. Jackson, is there anything
21 you'd like to say, sir?

22 MR. JACKSON: Yes. I just want to
23 apologize to the families. I'm sorry. I wish this
24 had never happened. I think about Josh every day of
25 my life. I think about -- I just want y'all to know

579

1 that I'm sorry, and I ask y'all's forgiveness. I'm
2 sorry this happened.

3 MR. COLONGELI: Your Honor, if I may, one
4 of the critical decisions I had to make as far as
5 putting Harold on the stand, in the many, many
6 months of meeting with him in preparing for this
7 case, he's got a personality that comes across very
8 dry.

9 But in no way do I think that he is not
10 sincere. As a matter of fact, the closer we have
11 gotten to this trial, I've seen emotions in him that
12 I haven't seen in over a year.

13 So to me, I believe it's very sincere and
14 touching. And I wanted to express that to the
15 Court.

16 THE COURT: Mr. Jackson, is there anything
17 you can do to kind of help me understand, because by
18 Rene Laurent's testimony, she wasn't afraid of you.

19 And so, clearly, this is not something
20 that had occurred before or something that she could
21 have predicted. It tends to me to say that you're a
22 man who is 39 years old. At the time you were 37.

23 And the only thing you had was a simple
24 assault and battery charge 20 years ago. That does
25 not indicate to me someone who is just a bad person.

1 And here we go from having no record to doing the
2 ultimate bad thing. Is there anything you can tell
3 me to help me understand?

4 MR. JACKSON: Well, Your Honor, I was
5 under a lot of stress. Things that happened to me
6 when I was small, I was never able to overcome them.

7 MR. COLONGELI: Your Honor, if I may --
8 and I actually appreciate you bringing that up. I
9 was hoping to have Dr. Donna Schwartz-Watts here.
10 As you're aware, she did independently examine
11 Harold.

12 There was also an original mental
13 evaluation, which is not an issue here today. But
14 I'm sure if it was made part of the Court exhibit,
15 that you were familiar with it.

16 But in talking to Donna Schwartz-Watts --
17 and in no way do I say this to make excuses for
18 Harold; I don't think he ever wanted to use this as
19 an excuse -- there was terrible indications of post-
20 traumatic stress disorder.

21 And I don't say that to make light of this
22 or justify his actions. But as he said, it's
23 incredible to me, as you stated, someone who went
24 from a simple assault and battery 20 years later to
25 be ultimately charged and convicted for murder.

581

1 After she, having reviewed all of that
2 evidence, she did indicate a lot of those post-
3 traumatic stress disorders would lead to some sort
4 of diminished capacity where he was presented with a
5 situation that night that just horribly resulted in
6 him doing what he did.

7 For whatever that's worth, she saw a lot
8 of hope as far as rehabilitation in the Department
9 of Corrections. There's been a lot of things that
10 have happened while he's been incarcerated for the
11 last two years as far as medication that I think
12 have greatly assisted.

13 Some of his family members were here. You
14 could see there wasn't a whole lot. He doesn't have
15 a whole lot in the way of family support, but there
16 were some.

17 And in my investigations in this case, we
18 talked to many people, including his wife, other
19 people, who said he was a great guy, hard-working,
20 loves his kids, did everything he could to help his
21 kids.

22 Even Shella and Nazarene were saying they
23 couldn't believe how well he acted around Nazarene
24 as far as helping in the house. So this is one of
25 those things that's just so hard to fathom and

1 understand and bring some sort of justification to.

2 But I think and I hope that it goes to
3 your sentencing here. He's looking at serious time.
4 He knew that before we got into this. I would only
5 respectfully ask you -- I mean, I guess there's two
6 ways to look at.

7 Even a minimum of 30 years potentially
8 means life for Harold. We could flip the script
9 there and just jump to the conclusion that why not
10 give him life.

11 But I firmly think that, whether we look
12 at it from a religious standpoint or not, that some
13 sort of redemption has to come from this, whether it
14 be while he's incarcerated for the rest of his life
15 or has the chance to see the light of day in his
16 very old age, that something good could come from
17 this. And I'd only beg and urge you to consider
18 that.

19 THE COURT: Okay. Sir, do you have a copy
20 of the independent evaluation you had done?

21 MR. COLONGELI: There was never one
22 submitted, Your Honor.

23 THE COURT: There was never was one
24 generated at all?

25 MR. COLONGELI: No, ma'am.

583

1 THE COURT: It was not generated or not
2 submitted?

3 MR. COLONGELI: There was never one
4 generated, to my understanding.

5 THE COURT: Okay.

6 MR. COLONGELI: And as I said, I believe
7 Dr. Schwartz-Watts was on vacation this week. It
8 was just not possible for me to have her here, Your
9 Honor.

10 THE COURT: Okay. Anything further from
11 anyone else? If not, I'll go ahead with the
12 sentencing.

13 SENTENCE OF THE COURT

14 Indictment Number 2007-GS-07-175 is for
15 assault and battery with intent to kill, the
16 sentence of the Court is that you be committed to
17 the Department of Corrections for a period of 20
18 years.

19 Indictment Number 2007-176, again for
20 assault and battery with intent to kill, the
21 sentence of this Court is that you be committed to
22 the Department of Corrections for a period of 20
23 years.

24 On Indictment Number 2007-174, it's for
25 the charge of murder, the sentence of this Court is

1 that you be committed to the Department of
2 Corrections for a period of 50 years.

3 Those are to run concurrent to each other.

4 There is a possibility, Mr. Jackson, that
5 as a very, very old man you possibly could see the
6 light of day. Prison is very hard, as you know, and
7 I don't know if you'll ever live to see that day.

8 But I hope it gives you some hope, some
9 possibility. As everyone knows here, because you
10 were convicted of murder, you're going to do day for
11 day of these sentences.

12 I just wish you the best of luck. I wish
13 the family the best of luck.

14 And, again, thank you all for being here.
15 And I want to again commend the attorneys. You all
16 have done a wonderful job on this case, and I am
17 very appreciative, as well as everyone else in the
18 courthouse. So thank you, and good luck.

19 MR. COLONGELI: Thank you, Your Honor.

20 MS. TANNER: Thank you, Your Honor.

21 -- End of Transcript --

585

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON APRIL 20, 21, 22, AND 23, 2009, IN BEAUFORT, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTY-FIFTH DAY OF JULY, 2009.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HAROLD LEE JACKSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
The court erred by refusing to instruct the jury on self-defense where there was evidence that appellant, in describing the incident, said "they tried to kill me" or those "people were trying to kill him" when appellant described the fatal incident since this evidence, as well as evidence appellant's girlfriend had handled the bloody stick, the fact the decedent was big man acting in a macho fashion, and other evidence regarding the conflict, mandated a self-defense instruction.....	5
Relevant Facts	5
Discussion.....	12
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<u>State v. Brown</u> , 362 S.C. 558, 607 S.E.2d 93 (Ct. App. 2004).....	12
<u>State v. Bryant</u> , 336 S.C. 340, 520 S.E.2d 319 (1999).....	13
<u>State v. Burkhardt</u> , 350 S.C. 252, 565 S.E.2d 298 (2002).....	12
<u>State v. Crosby</u> , 355 S.C. 47, 584 S.E.2d 110 (2003)	13
<u>State v. Day</u> , 341 S.C. 410, 535 S.E.2 nd 431 (2000)	13
<u>State v. Gilliam</u> , 296 S.E.2d 395, 373 S.E.2d 596 (1988).....	13
<u>State v. Jackson</u> , 384 S.C. 29, 681 S.E.2d 17 (Ct. App. 2009).....	12
<u>State v. Light</u> , 378 S.C. 641, 664 S.E.2d 465 (2008)	12
<u>State v. Muller</u> , 292 S.C. 10, 316 S.E.2d 409 (1984).....	12
<u>State v. Slater</u> , 373 S.C. 66, 644 S.E.2d 50 (2007)	12

STATEMENT OF ISSUES ON APPEAL

Whether the court erred by refusing to instruct the jury on self-defense where there was evidence that appellant, in describing the incident, said "they tried to kill me" or those "people were trying to kill him" when appellant described the fatal incident since this evidence, as well as evidence appellant's girlfriend had handled the bloody stick, the fact the decedent was big man acting in a macho fashion, and other evidence regarding the conflict, mandated a self-defense instruction?

STATEMENT OF THE CASE

Appellant was indicted by the Beaufort County Grand Jury for the offenses of murder and two counts of assault and battery with intent to kill (ABIK). R. 405. All three indictments arose from a single incident where the decedent and his girlfriend were visiting appellant and his girlfriend over the holidays on January 3, 2007.

Appellant's case was called to trial on April 20, 2009, before the Honorable Carmen Mullen, and a jury. Donald Colongeli represented appellant. Angela Tanner and Meredith Bannon were the solicitors. R. 1.

On April 23, 2009, the jury found appellant guilty on all three counts. R. 399, 1. 17 – 400 1. 3. Judge Mullen sentenced appellant to fifty years imprisonment for murder and to concurrent terms of twenty years imprisonment on the ABIK counts. R401. 583, 1. 14 – 402, 1. 2.

This appeal follows.

ARGUMENT

The court erred by refusing to instruct the jury on self-defense where there was evidence that appellant, in describing the incident, said "they tried to kill me" or those "people were trying to kill him" when appellant described the fatal incident since this evidence, as well as evidence appellant's girlfriend had handled the bloody stick, the fact the decedent was big man acting in a macho fashion, and other evidence regarding the conflict, mandated a self-defense instruction.

Relevant Facts

Nazarene Rene Laurent (hereinafter "Laurent") was the stepmother of Shella Laurent. R. 2, l. 21 – 4, l. 5. Laurent had been estranged from Shella for a time. However, Shella and her decedent boyfriend were either living with Laurent and appellant at the time of the incident, January 3, 2007, or they was just visiting with them for the holidays as Shella claimed. Appellant was Laurent's boyfriend. R. 4, l. 14 – 6, l. 13. As will be seen infra, Laurent planned to end her relationship with appellant on the fatal night of January 3, 2007 and there was evidence Shella, and possibly the decedent were both aware of that fact.

Laurent remembered that on the morning of January 3, 2007 she did not feel well. However, she went to work anyway. Shella worked with Laurent. R. 6, ll. 10-22.

Laurent recalled that she received several text messages during the day from appellant referencing the fact Shella had moved in with them. One of these messages read: "Your daughter is back, so I guess all you need now is your ex-husband and your son to come back home." R. 7, l. 4 – 8, l. 4.

Appellant picked Laurent up from work that afternoon. Laurent testified appellant continued to be argumentative with her. R. 8, l. 3 – 9, l. 5. Laurent said since she did not

feel well that once they got home she went into her bedroom to be alone. She then went out of the sliding glass door in the bedroom and started walking up the road "to go towards my mom's. And as I was walking, when I looked back, I could see Harold (appellant) like standing on the front in the house yard (sic)." R. 9, ll. 11-21.

Laurent stated that appellant ran after her and grabbed her cell phone "and split it in half." Laurent said appellant demanded that she give him his keys. Laurent testified she told appellant "I don't have your keys." Laurent maintained every time appellant became very angry he accused "somebody of having something that they don't have." R. 9, l. 22 – 10, l. 12.

Laurent recalled that when she returned to the house with appellant, Shella and her decedent boyfriend, Josh, "were putting up the groceries." Laurent said she told Shella and Josh to go upstairs because she did not want them to witness the argument that was going to continue between her and appellant. R. 10, l. 13 – 11, l. 9.

Laurent maintained appellant became so angry at one point he told her: "I'm going to kill you. You're not going to have to worry about God, your momma, your friends or nobody no more. I'm going to kill you." R. 11, ll. 6-23.

Laurent said that she responded: "Harold, why are you going to do something to hurt me? All I've ever done is try to help you. Why do you want to try to kill me?" R. 11, l. 12 – 12, l. 6.

Laurent testified appellant then began turning the lights off, and "I'd turn it back on – you know, because if I ever thought that he would hit me or something, then I probably would have been more alarmed." R. 12, ll. 2-12.

Laurent claimed appellant pushed her towards the bedroom and she hung on to the door. She said she told appellant: "I don't want to talk to you. I don't want to go in the room and talk to you. And what happened, I fell." R. 12, l. 24 – 13, l. 2. Laurent testified appellant then started beating her with a baseball bat. She said she screamed "Shella! . . . Smiley's [appellant] trying to kill me." R. 13, ll. 3-12.

Shella and Josh came downstairs and the decedent took the bat from appellant. The decedent said: "Man, what are you doing? Why would you do something like that? Are you thinking?" Laurent maintained that appellant then grabbed his head and she thought appellant was thinking, "Oh, my God! What did I do?" Laurent remembered Shella telling her, "Momma, just leave. We'll help Harold find his keys or whatever. Just go." R. 13, ll. 13-23.

Laurent claimed she hid under a trailer down the street as appellant walked the street looking for her. R. 15, ll. 1-15. Laurent recalled that when she got to her neighbor's Hercules Washington's house, that Hercules asked her what happened because she was bleeding. Laurent said she told him that "somebody hit me with a bat." R. 15, l. 12 – 16, l. 15.

On cross-examination, Laurent denied she ever threatened appellant with a stick that night. R. 49, ll. 4-5. She admitted there was a stick with blood on it found inside her home after the incident. R. 47, l. 18 – 48, l. 2. Laurent also admitted she had planned to end her relationship with appellant that night and that she had told Shella of that fact. R. 42, ll. 9-20.

Laurent said she was going to break up with appellant because she was tired of him being insecure. R. 43, ll. 1-17. Defense counsel on cross-examination repeatedly questioned Laurent about the bloody stick found inside her house and her use of that stick

that night. Laurent she denied hitting appellant with the stick, and she said she only had it in her hands to "open the door." Laurent acknowledged she had "the stick in my hand [during the argument]. When I came back in the house, it was sitting down. I had the stick in my hand." R. 46, l. 12 – 55, l. 10; R. 57, ll. 6-23. Laurent said she used the stick to keep dogs away from her or to keep dogs from attacking her when she walked down the road. R. 46, l. 12 – 47, l. 21. A photograph of the stick with blood on it is on file with this Court.

Shella Laurent testified that she was from Haiti and that the decedent was her boyfriend. R. 90, l. 25 – 91, l. 25. Shella remembered that on the night of January 3, 2007, her stepmother, Laurent, and appellant, were arguing "back and forth" because appellant thought Laurent had his keys. R. 95, l. 2 – 96, l. 1.

Shella said she and the decedent decided to pack their belongings and return home with their son. She claimed they were only visiting at the home of her stepmother and appellant for the holidays. R. 96, ll. 2-11.

Shella remembered hearing her stepmother yell from downstairs: "Shella, help me! . . . I don't know if he's trying to rape me or something, but he's crazy." R. 96, ll. 2-16. Shella recalled the decedent told her not to go downstairs. However, the decedent went downstairs to help her stepmother. Shella said she told the decedent not to get involved but "he always says that's not how he was brought up. So he went downstairs, I guess to her rescue." R. 96, l. 22 – 97, l. 11.

Shella testified the decedent intervened and took the bat from appellant. The decedent, according to Shella, asked appellant: "What are you doing? . . . Are you crazy. You need to stop doing what you're doing and think about it. She's a woman. You shouldn't be doing that." R. 98, ll. 5-19. Shella said that she was in tears at the time

because she saw that her stepmother was bleeding. Shella stated she told appellant they would find his keys, but she told him to leave her stepmother alone. R. 98, l. 16 – 99, l. 7.

Shella testified that the decedent told her “go ahead and go upstairs” to get their son. Shella claimed as she started to go upstairs she saw appellant come from behind the decedent and hit him with the baseball bat. R. 102, l. 13 – 104, l. 22. Shella maintained that her decedent boyfriend was not wielding the stick during the deadly altercation with appellant. Shella claimed appellant’s attack on the decedent was gratuitous and that the decedent did not hit or threaten appellant before appellant hit him. R. 105, ll. 1-22. As seen, there was evidence the bloody stick that Laurent admitted holding during her argument with appellant was found inside the home during the crime scene investigation. The stick could not be located for whatever reason at the time of trial.

On cross-examination Shella admitted she told a police officer at the hospital the following day that her stepmother did have a stick that night. Shella said she was now unsure of this fact. Shella testified at trial that “[i]f she had a stick, she was in the living room, so, therefore, if she had it I wasn’t looking at her. I couldn’t say whether she had a stick or not.” R. 128, l. 18 – 130, l. 19.

Shella admitted on cross-examination she was aware that appellant had said “they tried to kill me” during the altercation. R. 132, l. 16 – 133, l. 4. Unfortunately for appellant, Shella and her stepmother were the only eyewitnesses to what occurred between appellant and the decedent that night.

Sergeant Eric Calendine with the Beaufort County Sheriff’s Department acknowledged that a bloody stick was found inside the house that night. R. 182, ll. 4-17. Calendine added: “There were plenty of weapons in the house.” R. 182, l. 11 – 183, l. 25.

Calendine further stated that the chief investigator, Lester Williams, who prepared the only written report in this case, was fired in February, 2007 because he failed a drug test. Calendine said he known Williams for years but Williams was fired for using drugs. R. 180, l. 13 – 181, l. 18.

Investigator Jeffrey Purdy with the Beaufort County Sheriff's Department acknowledged Williams was the lead criminal investigating officer. However, he denied on cross-examination that this case needed to be reinvestigated because Williams had used drugs, and later was fired for this misconduct that occurred around the time of the incident in this case. R. 209, l. 15 – 223, l. 7.

However, Purdy did admit he was aware that appellant had told Sheree Wright that these people "*were trying to kill him*, that he had hit them with a bat, and he wasn't sure if they were dead." R. 229, l. 18 – 230, l. 2; R. 233, l. 23 – 234, l. 13. (emphasis added).

On recross-examination Purdy said he did not disagree that there was evidence appellant told Wright at least three times that the others had tried to kill him that night. R. 236, ll. 1-14. However, despite what appellant said, Purdy admitted he did not ever investigate this case as one involving self-defense. R. 236, l. 24 – 237, l. 6.

When the solicitor on redirect examination asked Purdy if appellant was given the opportunity to tell investigators he acted in self-defense, defense counsel objected and moved for a mistrial. The judge told the jurors that the question was improper and to disregard it. R. 238, l. 1 – 244, l. 6. The judge refused to grant a mistrial.

At the conclusion of the state's case defense counsel requested an instruction on self-defense. R. 318, l. 6 – 321, l. 25. Defense counsel cited the evidence before the jury that appellant had said "repeatedly" that "they tried to kill me." Defense counsel said this was

sufficient for the self-defense instruction. However, he went further and noted the issue of whether there was a struggle between the decedent and appellant over the bat or whether appellant voluntarily gave the bat to the decedent. Defense counsel also mentioned that the decedent -- in a macho manner -- went downstairs saying "that's not the way I was brought up. I'm going to handle it myself." R. 318, l. 6 -- 324, l. 5.

Defense counsel argued the jury had to make the factual determinations about the stick and the bat since they were relevant to his claim of self-defense. R. 324, ll. 1-5. Defense also noted that the decedent was a *very big man* "stocky and muscular" and that also went to the jury's determination of the issue of self-defense. R. 327, ll. 11-21. The judge questioned whether the evidence was sufficient to charge self-defense but stated she would think about that jury charge overnight. R. 333, l. 5 -- 491, l. 19.

The following day the judge ruled that she would charge voluntary manslaughter but not self-defense. R. 337, l. 21 -- 339, l. 17. After the judge charged the jury on voluntary manslaughter but not self-defense, defense counsel again took exception to the judge's refusal to charge self-defense. R. 397, l. 24 -- 398, l. 1.

Discussion

The evidence presented at trial determines the law to be charged to the jury. State v. Jackson, 384 S.C. 29, 681 S.E.2d 17 (Ct. App. 2009); State v. Brown, 362 S.C. 558, 261-262, 607 S.E.2d 93, 95 (Ct. App. 2004). When any evidence in the record entitles the accused to a jury charge on self-defense, the trial judge's refusal to give that charge is reversible error. State v. Muller, 292 S.C. 10, 316 S.E.2d 409 (1984). The state bears the burden of disproving self-defense beyond a reasonable doubt once any evidence is offered to

support that defense. State v. Slater, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007); State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Here, there was evidence appellant had repeatedly stated that "they tried to kill me." Those statements were documented in an official police report prepared by Williams, and appellant's assertion came before the jury during the testimony of Shella and Investigator Purdy.

In State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), the Supreme Court noted that Light in a statement to the police indicated he took the gun from the decedent and it was "either her or me." The Court held this statement indicated Light believed he was in imminent danger of losing his life.

Here, appellant stated several times that "they tried to kill me." A bloody stick was found inside the house, and defense counsel repeatedly raised the matter of the bloody stick when questioning the witnesses. Laurent admitted she had the stick in her hand as she argued with appellant. Defense counsel also raised the issue of the decedent having taken the bat from appellant. Counsel also noted that the decedent was a big "stocky and muscular man" and noted how the decedent was acting "macho" that evening. In addition, it must be remembered there was evidence that Laurent had planned to break-up that night with appellant. People intuitively sense that, and appellant's text message earlier in the day about him not being part of Laurent's future appears more prophetic than pathetic as Laurent tried to spin it. There was also evidence Laurent did not keep her intention to break-up with appellant a secret.

While the judge found appellant was entitled to a voluntary manslaughter instruction based upon the apparent heat of passion and a sufficient legal provocation, she ruled

appellant was not entitled to a self-defense instruction. However, self-defense and voluntary or involuntary manslaughter are not mutually exclusive. See State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003); State v. Gilliam, 296 S.E.2d 395, 373 S.E.2d 596 (1988).

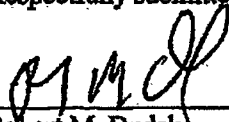
The only two eyewitnesses to this incident were Ms. Laurent, the stepmother, and Shella Laurent, the stepdaughter. The decedent was the boyfriend of Shella. It was therefore hardly surprising that both witnesses fought defense counsel on cross-examination about the use of the bloody stick, the extent of the argument that night, how aggressive the big and muscular decedent was and the fact that appellant was going to be told that evening that his relationship with Ms. Laurent was over.

Regardless, the four elements of self-defense were a jury issue in this case, particularly since the state now has the duty to disprove self-defense beyond a reasonable doubt. See, State v. Day, 341 S.C. 410, 416, 535 S.E.2nd 431, 434 (2000); State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999); State v. Burkhardt, *supra*. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed,
and this case remanded to the Beaufort County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

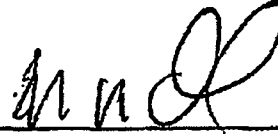
ATTORNEY FOR APPELLANT

This 14th day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the 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."

December 14, 2010



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort CountyCarmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

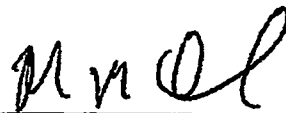
V.

HAROLD LEE JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

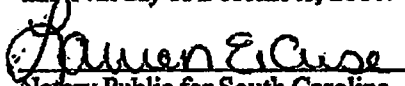
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 14th day of December, 2010.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of December, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

**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.

Harold Lee Jackson,

Appellant.

Appeal From Beaufort County
Judge Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2012-UP-038
Heard November 15, 2011 – Filed January 25, 2012

AFFIRMED

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

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, and Assistant Attorney
General Alphonso Simon, Jr., all of Columbia, for
Respondent.

PER CURIAM: Harold Lee Jackson appeals his convictions of murder and two counts of assault and battery with intent to kill arguing the trial court erred in denying his request for a jury charge on self-defense. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) ("In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous."); State v. Burkhardt, 350 S.C. 252, 260, 565 S.E.2d 298, 302-03 (2002) (stating if there is any evidence in the record to support self-defense, the issue should be submitted to the jury); id. (finding the trial court's refusal to give a requested jury instruction must be both erroneous and prejudicial to warrant reversal); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (concluding a self-defense charge is not required unless it is supported by the evidence); State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (listing the four elements to establish self-defense: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) if the defense is based on belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, and if the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury); State v. Santiago, 370 S.C. 153, 166, 634 S.E.2d 23, 30 (Ct. App. 2006) (Anderson, J., dissenting) (noting if the defendant provokes or initiates the assault, he cannot invoke self-defense).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

AW
14

607

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Beaufort)
)
Harold Lee Jackson #334411)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2012-CP-07-4116
IN THE COURT OF COMMON PLEAS
CLERK OF COURT
COUNTY OF BEAUFORT, S.C.
MAR 14 PM 1:31

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2007-65-07-175 - Assault and battery with intent to Kill
- (b) 2007-176 - Assault and battery with intent to Kill
- (c) 2007-174 - Murder

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) April 23, 2009 - 20 years
- (b) April 23, 2009 - 20 years

- (c) April 23, 2009 - 50 years
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. South Carolina - Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed my conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Has no precedential value
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (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 Trial and Appellate Counsel
 (b) Denial of a fair trial in violation of Due Process, Fourth, Sixth + →
 (c) _____

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

- (a) Applicant reserves the right to amend his original PCR application
 (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? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

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

iv. _____

(d) the date of each such disposition: N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented: N/A

i. _____

ii. _____

iii. _____

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

i. _____

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 my first opportunity

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Donald C. Colengeli P.O. Box 6658 Hilton Head Island S.C. 29938-u
- ii. Robert M. Dudek P.O. Box 11589 Columbia, S.C. 29211 - 1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Relief for vacant a new trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of Beaufort

VERIFICATION

I, H.J., 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.

Thud Lee Jackson

SWORN to and subscribed before me this 27th
day of November, 2012

Steve T. McIntosh (S.)
Notary Public

My Commission Expires: November 7 2016

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

I, H.T., 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.

Harold Lee Jackson
Applicant

SWORN or affirmed to and subscribed before me this

27th day of November, 2012.

Robert T. Melanchy
Notary Public

My Commission Expires: November 7 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2012-CP-07-4116
	)	
Harold Lee Jackson, #334411,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 2, 2012, 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 Beaufort County Clerk of Court. The Applicant was indicted at the February 2007 term of the Beaufort County Grand Jury for murder (2007-GS-07-0174) and two counts of assault and battery with intent to kill (ABWIK) (2004-GS-07-0175, -0176). The Applicant was represented by Don Colongeli, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On April 23, 2009, the Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a period of twenty years for ABWIK and fifty years for murder. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Jackson, No. 2012-UP-038 (S.C. Ct. App. January 25, 2012).

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

II.

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

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.
3. Denial of a fair trial in violation of due process, 4th, and 6th amendments.

III.

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

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

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

IV.

The Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of

trial counsel. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the *Strickland* test. However, the allegation of ineffective assistance of appellate 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).

V.

The Respondent construes Applicant's last claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. *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). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Ah R. Wilson
ATTORNEYS FOR RESPONDENT

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

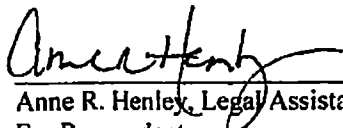
October 6, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2012-CP-07-4116
	)	
HAROLD LEE JACKSON, #334411	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the abovecaptioned 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:

Harold Lee Jackson, #334411
 Broad River Correctional Institution
 4460 Broad River Rd
 Columbia, SC 29210

DATED this 6th day of October, 2014


 Anne R. Henley, Legal Assistant
 For Respondent

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

3

4 Case No.: 2012CP0704116

5 Harold Lee Jackson,

6 Plaintiff(s),

7 vs. Transcript of Record

8 State of South Carolina,

9 Defendant(s).

10

11

12 **POST-CONVICTION RELIEF HEARING TRANSCRIPT**

13

14

15

16 October 11, 2017

17 Beaufort, South Carolina

18

19

20

21

22 BEFORE:

23 The Honorable Thomas A. Russo

24

25

APPEARANCE PAGE

1
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APPEARANCES

REPRESENTING PLAINTIFF(S):

James K. Falk, Esquire
PO Box 1058
Charleston, SC 29402
843-606-6007
jfalklaw@gmail.com

REPRESENTING DEFENDANT(S):

Ruston Neely, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
rneely@scag.gov
803-734-5844

INDEX PAGE

1	INDEX	
2		
3	WITNESS:	PAGE:
4		
5	DONALD COLONGELI	
6	Direct Examination By Mr. Falk	5
7	Cross Examination By Mr. Neely	22
8	Redirect Examination By Mr. Falk	37
9		
10	HAROLD LEE JACKSON	
11	Direct Examination By Mr. Falk	41
12	Cross Examination By Mr. Neely	64
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX PAGE

1 PROCEEDINGS

2 MR. NEELY: Harold Jackson versus State of South
3 Carolina, case number 2012CP0704116. The applicant was
4 indicted by the Beaufort County Clerk of Court --
5 sorry, the applicant was indicted by the Beaufort
6 County grand jury on February 7, 2007 term for murder
7 and two counts of assault and battery intent to kill.
8 Applicant was represented by Don Colongeli of the
9 Beaufort County Bar. Applicant proceeded to trial and
10 was convicted as indicted April 23rd, 2009. Applicant
11 was sentenced by the Honorable Carmen Mullen to be
12 confined for a period of 20 years for the ABWIK and 50
13 years for the murder charge, sentences to be served
14 concurrently.

15 The applicant did file timely notice of appeal and
16 the appeal was perfected by Albert Dudick of South
17 Carolina Appellant Defense. Applicant's convictions
18 and sentences were affirmed by the Court of Appeals.
19 And remitter was issued -- well, the case was decided
20 on January 25th, 2012.

21 THE COURT: All right. Mr. Falk.

22 MR. FALK: One moment.

23 (Pause.)

24 MR. FALK: Okay, Your Honor, I think we were
25 trying to accommodate the schedule of Mr. Colongeli, so

PCR HEARING PROCEEDINGS

1 I'm going to go a little bit out of order in order to
2 do that.

3 THE COURT: Sure.

4 MR. FALK: Will you please take the stand.

5 Thereupon,

6 DONALD COLONGELI

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows.

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q Could you please state your name for the record.

12 A Yes, my full name is Donald Christopher Colongeli.

13 Q Mr. Colongeli, how did you become involved in this
14 case?

15 A I was court appointed, sir, and this case dates
16 back I believe to September -- the incidents alleged in
17 2007. It appears by court order I was court appointed by
18 then the clerk of Beaufort County courthouse, Elizabeth
19 Smith. On the -- beg Court's indulgence here. Let's see.
20 The 22nd day of August, 2007.

21 Q How often did you speak with Mr. Jackson?

22 A I am sure, if I have prepared adequately here
23 before today, I have determined that this file is close to
24 ten years old. Not quite, actually eight years. The
25 staples are rusted here. It is very -- extremely well

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 organized. I could probably give you the exact number, but
2 I couldn't even put a number on the times that I met with
3 Harold. We met numerous times. And based on everything
4 here that I have gone over and reviewed that was done in
5 preparation for this case, I could only say probably two
6 dozen times at least.

7 Q Is your office here in Beaufort?

8 A No, sir, it is in Hilton Head.

9 Q Your office is in Hilton Head?

10 A Yes, the original location at the time when I
11 represented Harold was 112 Arrow Road. Since then, since
12 that time I do work out of my house. The PO Box remains the
13 same, but I do work out of my house at this point.

14 Q Were you on a list -- how many criminal cases have
15 you tried before representing Mr. Jackson on this case?

16 A Many. I was with the Beaufort County Public
17 Defender's Office from 1995 until the year 2000. I worked
18 for Gene Hood, incredible guy, who just recently retired.
19 He was the circuit wide Public Defender of the 14th circuit
20 prior to Ms. Stephanie Gittings, I believe, I forget her
21 married name now, become the circuit wide public defender
22 after he retired. So, I worked five years for him and
23 during the course of that time become one of only a half of
24 a dozen death penalty certified lawyers in the county back
25 then. And I left that office in 2000. So, I can't put a

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 number on it but I tried a great deal of cases up until I
2 represented Mr. Jackson.

3 Q And did you give Mr. Jackson a copy of all of the
4 discovery in this case?

5 A That would have been standard practice. My memory
6 doesn't properly serve me to say with 100 percent accuracy
7 at this point whether or not I did or did not. But I would
8 have to say that I did.

9 Q What was -- did y'all discuss your theory of the
10 defense in this case?

11 A At great length. Actually, interestingly, one
12 thing that I had forgotten prior to today is that originally
13 Mr. Jackson was represented by Mr. Hood, who was my former
14 boss. And he filed a motion to be relieved, to have
15 Mr. Hood disqualified or relieved of his services based on
16 his dissatisfaction with his representation. Specifically
17 as to, from what I gathered in a letter that he wrote, his
18 lack of an ability to come up with a defense. So, it ended
19 up with me, through the court appointment that we just
20 mentioned. And I can tell you that this case probably, out
21 of my entire career, which now I have been practicing close
22 to 20 years, still stands as one of the more difficult cases
23 that I have ever tried as to a theory of defense.

24 It was quite an unfortunate set of facts and
25 circumstances. And I know that we delved into that topic at

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 length and discussed it at length and finally arrived at
2 what we thought we had as our idea of a defense here.

3 And that was after multiple examinations. He
4 was not only evaluated by Dr. Donna Schwartz-Watts on a
5 certain occasion, and that was actually at the suggestion of
6 the Court. I have got that for the Court's review, if you
7 would like it. He was evaluated at MUSC for competency. I
8 had a --

9 Q Was that for NGRI or for competency to stand
10 trial?

11 A Competency to stand trial. I had a lie detector
12 expert, as far as the lie detector test given to him by my
13 own expert. And several other things that don't come to
14 mind right now. But about every facet was uncovered or
15 examined that I can recall that I have ever done in one
16 case.

17 Q Did Dr. Schwartz-Watts, what was the purpose of
18 that evaluation?

19 A It was more -- more so, I believe, at the
20 suggestion of the Court, which was off of the record in the
21 form of mitigation potentially, to try to work out some sort
22 of idea as to helping me in the theory of defense possibly,
23 or mitigating the circumstances in the event that
24 Mr. Jackson decided not to go to trial. That is my
25 understanding. And I may be wrong, but that's what I

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 recall. It's been a long time.

2 Q Well they can, forensic psychiatrists can do a
3 report on whether or not someone is a risk to reoffend
4 violently and, you know, those types of things; is that what
5 you think that was about?

6 A Actually, it delved quite a bit into his history.
7 As I discussed with you earlier, I had a great deal of
8 sympathy for Mr. Jackson, his background was revealed
9 through that report as having been abused as a child and a
10 great deal of domestic violence in his history of growing
11 up. So, I think that it delved more into that. And to give
12 me an understanding and grasp of what I was dealing with as
13 a whole. So it helped me to get my hands wrapped around
14 this case and try to put something together and better
15 understand my client. And that was my understanding, and
16 that is what I used it for.

17 Q Was there ever a plea offer in this case?

18 A Never. No offers were ever made. As a matter of
19 fact, I just discussed this briefly before the Judge walked
20 out, I even went so far as to make the very risky motion of
21 moving to disqualify the Solicitor's office in this case, at
22 my own risk because I was in private practice at the time.
23 But there was a civil suit pending and I think that it
24 involved the fact that Ms. Angela Tanner, who I'm good
25 friends with, who was the deputy chief prosecutor, who also

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 happened to be married to the sheriff, PJ Tanner. And on
2 that I believe that I moved that the appearance of an
3 impropriety, I meant no intentional impropriety, which was
4 basically just the appearance of an impropriety which was
5 not granted by Judge Mullen.

6 Q And the impropriety there, as I read your argument
7 in the transcript, was the potential financial incentive
8 that could have gone toward the lawyer representing --

9 A That is what the case law implicated, but I never
10 intended to say there was impropriety. But I think that the
11 case law in my argument made it clear, that just the
12 appearance in and of itself is what can be drawn by members
13 of a potential jury. And that was the basis for the motion.
14 And it was for my client's own defense and to make sure that
15 I preserved the record.

16 MR. FALK: May I approach?

17 THE COURT: Yes.

18 BY MR. FALK:

19 Q This is the cover letter on that SLED report that
20 I talked to you about earlier.

21 A Yes, sir.

22 Q The reason that I'm showing it to you is, you see
23 that last line of her cover letter?

24 A "I look forward to working with you on the
25 disposition of this matter." Yes, sir.

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 Q That is why I thought that there was probably a
2 settlement offer or something pending. I mean, it could be
3 a throw-away line, but it sounded like there would have been
4 some settlement?

5 A I'll be honest with you, I understand how you
6 could draw that conclusion. I honestly, this letter is
7 dated April 15, 2009 from Ms. Tanner, Angela McCall-Tanner,
8 who was the prosecuting attorney on the case. My file
9 clearly indicates that there was never any offers made, so I
10 think that it may have just been part of her standard
11 letter.

12 Q Okay. Because I know that in your motion to get
13 the Solicitor's office removed, in addition to the conflict
14 of interest, I think that you were citing the fact that you
15 got no settlement offers, sort of showing that the
16 solicitor's office may need to get a conviction in this
17 case. And if I'm mischaracterizing what you said --

18 A It was a very sticky motion, I guess, so to speak.
19 But I just thought that it was necessary to preserve the
20 record at the time. It was a motion made by other
21 attorneys, members of the Bar. I wasn't the first one to
22 make it. It was uncomfortable for me to do so, because a
23 lot of times lawyers draw the wrong conclusion from that
24 just from being human. But I thought and I am fairly
25 confident that Ms. Tanner understood that it was something

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 that needed to be done. But, yes, to answer your question,
2 that was my concern and fear that the appearance of
3 impropriety might be drawn.

4 Q I'm more concerned, just surprised that the
5 solicitor's office never -- that there was never an offer?

6 A I think that the facts pretty much indicated why
7 there wasn't an offer, at least in my mind and what was
8 related to me, that is why one was never made. It is
9 unusual not to have an offer made. That was an unusual
10 thing that I have encountered, and I would state that you
11 are correct, in my career.

12 Q Did you review his criminal record?

13 A I'm sure that I did.

14 Q Did he have any prior violent crimes?

15 A I don't believe he did. I believe that he had a
16 very clean record, as a matter of fact. He may have had
17 driving offenses, but it was very -- he went from a very
18 hard working, appeared to be normal, hard working citizen to
19 someone charged with what eventually turned out to be
20 murder.

21 Q Well, I'm interested in the trial strategy -- you
22 put on a defense of self defense?

23 A Correct, I attempted to.

24 Q Attempted to, right, but Judge Mullen didn't
25 charge on that?

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 A Yes.

2 Q And it was really the grounds for his appeal?

3 A Yes, sir.

4 Q They wrote a brief, the Judge was incorrect in not
5 charging self defense. But what I'm getting at is the
6 decision to go forward with self defense with a client who
7 has no criminal record and you don't have him take the
8 stand.

9 A I am sorry, last point?

10 Q I'm surprised that you tried to make a claim for
11 self defense --

12 MR. NEELY: I don't think that he's asked a
13 question here.

14 MR. FALK: No, I was trying to clarify.

15 BY MR. FALK:

16 Q My point is, you were trying to make a claim for
17 self defense?

18 A Yes.

19 Q Okay.

20 A I believe that was the end-run emphasis of my
21 defense. But I honestly believe this case presented itself
22 as being so difficult to, as I said, wrap my hands around
23 and formulate a theory of defense, it is what I -- the
24 end-run, as I had said, which actually was preserved well
25 enough for the chief public defender to bring before the

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 Court of Appeals which was -- circuit court was affirmed on.
2 Which I was actually surprised that it got that far. But
3 that was my end-run, so to speak, as far as why, why that
4 was where I ended up, the emphasis. There were other
5 theories and avenues that I had to go that probably would be
6 something that I would, you know, subconsciously call
7 nullification almost.

8 Q Sure.

9 A Because, obviously I couldn't use the theory of
10 nullification, but that's kind of what I was attempting to
11 do in a sort of way.

12 Q This sort of dovetails with the trial strategy of
13 not calling your witness to testify?

14 A Absolutely.

15 Q And why did you not call your witness to testify?

16 A That was something we discussed. He was fully
17 advised of his ability to do so. Based on my advice to him,
18 or at least my advice to him that he could if he so chose.
19 And based on my experience at the time, as to how that
20 normally would pan out for him, he made the decision,
21 voluntarily, knowingly and intelligently not to take the
22 stand.

23 Q But he would not have been challenged with a prior
24 criminal record?

25 A From what I remember, I agree. I don't believe he

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 would have.

2 Q And you had introduced exhibits in this case. Do
3 you recall putting in some defense exhibits?

4 A Vaguely. If you could remind me.

5 Q The record reflects that you put in two
6 photographs, I believe it was Defendant Exhibits 9 and 11.

7 A I apologize, it's been an awful long time. And I
8 don't -- I'm sure -- I'm amazed at how well my assistant,
9 who is my wife, put together this file and how old it is and
10 how well it's been maintained. But I could probably find
11 that, yes.

12 Q Okay. I guess what I'm getting at is, a lot of
13 times trial counsel will make the decision that, maybe if
14 they have a weak case, I want to get the last argument in
15 and sometimes they will give something back in order to have
16 the last word?

17 A Yes, sir.

18 Q But you didn't do that in this case?

19 A Yes, sir. And I made a strategic decision in
20 order to, unfortunately, arrive at that, with the exception
21 of putting Mr. Jackson on the stand. I understand where you
22 are going. I did lose last argument by admitting those
23 exhibits, but I still -- or I don't remember specifically
24 whether Harold was -- my understanding, and with any client
25 is, that he himself made that decision independently based

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 on our discussion of his right to do so. So, whether or not
2 I had advised against it or for it, I honestly can't tell
3 you.

4 Q There's colloquy on the record where he stood up
5 and the Court advised him.

6 A Yes.

7 Q So, he was aware of his rights.

8 A Yes.

9 Q I was just curious as what kind of recommendations
10 you made to him as his lawyer about the pros and cons of him
11 testifying?

12 A As far as my opinion as to him testifying?

13 Q Yes.

14 A Whether I would or wouldn't advise him to?

15 Q Yes.

16 A Well, Harold -- and obviously, I don't know if you
17 can tell to this day, but Harold exuded a personality that I
18 did not think would be inviting to the general population,
19 specifically a jury of his peers, 12 strangers from the
20 community. But it was nothing -- there was no substance to
21 it, like you said, there was no prior criminal history they
22 could have used against him to impeach him, but he didn't
23 have very good, what I would consider, interpersonal
24 relationship skills. During the course of my representation
25 he was very -- he came off as very, I guess for lack of a

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 better term, nonemotional. So, I think that as far as that
2 went, and I don't mean lack of sympathy or the existence of
3 sympathy, but just kind of flat and not much emotion to his
4 effect, as far as speaking. So, I thought that that would
5 possibly be very detrimental with cross-examination by the
6 State.

7 Q Well, as I read through the transcript and the
8 arguments, extensive arguments you made in chambers to try
9 and get your self defense instruction, there -- I think from
10 reading Judge Mullen's response, there was a concern that
11 really -- you know, was there enough evidence in there. Is
12 it fair to say that the best evidence of self defense was
13 the two witnesses repeated something that he had said that
14 they were trying to kill him; do you recall?

15 A I do recall that, specifically. And that was a
16 big issue. That was a big issue of contention. But there
17 was also other issues that surrounded that. But
18 specifically, in answer to your question, yes, I do.

19 Q That is kind of where the evidence was?

20 A To a certain extent, yes.

21 Q Yes. One of the concerns was, there wasn't really
22 any evidence as to who started the altercation?

23 A Absolutely.

24 Q And much was made of the fact that he had no
25 injuries?

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 A That Mr. Jackson had no injuries?

2 Q Yes.

3 A Yes, sir.

4 Q But that was based solely on the testimony of

5 Mr. Bare; (phonetic) and global; is that correct?

6 A Brian Bare, correct.

7 Q Okay. You know, second guess, but I mean,

8 obviously he could have testified as to his injuries?

9 A He could have, yes, sir.

10 Q Do you think that the testimony of the DNA expert

11 was helpful to the State's case?

12 A As far as identification, yes.

13 Q Did you consider obtaining your own DNA expert?

14 A I'll be honest with you. We discussed that during

15 the break a little, and in all honestly I guess I don't

16 think that I have ever cost the State as much money as I did

17 in this case. And I have a file here with the orders that

18 were signed by Judge Mullen, not only did I exceed the

19 limit, as far as my own fees went, but you had all of the

20 expenses associated with one of these, a case of this

21 magnitude that included so many experts that DNA never

22 really struck me as -- I just didn't see that as being

23 necessary, in all honestly. Because it boiled down to -- I

24 mean, there was no disputing who was in the house at the

25 time of the dispute, alleged dispute, between the parties.

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 So, I guess that I'm just a little confused as to why I
2 would have needed that, or how much it would have helped.

3 Q Let me suggest, there was some discussion about
4 the stick.

5 A Absolutely.

6 Q There was a stick there and if there was going to
7 be combat between these two people, and there was some talk
8 about a baseball bat, which I think that the State tried to
9 say was Mr. Jackson's weapon was, and then there was a stick
10 that was possibly Josh's -- what is Josh's last name?

11 A Josh Pringle.

12 Q Josh Pringle's weapon. Although there were
13 photographs in evidence that showed possible blood on the
14 stick.

15 A Yes.

16 Q SLED didn't send the stick in for any type of DNA
17 analysis, didn't know whose blood that was?

18 A If that's what you are telling me. I forgot that
19 part, that if they didn't examine the stick. I know that
20 the stick was a big part of the trial.

21 Q Yes.

22 A And I made it even bigger.

23 Q Sure.

24 A I forgot in all honesty whether or not that was --

25 Q I can call your attention to it, but the record is

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 what it says. But on page 456 of the transcript, around
2 line ten they say that there was no DNA evidence. I mean,
3 it was never sent to analysis?

4 A Sorry, four -- beg the Court's indulgence?

5 Q 456, line ten.

6 A (Pause.) You are correct.

7 Q Do you think that it might have been helpful --
8 obviously the stick is long gone, you can't do testing now
9 but --

10 A Well, I think that the stick -- I think if they
11 would have examined the stick, it would have come up with
12 the same as the other items which they analyzed, which would
13 be a combination of Mr. Jackson, Mr. Pringle, and the two
14 females in the house. There was no evidence that anyone
15 else was ever there, except the police that arrived on the
16 scene afterwards, to my -- to the best of my recollection.

17 Q As I view the testimony from the DNA expert, and I
18 could be mistaken also, but I thought that the testimony
19 was, basically, there was none of his blood found?

20 A I am sorry?

21 Q I think -- as I recall the testimony of the DNA
22 expert and the lab reports, none of Mr. Jackson's blood was
23 found on his shoes?

24 A No, it wasn't. That's correct.

25 Q On his shirt, on the sock. So, you are presented

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 with trying to make a self defense case where there's sort
2 of blood everywhere, and I guess it's speculation but it
3 still seems to be an avenue of inquiry to rule --

4 A You are exactly correct, and I think that's why it
5 made the case as difficult as it did. Because in
6 attorney/client conversations with my client I couldn't
7 answer that question.

8 Q Okay. In addition to the stick, they took
9 cuttings and it is in -- and we can walk through the
10 testimony of the expert and find it, but they took cuttings
11 from his shirt and they were items 3.1 and 3.2 on the SLED
12 report that I have here. If you will just look at the one
13 that we just had.

14 A In the transcript, sir?

15 Q Well, no, here, look at the SLED report.

16 A Is this the original or the supplemental?

17 Q The one of April 15th.

18 A Got it, okay.

19 Q You would see that items 3.1 and 3.2 were cuttings
20 from the shirt.

21 A Cuttings from shirt, correct.

22 Q Okay. And this is the report -- there was also an
23 earlier report of October 22nd, 2008. I think the
24 difference, correct me if I am wrong, I think the difference
25 in the SLED reports is the fact that when they took the

DIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 reports -- let me see. Okay. All right.

2 (Pause.)

3 I'm sorry. So, you got the cutting from the
4 shirt, 3.1 and 3.2, and if you look at the last line of the
5 results, the DNA from 3.1 is from an unidentified male
6 individual?

7 A Correct.

8 Q And they never took a sample of Mr. Jackson's DNA,
9 that is how I read the testimony at 453, line 19.

10 A That's correct.

11 Q So, again, if you were trying to show self defense
12 based on mutual combat, it would be helpful if your client
13 had blood on his shirt showing?

14 A Sure.

15 Q Okay. That is all that I have on that.

16 MR. FALK: I appreciate your time, Mr. Colongeli.

17 No further questions.

18 THE COURT: Mr. Neely.

19 MR. NEELY: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. NEELY:

22 Q Mr. Colongeli.

23 A Yes, sir.

24 Q If you would, would you kind of give the Court a
25 summary of the State's evidence that they had against, or

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 that they asserted against Mr. Jackson just so that we have
2 a better understanding of why it was difficult to come up
3 with a defense in this case?

4 A Well, as I can recall, and I know that I met with
5 numerous mentors of mine at the time to try to assist me in
6 this matter. It was one of those cases that really left you
7 grasping for air as to how to come up with a proper defense.
8 And that is not to assert that there was as to -- that is
9 not to mean when I took it I made any assumptions as to his
10 guilt or innocence, obviously, but it was just that type of
11 set of facts.

12 You had the girlfriend daughter and the
13 daughter's fiancée who basically were involved, and
14 Mr. Jackson who had returned from work. And a dispute that
15 had began over what I recall Mr. Jackson requesting the keys
16 simply, basically saying, Give me my keys so I can leave.
17 And his girlfriend, and I can't keep the names straight, I
18 apologize, but I believe Nazerene was the girlfriend, Shella
19 was the daughter and the daughter's boyfriend was Joshua
20 Pringle, who is the decedent. But basically you had
21 overwhelming evidence and testimony from the two of them as
22 to what had occurred, along with the stick, and along with
23 the crime scene with --

24 Q What did they testify to?

25 A They testified to what I told you. They basically

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 said that Mr. Jackson had been -- the girlfriend basically
2 testified that she -- that she had been in many domestic
3 disputes with Mr. Jackson. Whether he was prone to
4 violence, I don't recall she ever specifically stating that.
5 But on this night she did state that it escalated very
6 rapidly into the situation that we have presented to us,
7 which resulted ultimately in Joshua Pringle's death.

8 In the beginning, Joshua Pringle was in a
9 coma and I forget, but it was originally not charged as a
10 murder. But by the time that it came around, Mr. Pringle
11 had passed.

12 Q And I am sorry for interrupting you. You know, a
13 lot of times in cases like this, the first time that the PCR
14 Judge has seen any of these facts is when we hand him a
15 transcript. So, what did Mr. Jackson's girlfriend testify
16 that he did to her?

17 A Oh, she testified that he basically assaulted her,
18 began to assault her, keep her from leaving the house, and
19 became aggressive to the point of actually physically
20 assaulting her with this bat. Putting the bat in her face,
21 there were accusations that, You are going to die, you are
22 going to die tonight if I so much as see headlights or
23 anything in the driveway, you are done. I mean, it was
24 overwhelming testimony on her behalf that Mr. Pringle (SIC)
25 had every intention of killing her that night.

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 Q With a baseball bat?

2 A With a baseball bat.

3 Q And then how did the daughter and daughter's
4 boyfriend become involved after that?

5 A Well, obviously they, I think if I remember
6 correctly, went upstairs to remove themselves, as I'm sure
7 they were uncomfortable with the fight going on with the
8 mother and her boyfriend. They went upstairs to the
9 bedroom. There was also a child, as I recall, in the house
10 which made it even more delicate to try to get around the
11 fact that there was a young child in the house upstairs.
12 But I guess, what I remember is that it got to the point
13 where Joshua -- and this is where the self defense came
14 in -- who was actually much larger and stockier and muscular
15 than Mr. Pringle (SIC) -- I can remember him making the
16 statement, This isn't the way that I was raised, I'm going
17 to handle this myself. And he rushed down the stairs and
18 that is where there was a great deal of speculation as to
19 what happened.

20 Q That would be allegedly in defense of
21 Mr. Jackson's girlfriend?

22 A Yes, absolutely.

23 Q And then, after Mr. Pringle went down the steps,
24 down the stairs, to attempt to stop what sounded like to
25 him, from the testimony of his girlfriend, the daughter of

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 Mr. Jackson's girlfriend, testified that he went to stop
2 what he heard was a beating or a dispute?

3 A Correct. Yes, sir.

4 Q And then, how did the daughter become involved in
5 the dispute?

6 A I honestly can't specifically remember how, other
7 than that she was -- I think that her testimony was that she
8 was directed by Mr. Jackson to keep her nose out of what was
9 happening, otherwise she would also get hurt. And that she
10 was more or less very concerned about what happened to her
11 fiancée, Mr. Pringle, and which she ultimately found and
12 claimed -- I believe that it was her testimony where she
13 claimed that he was more or less sucker -- it wasn't a
14 sucker punch, but a sucker hit to the back of the head with
15 a baseball bat would have been her testimony.

16 Q Certainly. And the bat was recovered and the
17 victim's blood was found on the bat; is that correct?

18 A To my understanding. Now, there was some question
19 about -- there was some question about this baseball bat
20 now. I honestly can't remember or tell you -- I know that
21 they had the stick. Obviously we discovered here today that
22 the stick -- that the blood was not analyzed by -- as far as
23 DNA went. But I can't answer as to the baseball bat itself.
24 There was a baseball bat recovered, but I believe I had made
25 an issue of that at trial as to whether or not that in fact

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 was the baseball bat.

2 Q But both the daughter and girlfriend both
3 testified --

4 A That it was.

5 Q That it was?

6 A That it was, that's correct. But that is the
7 problem that I had. But I do believe that we had a pretty
8 solid argument that they didn't have the correct baseball
9 bat, and we made the argument that that was not the bat, to
10 the best of my memory.

11 Q And when Mr. Jackson turned himself in after this
12 incident?

13 A He did. He voluntarily turned himself in within
14 hours of the incident, if not quicker, sooner.

15 Q After he turned himself in, he was examined and he
16 had no injuries; is that correct?

17 A That is, to the best of my recollection, yes,
18 that's correct. Nothing that was showing physically. Now,
19 whether he had internal injuries, that is something that I
20 can't remember. He may have been complaining of some sort
21 of internal injuries, but there was nothing that you could
22 see as far as bruising.

23 Q No injuries that would cause bleeding?

24 A Correct, absolutely.

25 Q On Mr. Jackson?

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 A That is correct.

2 Q You said that you had a lie detector test done on
3 Mr. Jackson?

4 A I did. It was a very nice fellow. I could pull
5 my notes and see his name. He was referred to me by
6 Mr. McCloskie who is a very dear friend of mine and who got
7 me started here in Beaufort County many years ago. But I
8 can't remember his name. And I would say that he is
9 probably retired by now, but he had impeccable credentials
10 and it was interesting because that was the first time that
11 I had worked with a polygraph expert.

12 Q And what was the results of that polygraph test?

13 A I forget, I spoke --

14 MR. FALK: Your Honor, I would -- granted you are
15 the fact finder here, but I'm not sure of the relevancy
16 of the polygraph?

17 THE COURT: The relevancy of the polygraph?

18 MR. NEELY: Well, Your Honor, we heard a lot of
19 testimony about how difficult it was to form a defense,
20 and I think that this goes directly to counsel is
21 trying to find something to grasp onto and find a
22 defense. This goes to that.

23 MR. FALK: But you are the fact finder here. With
24 a jury, it certainly would not be able to discover the
25 results of a polygraph exam.

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 MR. NEELY: I think that, absolutely, the defense
2 can let in a polygraph exam. So, certainly -- this is
3 not the State seeking to get a polygraph because the
4 State certainly never entered a polygraph test. And I
5 think that if we had a polygraph test of the defendant,
6 saying, I didn't do it and it came back positive I
7 think that the defense can certainly enter that
8 evidence.

9 MR. FALK: Sir, if I could. One -- maybe
10 analogous case law, if we could find the SVP case in
11 re: Gonzalez, and I think it's similar here. The SVP
12 case takes place in a civil environment, but there's a
13 lot of criminal issues and a lot of criminal
14 undertones. And what comes up frequently in SVP cases
15 is that sometimes, you know, the State will evaluate
16 somebody and the defense counsel will get their expert.
17 A lot of times the expert can't help.

18 And the crux of the Gonzalez decision is that for
19 various reasons you can't ask defense counsel about
20 getting the exam. You can't get some -- you can't make
21 some kind of reference to it in the closing argument.
22 You can't say that it's some type of missing evidence,
23 because the court recognizes that a lot of expert
24 testimony, you can draw the wrong conclusion. Because
25 a lot of times, and I'm sure that you know, experts

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 sometimes it's 100 percent yes and 100 percent no and
2 there is a vast amount of gray area in between. And
3 you can always draw the wrong conclusion from not
4 getting -- so, I mean, to draw the conclusion that if
5 we got a polygraph --

6 THE COURT: Are you saying that -- did I hear you
7 say that if the State tried to admit a polygraph
8 result, that is not admissible, but if the defense
9 wants to, that is admissible?

10 MR. NEELY: I have actually -- we have actually
11 had a case in Greenwood where the defense wanted a
12 polygraph result entered into evidence and it was
13 entered into evidence. I think that the State can
14 assert a polygraph test against the defendant. I think
15 that the case law is clear on that. Again, here, it is
16 a very different case than SVP in that the Defendant,
17 by proceeding with the PCR, by statute, has waived his
18 right to the private conversations that he had with
19 counsel.

20 And again, here, if he had a polygraph result
21 where the defendant said yes, or where it indicated
22 that he did not, was not assaulted with a stick, or
23 maybe that the stick was another weapon that he used to
24 beat the defendant, certainly the defense attorney is
25 not going to hire a DNA expert to look at the blood on

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 the stick if his client has told him already that he
2 used that stick to hit somebody with it. There's just
3 no -- there's no reason for it. So, whenever you are
4 asserting that the defense attorney failed to do X or
5 Y, I am just trying --

6 THE COURT: There's a reason why.

7 MR. NEELY: I am trying to figure out why. I am
8 trying to figure out why he did or didn't do X and Y.

9 THE COURT: Well, call me crazy, but why don't you
10 just ask him. Why don't you just ask him why?

11 MR. FALK: Because -- well, then we are going to
12 get to the point I am going to object to the question
13 and we are at the same point where we are trying to get
14 the polygraph results in.

15 MR. NEELY: I am not trying to enter the
16 polygraph.

17 THE COURT: He is not entering the polygraph for
18 the truth of the polygraph result. I mean, in other
19 words, he's using the polygraph to explain why someone
20 did or didn't go down a certain path.

21 MR. NEELY: It was a tool that the defense
22 attorney used to try to help his client. And I'm not
23 arguing with the State here, I'm arguing for the
24 defense attorney.

25 THE COURT: I'll allow it. I will overrule the

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 objection.

2 MR. NEELY: Thank you, Your Honor. Same question.

3 THE WITNESS: Just so --

4 THE COURT: I don't know the question, you might
5 need to re-ask it.

6 THE WITNESS: Yes, thank you, Judge.

7 BY MR. NEELY:

8 Q What were the pertinent points in the polygraph
9 exam that you used to either just -- to make decisions about
10 what you decided to pursue at trial?

11 A I am sorry, can you just ask that one more time?

12 Q And I am sorry, that was a complicated question.
13 What were the results of the polygraph test that helped you
14 decide your trial strategy?

15 A As I recall, and I am not sure that this is even a
16 word. There's a word that for some reason escapes me today,
17 but it's usually what law enforcement and experts end up
18 with when you have these done. And, like I said, this was
19 the first time that I had utilized one. It was all new to
20 me, and very interesting, but I want to say that the results
21 were indecisive.

22 THE COURT: Inconclusive?

23 A Inconclusive, I am sorry, inconclusive as to
24 deception, as to deception or non-deception. So, it ended
25 up, unfortunately, not being much of a help.

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 Q Okay. That answers that question. The polygraph
2 test was attempted to be used as a tool and it didn't matter
3 in the end?

4 THE COURT: Yeah.

5 Q In determining your defense at trial, did you ask
6 your client his version of events?

7 A Absolutely.

8 Q And what did he tell you happened?

9 A I'm allowed just to -- out of abundance of caution
10 --

11 Q Yes, attorney client privilege is waived for PCRs?

12 THE COURT: Yes, for PCR purposes he waives
13 attorney client privilege.

14 A Okay. He described a series of events which led
15 up to a very unfortunate evening. But where this defense
16 basically went was, and where I felt extremely sympathetic
17 to Mr. Jackson, based on the totality of what I had gathered
18 over months of preparing this thing, obviously I had already
19 mentioned that he, on the outside looking in, here we had an
20 individual with no prior criminal history of any substance
21 that I recall.

22 But once we delved into it with the clinical,
23 or the forensic exam, discovered that he had a great deal of
24 trouble as a youth, at-risk youth. He was abused as a young
25 man, young adult and a child. But that he had this

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 girlfriend that was one of the victims in this case,
2 Nazerene, that there was mounting tension between the two of
3 them.

4 And then on that particular evening basically
5 that she was the aggressor or, for lack of a better term,
6 the one who started things. And that this whole stick, the
7 mentioning of this stick was that -- and I think that she
8 even testified to the fact that she used what she referred
9 to as the stick to secure a sliding glass door, which I'm
10 sure that we are all familiar with that you put in the door
11 jamb of a sliding glass door in addition to a lock.

12 So, I can't -- you know, when I heard stick,
13 I kind of thought of a twig of a tree or a branch, but this
14 had to be actually a stick that fit within the sliding glass
15 door frame in order to add an extra layer of protection, in
16 that she was the main aggressor with the stick and that he
17 simply tried to disengage and repeatedly asked for his keys.
18 I just want my keys. Give me my keys please. And that, you
19 know, my defense and my cross-examination of her really was
20 extensive to the point where I think her and the daughter
21 became quite emotional in response to my cross, on top of
22 how emotional the whole situation was to begin with.

23 But I think that there was a lot -- I think I
24 was successful in getting some anger from the jury pool and
25 law enforcement and everyone else involved in the case that,

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 but for her actions that night, not that it was an excuse or
2 turned out to be a defense, that Josh might still be alive.
3 That she antagonized him and taunted him in a way that she
4 should have known, that if she pushed those buttons, he was
5 going to react violently. And like I said, that is a hard
6 defense to present. But that's what he had stated to me.
7 And as far as what had happened, the altercation between him
8 and Josh, if my memory serves me correctly, obviously, it
9 was mutual combat is what he explained to me.

10 And that is where -- maybe I'm
11 mischaracterizing that as far as mutual combat. But that he
12 engaged Josh -- he engaged Mr. Jackson, and Mr. Jackson
13 attempted to defend himself as best as he could, and that's
14 where the self defense theory came -- came into play.

15 Q Just kind of going back, but in your conversation
16 with Mr. Jackson, Mr. Jackson admitted in response to the
17 antagonization and the taunting, that he did in fact beat
18 his girlfriend?

19 A That he assaulted her, yes.

20 Q Correct. And then Josh came down the stairs in
21 response to that assault and engaged in, according to your
22 client, mutual combat?

23 A Something, yes, they engaged in some sort of
24 assault at that point, too, in response to him inserting
25 himself into the argument, into the altercation.

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 Q And do you think that it's fair to say that, even
2 given if the jury took your client verbatim at his word,
3 what he alleged would not rise to self defense?

4 A It was tough. To get -- to get all four elements
5 of self defense in, it was very difficult. And,
6 particularly one which I think that the Court of Appeals
7 hinged their opinion on in affirming the circuit court was
8 the duty to retreat, the fact that he had the ability to
9 retreat not once, but more than once. So, yes, you are
10 correct, that was very hard. But I obviously preserved it
11 well enough for them, for Mr. Dudick to be able to present
12 it to the Court of Appeals, so it was close.

13 Q And just so we are clear on the stick, your client
14 told you that his girlfriend was antagonizing him with the
15 stick and began the altercation with the stick?

16 A To the best of my recollection, and I stand to be
17 corrected, but from what I recall I believe that is what he
18 told me. And I think that the testimony will show, from the
19 little bit that I was able to look at it before in the last
20 PCR and during lunch, that she even admitted initially to
21 having had the stick. I don't think that she had the stick
22 for very long, but she did have the stick at some point.

23 Q Okay. So, and just so the record is clear, I
24 think that -- do you have a transcript in front of you?

25 A Yes.

CROSS EXAMINATION OF DONALD COLONGELI BY MR. NEELY

1 Q On page 177 of the actual transcript and page 57
2 of the record of appeal.

3 A Page 177?

4 Q 177 being the smaller number I think, if that
5 makes sense.

6 A Which para -- which line under that?

7 Q It is like 20 to 25.

8 A I didn't have a stick -- oh, okay, yep.

9 Q But she denies having a stick in her hand?

10 A Correct. "How could I hold on with both hands to
11 stop -- to the top of the door if I had the stick in my
12 hand. I wouldn't be able to hold on."

13 Q So, she denied ever having the stick?

14 A She did, that's correct.

15 Q Even though you were examining her in that vein
16 based on what your client had told you?

17 A That's correct.

18 MR. NEELY: Thank you. I have no further
19 questions, Your Honor.

20 THE COURT: Anything further?

21 REDIRECT EXAMINATION

22 BY MR. FALK:

23 Q Your reason not to get -- is the reason why you
24 didn't hire the DNA expert is because of your interpretation
25 of the polygraph results?

REDIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 A I think that, in addition to what my client told
2 me transpired, you would be correct. I do understand though
3 based -- I obviously -- I do see, and I think that I saw
4 back then, the fact that where you specifically pointed out
5 the items 3.1 -- the cuttings from the shirt hadn't been
6 examined, I see what you are saying. But I think that it
7 would have went against my -- our culmination of
8 discussions, between my client and I, and where we arrived
9 at trial strategy in preparing for what was the best
10 defense.

11 Q If he had testified -- strike that.

12 MR. FALK: May I approach?

13 THE COURT: Yes, sir.

14 BY MR. FALK:

15 Q I am showing you -- you will just have to accept
16 that that is a piece of the discovery in this case. Does
17 that look like -- I mean, you practice down this way. Does
18 that look like a typical incident report?

19 A Yes, sure.

20 Q I think that you see the officer's name is Chris
21 Henry?

22 A Correct.

23 Q Okay. And that highlighted section on there --

24 A Yes.

25 Q Small cut to --

REDIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 A Yes, small scratch on right side of neck, no other
2 injuries noted.

3 Q So, there was potential evidence that could have
4 come in that he did have injuries?

5 A According to this, yes. In all honesty I don't
6 recall him being involved in the case, but I don't remember
7 him being a witness, but according to this, yes, that is --
8 it looks like a supplemental incident report as to this
9 case, yes. Yes, sir.

10 MR. FALK: Your Honor, could I make a copy of this
11 and just make it an exhibit to the record?

12 THE COURT: Yes, any objection?

13 MR. NEELY: I don't think that we have a
14 foundation for the document to be introduced as an
15 exhibit.

16 MR. FALK: That is fine. I would probably agree
17 with that.

18 Q You know Chris Henry?

19 A I'm very familiar with him.

20 Q Okay. And this report -- just so we know what
21 this is coming from, if you could just read the synopsis of
22 the report.

23 A Yes, according to this, the synopsis, as I'll
24 publish it says, "On January 3rd, 2007, at approximately
25 0140, I, Deputy Chris, assisted the Beaufort County

REDIRECT EXAMINATION OF DONALD COLONGELI BY MR. FALK

1 Sheriff's Office in Beaufort SO with an investigation that
2 was being conducted of an incident that occurred on Stuart
3 Point Road in Beaufort County. Beaufort SO case number
4 200701030760. I assisted Beaufort SO by taking the suspect
5 Harold Jackson into custody and having him transported to
6 Beaufort County. I also located a weapon, a baseball bat,
7 that was possibly used in the incident, and seized it as
8 evidence."

9 That does refresh my memory and I do recall
10 that now specifically.

11 Q Thank you.

12 A Yes, sir.

13 MR. FALK: No further questions.

14 MR. NEELY: Nothing further. No objections to him
15 being released?

16 THE COURT: Any objection?

17 MR. FALK: No, Your Honor.

18 THE WITNESS: Thank you very much, Judge. Good
19 seeing you.

20 THE COURT: Appreciate you very much. Thank you
21 for being here today.

22 WITNESS: Beg the Court's indulgence to get all of
23 my stuff.

24 (Pause.)

25 Thereupon,

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 HAROLD LEE JACKSON

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FALK:

6 Q Are you ready? State your name.

7 A Harold Lee Jackson.

8 Q You heard testimony that Mr. Colongeli got
9 appointed to your case?

10 A Yes.

11 Q And did you have concern about Mr. Hood's
12 representation, prior counsel?

13 A No, sir.

14 Q Do you know how -- do you know anything about the
15 conflict that got Mr. Colongeli appointed to the case?

16 A They took me back to court and Ms. Tanner and
17 Mr. Hood. Mr. Hood said that I was playing games, so he
18 wanted to relieve himself from my -- as being my attorney.

19 Q Mr. Colongeli testified that -- you never made
20 bail in this case; is that correct?

21 A No, sir.

22 Q Over the course of this he saw you two dozen times
23 in presumably the Beaufort County Detention Center?

24 A That is not correct.

25 Q How many times do you think that you saw and spoke

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 with him?

2 A Maybe eight times.

3 Q Did you get all of your discovery from him?

4 A No, sir.

5 Q I had shown Mr. Colongeli a SLED report from April
6 18th and I show you a tape of the same report; had you ever
7 seen that one?

8 A No, sir. I even wrote to the South Carolina Bar
9 to, you know, to have them to have him get me, you know,
10 most of my discovery. Because I was writing him letters
11 and, you know, requesting a lot of things that he wasn't
12 sending to me.

13 Q Some of the pieces that we do have here, where did
14 they come from?

15 A I got those from him, after I made contact with
16 them.

17 Q I see. I see. He recanted -- Mr. Colongeli
18 conveyed conversations, conversations that you had with him
19 about what happened?

20 A Yes, sir.

21 Q You heard those?

22 A Yes.

23 Q Did you have those conversation with him?

24 A We talked about it, but not what he said.

25 Q What did he say that was inaccurate?

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 A Well, what we talked about was, I told him, when I
2 first saw him, I said the stick that the Sheriff's
3 Department collected is going to be a big issue in my case,
4 I said, because it has my blood on it and it needs to be
5 tested. So I asked him several times would he take my
6 blood, you know, so he can compare with the blood on the
7 stick. He never gave me an answer.

8 Q So, you were never -- the State never got a --

9 A No, a DNA sample or anything.

10 Q From you? They never sought one from you?

11 A No, sir. And once I found out that, you know,
12 blood was on my shirt, you know, I told him -- you know, I
13 called him again and asked him would he please take my DNA
14 so we can compare with the blood on the shirt and he never
15 did that either.

16 Q What do you think the significance of that would
17 have been?

18 A It would have showed that, you know, I had been
19 assaulted with the stick, you know, and injuries that I
20 sustained from the stick. That is what caused the injury to
21 the right side of my neck, the stick. That is why I wanted
22 the stick to be tested.

23 Q Was any explanation ever given to you why the
24 stick was never sent to SLED for --

25 A SLED had the stick. They had an officer from

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 Beaufort County Sheriff's Department, I forgot his name, but
2 he wasn't even part of the investigation. He called down
3 there. The analyst, he testified that the guy called down
4 there and tell him, said, Test all of the other evidence,
5 but you can just send the stick back. I have it in my
6 transcript, but I just have to, you know, look for it right
7 quick.

8 Q Okay. Before you go to that. What kind of
9 discussions did you have with him regarding you testifying?

10 A Nothing. He told me not to testify.

11 Q Did he say why?

12 A No, he just said, you know, it'll be in your best
13 interest just not to testify.

14 Q He testified earlier that he didn't think that you
15 would make a good witness?

16 A I mean, that is his opinion.

17 Q No, I'm not telling you that.

18 A Yes, that is what he said.

19 Q I'm saying, did he tell you that?

20 A No, he didn't say that. He just told me not to
21 testify. They came the day of trial, offering me 40 years.
22 I had been in county 27 months and they never offered me a
23 plea or anything.

24 Q Do you have a criminal record other than this?

25 A No, back in the day, I think 1989 I had a simple

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 assault and battery, something like that. That was about
2 it. I had like one or two traffic tickets. Other than
3 that, I didn't have anything.

4 Q He never told you that he didn't want you to
5 testify because it was a risk that your criminal record
6 would come out, did he?

7 A No.

8 Q So, in your mind, what was the basis for your self
9 defense claim?

10 A The stick. She had -- she had me up against the
11 door. She had the stick to my throat. And, you know, that
12 is what caused the injury to the right side of the neck,
13 when I tried to push the stick off that is what caused, you
14 know, the stick to brace against my neck. That is what
15 caused the injury.

16 When Josh came down stairs he attacked me
17 with the baseball bat. It is in her testimony, one of the
18 victim's testimony, I think it was Shella, Joshua is her
19 boyfriend, that when she came from downstairs and came into
20 the room, he had the baseball bat. But he came down the
21 steps with the baseball bat in his hand and he attacked me.

22 Q Did y'all mutually decide to do a defense of self
23 defense?

24 A Yes. One thing about that self defense charge,
25 you know, we was -- you know, trial had already started and

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 Ms. Tanner, which was the prosecutor at the time, she said
2 that there had to have been more than me telling the third
3 party that, you know, that they tried to kill me, it had to
4 have been something more than that. And then the Court
5 asked Mr. Colongeli did I sustain a wound or had an injury
6 or anything and he said that he would concede to the self
7 defense charge. So, that just went out the door.

8 You know, and he had the report saying that I
9 had an injury to the right side of my neck, but he failed to
10 give that information to the Court. That is the paper that
11 he did show Mr. Colongeli, but he conceded to the self
12 defense charge. So the Judge, you know, that just went out
13 the window.

14 Q Did he explain to you what you would have to prove
15 in order to make a self defense charge?

16 A Yes, he said I think that he said there were four
17 issues, something like that. I am not sure.

18 Q I'm reading from State versus Davis, which sets
19 out the four things. And I -- did he suggest to you or tell
20 you that we had or you would have to prove that you were
21 without fault for causing the accident -- causing the
22 incident? And that you had to actually believe that there
23 was an imminent danger of losing your life. And that if you
24 were basing your defense on imminent danger, that that had
25 to be a reasonable belief. And four, you had no other

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 possible means of avoiding injury.

2 If you testified what would your -- and
3 Ms. Tanner came on in cross-examination, what would you have
4 testified to when she was asking you why you didn't retreat?

5 A I left the house. Once me and Rene got into it
6 and Josh came down and, you know, he attacked me and I got
7 up and I went outside behind Rene. I went outside behind
8 Rene. And when I came back, when I finally came back to the
9 house, I saw Josh on the floor and I just, you know, went
10 back in the room and tried to find my keys and, you know,
11 turned up the mattress or whatever, went up under the bed
12 and there was my keys right there.

13 So I, you know, jumped in my vehicle and I
14 left and I went to Ridgeland and I got my cousin and I told
15 her I needed to turn myself in. And, you know, I told
16 him -- he asked me, Why you want to turn yourself in. I
17 said, They was trying to kill me. He said, Where at? I
18 never said anything else. I just kept saying that they were
19 trying to kill me. And then my cousin told me that they
20 were looking for me in Beaufort County.

21 Q During the altercation, so Josh was hitting you
22 with the stick?

23 A Yes, sir.

24 Q Were you able to leave the room?

25 A Yes.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 Q What other concerns do you have about
2 Mr. Colongeli's representation?

3 A Mr. Colongeli said that we had a conflict, but I
4 mean, he said -- he didn't tell the truth about that.
5 Because the reason why we had -- I had a conflict is because
6 you had a member of the 14th Circuit representing one of the
7 victim's in the wrongful death suit, her husband. You had
8 prosecution assist -- her husband was representing one of
9 the victims in the civil suit. And to me that was a
10 conflict. Because you had a house that was valued over --
11 you had a house that was valued over \$750,000.00 and you had
12 deep water property, so all together it was valued over a
13 million dollars.

14 Q You are saying that the person that was being sued
15 had assets?

16 A Yes, one victim was suing the other. And by that,
17 by her having her assistant husband represent one of the
18 victims, you know, and I was named in the civil suit, so you
19 know, they stand to gain monetarily, you know.

20 Q From your conviction?

21 A From my conviction.

22 Q Do you have other issues with Mr.
23 Colongeli?

24 A Yes, he didn't -- Mr. Colongeli didn't call -- he
25 didn't subpoena none of my witnesses that we talked about.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 All of my witnesses was labeled in my transcript, but he
2 didn't call none of them. You had the first respondent.
3 You had the first respondent officer, you had the officer
4 who responded at the hospital. You had the arresting
5 officer. No other lead detective. None of them was
6 subpoenaed to come to trial. And I'm being charged with two
7 counts of assault and battery with intent to kill and a
8 murder. And the reason why I said they were important was
9 because there was discrepancy between -- this case involved
10 a lot of blood and there was a discrepancy between Beaufort
11 County and Jasper County. I have a report right here from
12 the arresting officer stating that after he searched my
13 cousin's house and he looked me over, he didn't see no sign
14 of the incident that was apparent at the time. That means
15 if he saw, other than noting that I had the injury to the
16 right side of the neck, he didn't list no blood or anything
17 on me.

18 So, after Beaufort County took my clothing --
19 they took my clothing at 8:45 in the morning. The Sheriff's
20 Department repository is only like five minutes away from
21 there. I had no chain of custody as to where my clothes
22 went from that time. That is a six-hour difference from
23 8:45 in the morning to 1445. That is six hours. I had no
24 chain of custody. So, I don't know where my clothes was at.
25 Okay.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 The lead detective, he still had access to
2 the crime scene. His credibility was a big issue in this
3 case, because he was fired for using cocaine. I have a
4 letter from him right now where he tells how he was using
5 while his wife was using --

6 MR. NEELY: I object.

7 MR. FALK: Your Honor, this is actually in the
8 transcript.

9 THE COURT: If it's in the transcript, it's part
10 of the record.

11 THE WITNESS: Yeah, he never --

12 THE COURT: Hold on.

13 BY MR. FALK:

14 Q A reference to this is in the transcript. I know
15 that there was -- the solicitor made a reference of
16 having -- that the one detective that she had said, you
17 know, bring him in here and humiliate him and how he made
18 decisions that ruined his life. I'm assuming this is the
19 same detective that we are talking about here?

20 A Yes.

21 Q And we can stop and look, but I think -- I'm
22 assuming that this is the same detective that's addressed in
23 the closing argument by Ms. Tanner.

24 A He did all of the investigation. He did -- he did
25 the crime scene by himself. Nobody else did anything. This

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 officer did everything by hisself.

2 MR. NEELY: I mean, Your Honor, first, I would
3 object on hearsay grounds.

4 THE COURT: No, this ain't hearsay.

5 THE WITNESS: This is according --

6 THE COURT: No, sir, you don't decide. The letter
7 would be hearsay.

8 MR. NEELY: Yes, Your Honor.

9 THE COURT: Yes. So I'm not going to allow the
10 letter.

11 BY MR. FALK:

12 Q I think that my last question was what your
13 concerns were with Mr. Colongeli.

14 A Yes.

15 Q And I think that you said you had some concerns
16 with how he waived some objections to the possible problems
17 with the chain of custody with your clothing?

18 A Yes.

19 Q And you were talking about discrepancy between
20 Jasper County and Beaufort County regarding the blood?

21 A Yes, you had -- you had -- you had the arresting
22 officer stating that he didn't see no sign of the incident.
23 That means if I had blood on my clothing and blood on my
24 shoes, from the way, you know, it was in the pictures,
25 automatically he would have put that in his report. But he

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 didn't say that. He said that he saw no sign of the
2 incident that was apparent at the time.

3 Now after they took my clothing, then that is
4 when all of the blood got on my clothing. That is why I --
5 when I got my discovery, I asked him -- we went over this
6 several times. I said, You have got to make sure you have
7 the lead detective there, because I said, Something ain't
8 right. They had six hours and they could have done
9 anything. I don't have a chain of custody. I don't know
10 where my clothes are at.

11 I mean, they had six hours. The repository
12 from downstairs in the detention center is like only five
13 minutes away. You have got an officer -- you have got an
14 officer who gave his superiors this letter right here. This
15 is -- this is his own handwriting, the lead detective.

16 Q Where did you get that?

17 A I wrote to the Freedom Act Information. This is
18 why he was terminated.

19 Q Okay.

20 A Am I allowed to read this, Your Honor?

21 THE COURT: No, sir.

22 Q Does that -- does that refer to this case?

23 A Yes, sir. Yes, sir. This is why he was
24 terminated. And I can show -- I can show the Court that he
25 was using cocaine before, during and after this incident

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 occurred because he states clearly that --

2 MR. NEELY: Your Honor, again --

3 THE COURT: This is information that he, you know,
4 I applaud your ability to research and get this stuff,
5 but apparently all information done subsequent to the
6 trial which has no relevance to the issues in this
7 matter.

8 MR. FALK: Yes, Your Honor.

9 THE COURT: So.

10 THE WITNESS: Your Honor, Don, Mr. Colongeli, was
11 supposed to subpoena this detective and he never
12 subpoenaed him.

13 THE COURT: I'm not allowing the letter in, it is
14 hearsay. That is what I'm saying.

15 A Okay. But I mean -- okay. This -- I have one
16 more thing to say about this officer.

17 Q Okay.

18 A Okay. He gave -- he gave, let me see where it is.
19 He gave a supplementary report. He told what all he did,
20 Your Honor. He say he observed blood.

21 Q Before you read that, let me see what you are
22 referring to.

23 A And I will tell you the reason why I needed him to
24 subpoena him. Your Honor, the reason --

25 THE COURT: Hold on.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 BY MR. FALK:

2 Q Let's try to put it in this way.

3 A Yes.

4 Q Did you receive discovery in this case?

5 A Yes.

6 Q Did you receive the supplemental report as part of
7 the discovery?

8 A Yes.

9 Q When you read the supplemental report, did you
10 have something that you wanted Mr. Colongeli to do?

11 A Yes, sir.

12 Q What was that?

13 A Subpoena him to trial, subpoena the lead
14 investigator.

15 Q Why was that?

16 A Because, on that paper, when he submitted his
17 evidence, his blood evidence, he collected it on the 4th.
18 He turned -- he turned some of it in on the 5th and some of
19 it in on the 8th. Now, if you were collecting blood
20 evidence, why didn't you turn it in on the 4th?

21 THE COURT: Can I ask a question here? This lead
22 investigator, do we have a name?

23 MR. NEELY: Detective Inabinet.

24 THE WITNESS: Lester Williams.

25 MR. FALK: LEster Williams. Inabinet was another

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 one.

2 THE WITNESS: He was the lead detective.

3 THE COURT: He was a lead investigator?

4 THE WITNESS: Yes.

5 THE COURT: Did he not appear in this case?

6 THE WITNESS: No. No, sir.

7 MR. FALK: I have it right here, Your Honor.

8 BY MR. FALK:

9 Q So you reviewed the discovery and you thought --
10 and you had concerns with the way you thought that the
11 evidence was collected?

12 A Yes.

13 Q And you had concerns about Williams, who was the
14 one who had done this?

15 A Yes.

16 Q Did Mr. Colongeli ever give you an explanation why
17 he didn't subpoena Mr. Williams?

18 A No, sir. If -- in my transcript, all of the
19 witnesses that we talked about, they are labeled in my
20 transcript but none of them were ever subpoenaed.

21 Q Uh-huh. (Indicating affirmatively.) They were
22 labeled in the transcript, meaning when they read the
23 witnesses as part of the jury qualifications?

24 A Yes, sir.

25 THE COURT: I don't have the entire transcript. I

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 have got -- the transcript that I have got begins on
2 page 113.

3 MR. NEELY: Your Honor, I am not sure why that is
4 the case.

5 THE COURT: I mean, I have got two -- I have got
6 part one of two and part two of two. But when I --

7 MR. NEELY: Is that the record on appeal?

8 THE COURT: This is -- it just says, Transcript of
9 trial.

10 MR. NEELY: I can give Your Honor my copy. I have
11 got --

12 THE COURT: I don't know if I need it. I was --
13 but the reason that I was asking was because I was
14 going to turn to the index page to see if Investigator
15 Williams was a witness in the case and that is when I
16 looked and said, Whoa, this starts on page 113. But
17 I -- I might be all right with that.

18 MR. FALK: I copied out the index page of the
19 witnesses, if you want to see it.

20 MR. NEELY: I think that 113 is actually when the
21 first witness takes the stand, I believe. Before that
22 is voir dire.

23 THE COURT: Yes, that is the end of the opening
24 statement by the defense and then they go into calling
25 the first witness, which is I guess Nazerene.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 MR. NEELY: I'll if I can approach?

2 THE COURT: All right.

3 (Judge receives entire trial.)

4 MR. NEELY: In all candor, that is missing the
5 first page, the cover sheet. I don't know why they
6 sent it without a cover sheet on there, but --

7 THE COURT: That is fine.

8 (Pause.)

9 THE COURT: Mr. Falk, whenever you are ready.

10 BY MR. FALK:

11 Q After reading the supplemental report, do you
12 think that they ever found the baseball bat?

13 A They found a bat in Jasper County that they
14 brought back from Jasper County and field tested it.

15 Q Where did you learn of that?

16 A Through my discovery.

17 Q Okay. And you said that you read your discovery
18 and you believe that the discovery said that they tested the
19 baseball bat?

20 A Yes.

21 Q And did it have your blood on it?

22 A No, it didn't have no human blood, I don't think.
23 The little kid said that they used it to kill a pig or
24 something like that.

25 Q That was your understanding of what this

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

- 1 investigation led to?
- 2 A Yes.
- 3 Q Okay. And so, it was your understanding of the
- 4 investigation that Detective Williams got the stick and it
- 5 had blood on it, correct?
- 6 A Yes, it is in his report.
- 7 Q And actually there was testimony at the trial that
- 8 it looked like blood on the stick, was there not?
- 9 A Yes.
- 10 Q Because there was a photograph of the stick?
- 11 A But you had someone from Beaufort County Sheriff's
- 12 Office that called the DNA analyst and told him not to
- 13 analyze the stick.
- 14 Q That was also in the transcript, was it not?
- 15 A Yes, it was in the transcript.
- 16 Q Now, your lawyer, Mr Colongeli, called that to the
- 17 Court's attention, did he not, about somebody calling --
- 18 A No, he didn't. I have it right here.
- 19 Q Okay, I just read what I thought that you were
- 20 referring to.
- 21 A Do you want me to read it?
- 22 Q What page is it on?
- 23 A On -- it is part two of two, page 456.
- 24 Q Okay.
- 25 A Line 17.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 Q Please.

2 A Read it?

3 Q Yes.

4 A It says, "I spoke I believe to a Captain Bob
5 Bromage with the Sheriff's Office on October 21st with
6 regard to that item and he said at the time of this
7 telephone conversation that would not be necessary to
8 process for blood at the time and that I could send the
9 report without analyzing the item."

10 MR. FALK: Your Honor, if you would -- I believe
11 that there might have been a discussion outside of
12 Mr. Jackson's presence, but if you look at page 459.

13 THE COURT: Okay.

14 MR. FALK: Starting at about line 16.

15 THE WITNESS: Do you want me to read it?

16 BY MR. FALK:

17 Q No, that is fine, I just wanted to call it to the
18 Court's attention. Although, I'm concerned by the fact that
19 he told him not to look at it and the implication that you
20 could draw from that, I do think that your lawyer brought
21 that to the Court's attention.

22 A Yes.

23 Q Did he, did Mr. Colongeli ever say why he didn't
24 call Williams to the stand or why he didn't get these law
25 enforcement officers?

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 A No, he had me thinking that they were going to
2 show up for trial. You know, the whole time that we -- as
3 my trial got closer, you know, I kept asking, Are they going
4 to be there, are the witnesses going to be there. He told
5 me, Yes, but they weren't. He never gave me an explanation
6 as to why not.

7 Q Say they were there, why did you want them there?

8 A Well, the arresting officer, why did I want him
9 there?

10 Q We are trying to get through this without saying
11 hearsay, but what do you think?

12 A He could have testified as to what he saw.

13 Q What do you think he would have testified to?

14 A That I didn't have the blood like they say I had
15 on my clothing, that it wasn't like that because if it was
16 it would have been in his report.

17 MR. NEELY: Speculation, Your Honor.

18 MR. FALK: I think that I'm trying to just show --

19 THE COURT: Yeah.

20 BY MR. FALK:

21 Q And what would Williams have testified to, had he
22 been there?

23 A Well --

24 Q He would have testified about the stick and the
25 blood?

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 A Yes, and why he had it in his possession that
2 long. That is what, you know, I would have Mr.
3 Colongeli ask him. Because if you collected it on the 4th
4 and you didn't turn it in until the 5th. And you had the
5 stick with blood on it until the 8th. I mean, what were you
6 doing with it? You know, this is blood evidence.

7 Q And --

8 A And he still had, you know, from the 4th until I
9 think maybe the 5th he still had access to this home, you
10 know.

11 Q Mr. Williams, Detective Williams, had access to
12 the murder -- to the crime scene?

13 A Yes, sir.

14 Q Yeah. Do you feel the jury would have drawn some
15 conclusions from his testimony?

16 A Yes.

17 Q Is that why you wanted him to call him?

18 A Yes.

19 Q Because it would draw a question in the jury's
20 mind as to the State's investigation?

21 A Yes. Yes.

22 Q Is there anything else?

23 A Yes, sir. Another thing about the -- we had one
24 witness. I mean, one witness, when I came to the detention
25 center I had what was called code blue, I had a medical

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 emergency. And in my transcript we also had the head nurse,
2 who was Ms. Dubose at the time. Her -- I mean, we were
3 going to subpoena her to tell -- I mean, to show the jury
4 that I did have a medical emergency, that I did have an
5 injury. But he never subpoenaed her, nor did he ever
6 subpoena the law -- I mean, the record from the log book to
7 actually show that I actually had an injury and there was a
8 code blue in that cell.

9 Q Do you think that the code blue that you had was
10 related to the fight that you got into?

11 A Yes, yes, yes, I was coughing up blood. And you
12 would have somebody to testify for that, somebody who is,
13 you know, the head nurse. Someone considered, you know, an
14 expert in that field.

15 MR. FALK: I have no further questions.

16 THE COURT: I have got to ask a question before
17 Mr. Jackson gets off of the stand so he can respond to
18 it. But if I understood his earlier testimony, if I
19 understood his earlier testimony, the blood on the
20 stick was his but it got there because apparently the
21 girl --

22 THE WITNESS: Yes, sir, she had me up against the
23 wall.

24 THE COURT: Had him up against the wall?

25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 THE COURT: With the stick and all of that. But
2 he was convicted of killing the guy.

3 MR. NEELY: And two ABHAN charges, Your Honor.

4 THE COURT: Were the ABHAN charges against the
5 girl?

6 MR. NEELY: No, they were both against him on both
7 of the girls.

8 MR. FALK: The girl was the victim of one of the
9 ABHAN charges.

10 THE COURT: Right. Okay. So, what relevance is
11 that as to the murder charge?

12 MR. FALK: I think that the relevance -- I think
13 that you could try to establish the fact that at trial
14 that he got there, that there was a fight going on that
15 he didn't cause, that the girls started the fight, he
16 didn't cause the fight, that people came in to
17 intervene in the fight and he was still defending
18 himself. That is how Josh got there. They came to
19 intervene. I think that's what the testimony would be,
20 or that would be the theory.

21 THE COURT: Okay. I just, because the blood on
22 the stick, but then I thought he later testified that
23 Josh had a stick.

24 THE WITNESS: No, Josh had a baseball bat.

25 THE COURT: Had a bat, all right.

DIRECT EXAMINATION OF HAROLD LEE JACKSON BY MR. FALK

1 MR. FALK: I think that there was testimony in the
2 transcript about who had the stick and who had the bat.
3 But that's not in my client's testimony.

4 THE COURT: All right. Mr. Neely.

5 CROSS EXAMINATION

6 BY MR. NEELY:

7 Q Thank you, Your Honor. Now, we have talked a lot
8 about the investigation and the evidence. We haven't talked
9 a whole lot about the incidents that put you in jail. Are
10 you asserting today that the injuries caused to Ms. Nazerene
11 were not caused by you?

12 A Yes, sir, I do admit that.

13 Q So, you do admit that her injuries were caused by
14 you?

15 A Yes. Yes.

16 Q Okay. So, your testimony is that she had you
17 against the wall with the stick?

18 A Yes, sir.

19 Q And then you used your hands?

20 A No, she had me like this up against the wall and
21 we was struggling over the stick and she was pushing one way
22 and I was trying to, you know, pull it down. The stick went
23 across my neck and where it was broke at it sort of like dug
24 into my skin. We were still wrestling over the stick. We
25 went to the floor with the stick. Both of us still had the

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 stick. I reached up on the TV stand and grabbed a bottle
2 and smacked her because she was biting my leg by that time.
3 That is it.

4 Q Okay. I mean, that -- I guess that would explain
5 the back of the head injury where she had 15 stitches?

6 A No, I think that she -- I think she had a little
7 cut right there or something.

8 Q She had 15 stitches in the back of her head, was
9 that caused by you or not caused by you?

10 A Nazerene?

11 Q Yes.

12 A I don't think that she had 15 stitches. No, no,
13 according to the pictures now she had, I think, a couple of
14 staples right across her forehead.

15 Q And then the injuries to her arm, was that caused
16 by you, she couldn't raise her arm?

17 A Well, I don't know about that.

18 Q Sorry, 13 staples on the hair line; does that
19 sound correct?

20 A Yes.

21 Q Okay. That is on page 128 of the transcript. And
22 she testified that she had extensive bruising, was unable to
23 raise her arm for two years; is that right?

24 A I don't know about that.

25 Q That is what she testified to. But you are saying

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY .

1 that the only -- the only thing that you did was hit her
2 with the bottle?

3 A Yes, that is it. That is it. That is why we
4 wanted -- that is why we wanted the self defense charge.
5 Mr. Colongeli told me that we would let the forensic handle
6 the other two, Shella and Josh.

7 Q What is your testimony about how Josh ended up
8 with three separate concussive injuries to the back of his
9 head that ended up killing him?

10 A I have no idea.

11 Q So, you are saying that y'all fought?

12 A Yes.

13 Q But you didn't hit him in the back of the head
14 three times so hard that it killed him?

15 A No, no, when I left the house they were in the --
16 near the wet bar. Both of them was standing, him and
17 Shella.

18 Q So, when you left the house he was awake and
19 alive?

20 A Yeah, yeah.

21 Q Okay. So --

22 A I went out the front door.

23 Q So you engaged with him in mutual combat?

24 A I got up and I went out behind Nazerene.

25 Q Okay. You got -- so, after you hit her on the

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 head with the bottle you got up?

2 A She ran out of the room. When they came and Josh
3 attacked me, she left.

4 Q OKay. And Josh attacked you, what happened then?

5 A I got up. When Shella came in the room, I got up,
6 and I went behind Nazerene.

7 Q That doesn't sound like combat to me. You said
8 that y'all fought?

9 A Yes, we was -- and then Shella came down. Me and
10 him was fighting. Nazerene was still in the room. Me and
11 him was fighting. And then Nazerene ran out of the room and
12 Shella came down and Shella grabbed Josh and I got up and
13 then I went behind Nazerene. It is in the testimony of
14 Shella.

15 Q So you are saying that Josh was not injured at all
16 when you left?

17 A No.

18 Q So the blood -- his blood that was on your shoes,
19 where did that blood come from?

20 A I don't know.

21 Q Just mystery blood?

22 A Listen.

23 THE COURT: That is when he was testifying that
24 his shoes was taken.

25 MR. NEELY: Oh, when he came back in, fair enough.

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 THE COURT: Let me -- and maybe I'm wrong, but
2 maybe we need to refocus. We are getting into retrying
3 the case, and this is whether -- this is PCR
4 allegations, whether or not his attorney was
5 ineffective in not -- in representing his interest.

6 MR. FALK: My only point would be that, had he
7 taken the stand, this would have been the types of the
8 questions that the jury would have that possibly he
9 could have fleshed out because he had very little
10 evidence of self defense.

11 THE COURT: I understand that but, you know, the
12 testimony that I'm hearing is that he chose not to.

13 And it is a credibility issue, I guess. He says
14 that Mr. Colongeli told him not to. Mr. Colongeli
15 testified that he gave him the pros and cons of
16 testifying and it was his decision.

17 MR. NEELY: Your Honor, I'll end my cross
18 examination. I think I have covered all of the issues
19 that are pertinent. I was just going into his theory
20 of the case.

21 THE COURT: Okay.

22 MR. FALK: No redirect.

23 THE COURT: Are you done?

24 MR. NEELY: Yes, sir.

25 THE COURT: All right. You may step down, sir.

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 MR. FALK: Your Honor, I don't believe that
2 there's any doubt that Mr. Colongeli spent a lot of
3 time on this case, just the stack of papers that he
4 brought up I think can attest to that. But my concern
5 is possibly that he was spending time on the wrong
6 aspects of this case and the wrong issues. I think
7 that, by looking at the police report, you can see that
8 this case is going to, you know, is going to focus on
9 the DNA evidence. And Mr. Colongeli already knows that
10 he could have gone to indigent defense and gotten an
11 expert. Why he didn't hire a DNA expert, I'm not sure
12 that he had the best answer for it.

13 But he certainly -- it was not a money question,
14 because he had already hired Dr. Schwartz-Watts and he
15 had the polygraph examiner, so I have concerns why, in
16 a case that is going to hinge on DNA --

17 THE COURT: What would a DNA expert have added or
18 detracted from the case?

19 MR. FALK: That he had blood on his shoes.
20 Because we know that there's a stick that has blood on
21 it, but the jury doesn't know whose blood it is.

22 THE COURT: Okay.

23 MR. FALK: We know that there are two clippings
24 taken from the shirt. Those are 3.1 and 3.3 and we
25 know that they were submitted. And we know that there

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 was an unidentified male's blood on the shirt. So,
2 this is his shirt. Blood is on his shirt. We also
3 know that they didn't take a buccal swab or anything
4 from my client. So, this is what I think is sort of
5 the gap.

6 THE COURT: Well, all of that is a lack of
7 evidence that would be attacked by the defense. I
8 haven't read the whole transcript, but Mr. Colongeli
9 attacked those issues upon cross examination?

10 MR. FALK: I'm saying that it would 'have been a
11 more effective attack to have shown that it was my
12 client's blood on the stick and my client's blood on
13 the shirt. Because, again, all of the blood evidence
14 that is found are all identified to people who are
15 victims in this case and none of the blood found at the
16 scene points to my client.

17 And so that is point one. I think that they
18 should have found out, seen if it was his client that
19 was the unidentified male whose blood was found on my
20 client's shirt. Cuttings were taken from his shirt.
21 They had blood on him. It was a male's blood. We know
22 that it wasn't Josh's blood because they had an
23 exemplar, or whatever the term is for his. And it
24 wasn't the other two females. I think it would benefit
25 --

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 THE COURT: So, the evidence from the trial is
2 that there was blood on his shirt that was not any of
3 the three victims?

4 MR. NEELY: No -- yes.

5 MR. FALK: Yes.

6 THE COURT: Then what difference does it make
7 whose blood it was then?

8 MR. FALK: Again, because --

9 THE COURT: It could have been his, or it could
10 have been a fourth or fifth person out there.

11 MR. NEELY: Just to clarify, the testimony from
12 the DNA expert is that it also could have been a
13 mixture of the three that made it unidentifiable.

14 THE COURT: So, there was a DNA expert that the
15 State put up?

16 MR. NEELY: That is at 442, I believe. Line 22
17 and 23. Line 22 and 23.

18 MR. FALK: What page?

19 MR. NEELY: 442. It wasn't testified that it was
20 actually a fourth person, I just want to put that in
21 there.

22 MR. FALK: I think that the testimony about the
23 shirt is 453, line 11.

24 THE COURT: All right.

25 MR. FALK: So, anyway, that testimony was that the

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 shirt, the cuttings from the shirt were testified to
2 and the testimony was that there was blood from an
3 unidentified individual, unidentified male individual
4 that dovetails with the SLED report that I have. A
5 better argument for self defense could be if he had
6 made -- not the effort, but if he had gone down the
7 path to have the shirt tested by an independent -- or
8 have the shirt tested for DNA to show that it was his
9 blood on there. And I appreciate that that is
10 speculation, but it really does dovetail back into the
11 argument that we are trying to prove self defense
12 without having the witness -- the defendant testify.

13 I know that there are trials where you can make a
14 self defense claim without a witness testifying. And I
15 would bet most of those trials, those are ones where
16 the defendant is not going to testify because he has
17 got a criminal record that we are trying to keep from
18 the jury. But in this case we have a gentleman with,
19 apparently, a criminal record that would not have been
20 an issue. And he could have explained so the jury
21 would have heard why he did feel like he couldn't exit
22 from the place and why -- and you know, who was the
23 instigator of it. And there could have been testimony
24 from him regarding the four steps -- the four factors
25 that could be proven to show self defense.

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 THE COURT: Well, I mean, he brings it out in his
2 questioning the DNA guy. He asked him, and I am on
3 page 455, line 22, As far as cuttings from his shirt,
4 which is admitted into evidence, that is where you
5 determine an unidentified male, correct?

6 Answer: Correct.

7 It did not match anybody that was submitted.

8 So, the next question: Okay. And correct me if I
9 am wrong, was there an assumption made that the -- that
10 that unidentified male was in fact Harold Jackson's
11 blood?

12 There was a statement made just a moment saying
13 that it could be, and I said it certainly could be.
14 I'm certainly going to have -- I am certainly going to
15 have DNA on my shirt, however I can't say that -- I
16 can't say that it has to be his.

17 So, he -- he raises that question that that blood
18 very well was more than likely Mr. Jackson's blood. I
19 mean, he addresses it, is what I'm saying.

20 MR. FALK: Yes, Your Honor.

21 THE COURT: Okay. And your point is that the DNA
22 expert, if it was in fact his, could have said it is
23 his?

24 MR. FALK: Exactly.

25 THE COURT: Okay.

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 MR. FALK: And that, I'm trying to get back to my
2 argument that, to try to go forward in a trial on a
3 self defense claim when you have got a -- you have got
4 a witness who could have testified, the defendant in
5 this case, and he could have filled in some of the
6 gaps.

7 THE COURT: If he would have agreed to testify.

8 MR. FALK: If he would have agreed to testify.
9 And Mr. Colongeli said that he didn't think that he
10 would be a good witness, and I took that comment that
11 he probably told him that he would not be a good
12 witness. I don't -- I think that there's no doubt that
13 the transcript shows that -- this was Judge Buckner's
14 case.

15 THE COURT: I think that it was Judge Mullen.

16 MR. FALK: Excuse me -- that Judge Mullen walked
17 him through the typical colloquy that you would have as
18 far as advising people. And I don't doubt that that
19 took place. In fact, I know that it took place, it was
20 in there. And I know that he knew that he had a right
21 to testify, but I think that his testimony is that, you
22 know, that his lawyer suggest that he not testify
23 because he didn't think that he would make a good
24 witness. I think that's how Mr. Jackson testified,
25 that he told him not to testify, that Mr. Colongeli

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 told him not to testify.

2 So, I appreciate that is a trial strategy, but it
3 would appear to be a rather hard burden when you have a
4 resource that you don't call on to try to make a self
5 defense claim. And it's clear that the best test -- I
6 mean, you had evidence of self defense where his,
7 Mr. Jackson's statement about, they were trying to kill
8 me, they were trying to kill me that came in from two
9 different witnesses. But that is all that we had.

10 THE COURT: Well, I guess that it could have been
11 flushed out a little bit more with Mr. Colongeli, but
12 you know, there are other reasons that you don't -- I
13 mean, I was a criminal defense lawyer for many years
14 and there's a lot of reasons that you don't call your
15 client. And it is not just their criminal history.

16 As a counselor you have got to go with your best
17 opinion as to how you think things are going. It may
18 have been that -- and I am speculating now, but I'm
19 just saying that there are a lot of reasons other than
20 a criminal record that you prefer your client not to
21 testify.

22 How are you going to explain the blood, that the
23 victim's blood was on your shoes. How are you going to
24 explain that? And maybe they talked about that and
25 maybe he felt like that was out there and it wouldn't

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 present well to the jury. There are many number of
2 reasons, but I'm assuming, and I don't know Mr.
3 Colongeli, but he is a very experienced criminal
4 defense lawyer. He has been doing it for quite some
5 time and was experienced in doing it.

6 I think that any lawyer knows that, you know,
7 whether or not your client testifies is their decision.
8 You can't tell them that they can't testify. You can
9 tell them you don't think that it's in their best
10 interest, but then ultimately it is their decision.
11 And I haven't gotten into the colloquy with regards to
12 the Court, but I'm sure, as you said, I'm sure that
13 Judge Mullen, I know her extensively, gave
14 Mr. Jackson's rights with regard to testifying.

15 MR. FALK: I'm not trying to assert that point.

16 THE COURT: No, I understand but I'm just saying
17 that there are reasons other than simply someone's
18 criminal history why you would suggest to them that
19 it's not in their best interest to testify.

20 MR. FALK: Just coming around to Mr. Colongeli
21 had -- there were some witnesses that my client wanted
22 there. I think that that testimony is in there. And
23 certainly there's some question about Mr. Williams and
24 some of the doubt that could have been raised
25 through -- that he wanted to raise, as far as the chain

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 of custody of the evidence, you know. I think that my
2 client is sincere in saying that he wanted that person
3 there. I guess I'm anticipating what sometimes a
4 criminal lawyer will say, well, I made a strategy
5 because I wanted -- I didn't think that it would help
6 much, but I wanted that last say. But he had already
7 given up -- you know, he was not going to get the last
8 say because he had already entered evidence. So I'm
9 not really sure what the explanation is not subpoenaing
10 witnesses that my client was asking for.

11 Certainly, if you can turn somebody who should be
12 a State's witness into a witness for yourself, that has
13 a tremendous appeal for a jury. So, I don't know why
14 witnesses did not testify. I do believe that the
15 discovery supports questions that could have been asked
16 of Mr. Williams that would have possibly drawn some
17 doubt as to how the blood got on the shoes and some of
18 the other handling of the forensic evidence. And I do
19 think this is a forensic evidence case.

20 So, I think that my strongest points are the
21 failure to get an expert in DNA to explain the blood.
22 The -- to try to put on a self defense case without
23 having -- without having a witness testify to explain
24 some of the holes in the four prongs or four elements
25 that you have to meet and the explanation of why he

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 didn't. Why once he had already lost the opportunity
2 to be the last person to talk to the jury, when he
3 already did introduce evidence in this case, why he did
4 not call witnesses that could have raised serious
5 credibility with the State's case.

6 THE COURT: Yes, sir.

7 MR. NEELY: Thank you, Your Honor. I think the
8 problem with criticizing an attorney's advice to a
9 client about whether to testify or not is that for PCR
10 purposes, we are on the end side of the trial looking
11 back at it. So, every single decision made by every
12 single defense attorney where their client was found
13 guilty is going to be viewed as wrong by the defendant.

14 If they advise their client, I think that you
15 should testify but it's your decision and they testify
16 and they were found guilty, then they should have
17 advised them not to testify. And if they advise them
18 not to testify and they are found guilty, then they
19 should have advised them to testify. There's really no
20 way to get around that statement. I mean, like it is
21 just -- you are going to be wrong in the eyes of the
22 defendant looking back because they were found guilty.

23 I think, in this case, Mr. Colongeli did exactly
24 what a competent defense attorney does, he lists the
25 pros and cons, here is what I see. Here is what I

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 think will help with this, here is what will hurt with
2 this, but it's your decision. And that is what he
3 testified that he did. He told him why he thought it
4 would be harmful and why he thought it would be helpful
5 and then he left the decision in his hands and
6 Mr. Jackson chose not to testify.

7 I think that the DNA expert is a very simple issue
8 for me. First off, I don't think it would have helped.
9 Even if the DNA had come back as Mr. Jackson's DNA, I
10 don't think that that helps the case much at all. The
11 only testimony about any injury to Mr. Jackson was a
12 small scratch on the neck. And then, further, and this
13 is, I think, more importantly, South Carolina courts
14 have determined that unless you have an expert testify
15 at a PCR hearing, it is pure speculation.

16 Quoting Dempsey v State, 363SC365, because
17 Dempsey, the applicant, failed to have an expert on
18 child sexual abuse testify at the PCR hearing, he
19 called it any finding of prejudice is merely
20 speculative. So, unless you have a -- unless you can
21 show that, indeed, an expert would have come and
22 testified in applicant's favor, it is pure speculation.
23 And the burden lies on the applicant in a PCR hearing
24 to prove his case. So he has not -- he's failed to
25 prove his case and failed to meet his burden in this

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 case.

2 And the same thing goes for investigators. I
3 think that I quoted on Monday the case where an
4 applicant's testimony by itself of what a witness might
5 have said is not enough unless the witness is called to
6 the stand and says, I would have said this, it is mere
7 speculation. That is what we have here, pure
8 speculation.

9 And again, I think this case all comes back --
10 this case is, to me, obviously, an overwhelming
11 evidence case. When you have two witnesses who are
12 injured and testify as to what happened. You have a
13 third witness who, not witness, but decedent who was
14 beat to a bloody pulp. And then you have blood all
15 over the Defendant's clothes and his shoes, him placing
16 himself at the scene. And then his statements that,
17 They were trying to kill me.

18 It is obvious that he was there. It is obvious
19 that he was part of the fight. He places himself
20 there. And then the witnesses testify exactly what
21 happened. And they have no reason to testify any other
22 reason -- any other way. It is rare in a murder case
23 where you have witnesses that were on the attacked side
24 that are available to testify. Obviously the decedent
25 couldn't testify. We have two witnesses that testified

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 as to what happened. It is a terrible circumstance.

2 Domestic abuse that spirals out of control. One
3 man that tried to come to the defense of Mr. Jackson's
4 girlfriend, which is certainly legal, self defense of
5 others, and was brutally murdered with a baseball bat
6 in front of Mr. Jackson's girlfriend. She testified as
7 to how it happened. A terrifying state of events.

8 And, again, the State has overwhelming evidence
9 and I think that there's been nothing but speculation
10 about the DNA expert, nothing but speculation about the
11 investigators. And Mr. Colongeli did a fantastic job
12 of advising his client of the pros and cons of
13 testifying and allowing him to make that decision.

14 THE COURT: Y'all know how earlier this week I
15 ruled from the Bench and gave you my response when I
16 can, but when I need to read some of the transcript, I
17 have to take it under advisement. I would prefer a
18 ruling from the Bench and to have an answer, but I
19 think that I need to do some reading on this.

20 MR. FALK: Thank you, Your Honor.

21 THE COURT: So, I'm going to take it under
22 advisement. And if you don't mind, Mr. Neely, can I
23 hold on to your -- to your transcript that you handed
24 me? It is more complete.

25 MR. NEELY: Absolutely.

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1 THE COURT: If you want this one in replacement.

2 But I am going to hold on to this one.

3 MR. NEELY: I would prefer Your Honor to have a
4 full copy. I am sorry, I check the packets to make
5 sure that the transcript is in there but I didn't make
6 sure that it was the right one.

7 THE COURT: Okay. Here is what might hae
8 happened. You have it on yours, that you are missing
9 the front page, well I got the front page but I didn't
10 get the first 114 pages.

11 MR. NEELY: I don't know how that happened. I
12 guess it was a copy error.

13 THE COURT: No problem.

14 (Whereupon, the hearing concluded.)
15
16
17
18
19
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21
22
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24
25

CROSS EXAMINATION OF HAROLD LEE JACKSON BY MR. NEELY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 14th day of February, 2019.

9

10

11

Mona L Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

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mmanley@scccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Harold Lee Jackson, #334411,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2012-CP-07-4116

ORDER OF DISMISSAL

Applicant submitted a post-conviction relief (PCR) application on December 2, 2012. This Court convened an evidentiary hearing into the matter on October 12, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Donald Colongeli (Counsel), Esquire, and Applicant were present and testified. This Court had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the February 2007 term of the Beaufort County Grand Jury for murder (2007-GS-07-0174) and two counts of assault and battery with intent to kill (ABWIK) (2004-GS-07-0175, -0176). Applicant proceeded to trial and was convicted as indicted. On April 23, 2009, Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a

period of twenty years for ABWIK and fifty years for murder. The sentences are to be served concurrently.

Applicant subsequently filed a timely Notice of Appeal. His appeal was perfected by Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals, State v. Jackson, No. 2012-UP-038 (S.C. Ct. App. January 25, 2012).

II. ALLEGATIONS

In his PCR application, Applicant alleged the following:

1. Ineffective assistance of trial counsel
2. Ineffective assistance of appellate counsel
3. Denial of a fair trial in violation of due process.

At the PCR hearing, Applicant presented no evidence to support allegations he was denied effective assistance of appellate counsel or his due process rights were violated, and they are, therefore, denied. Under ineffective assistance of trial counsel, Applicant asserted the following:

1. Ineffective assistance of trial counsel
 - a. Trial counsel should have hired DNA expert
 - b. Trial counsel should have called additional witnesses
 - c. Trial counsel should have advised Applicant to testify.

III. SUMMARY OF FACTS

On January 3, 2007, Harold Lee Jackson attacked and beat Nazarene Laurent with a baseball bat in her home. Nazarene suffered bruises to her legs and arms. A head injury she incurred during Jackson's attack required thirteen staples to close. Nazarene indicated at trial that she had not regained full use of her arms; she was only able to lift her arms enough to reach her back.

That same evening, Jackson attacked Josh Pringle from behind with the baseball bat in Nazarene's home. Jackson hit Josh in the head and his upper torso several times. The pathologist testified that Josh was struck at least three times on the head. Josh suffered several fractures in his skull and sinuses. He also received a laceration on his face above his right eyebrow, and a laceration to his back right shoulder. Josh experienced tremendous swelling of the brain, and a small amount of bleeding in the brain. He was placed on life support shortly after arriving at the hospital. Josh was declared dead on January 11, 2007 after he suffered a cerebral blood clot. The cause of death was listed as diffuse blunt trauma to the head with resulting multiple skull fractures; epidural, subdural, intercerebral, intercerebellar, and extensive subarachnoid hemorrhages due to being beaten with a baseball bat.

Jackson then chased Shella Laurent across the street. Jackson beat Shella with the baseball bat outside of Nazarene's neighbor's home. Jackson hit Shella with the bat three to four times in the head, and several times across the rest of her body. Shella sustained a head injury, a dislocated shoulder, and spinal fractures.

Nazarene and Jackson were dating at the time of the beatings and murder. She testified they were having problems. At the time, Jackson was estranged from his wife. Nazarene was divorced. Shella, Naz's step-daughter from her prior marriage, was engaged to Josh. Shella and Josh had a child who was approximately six months old when the beating occurred.

Shella, Josh, and their son stayed with Nazarene during the holiday season of December 2006/January 2007. While Shella and Josh had their own place in Beaufort, Shella testified that she and Josh stayed at Nazarene's house for the four days before Christmas and the four days after Christmas. Nazarene testified that they had moved in early December 2006.

On January 3, 2007, Nazarene received several text messages from Jackson while she was at work. Some of the messages were positive. Others were not. Nazarene requested Jackson stop sending her text messages because Shella was holding on the Nazarene's cell phone for the day.

Nazarene first saw Jackson that evening when he picked her up from work. She indicated that Jackson was argumentative in the parking lot. Nazarene was not interested in engaging in an argument with Jackson because she was not feeling well. When the couple arrived at Nazarene's home, Jackson continued arguing. Nazarene testified that she went to her bedroom because she did not want to hear him. At one point, Nazarene went into her bathroom so she would not hear Jackson talking. While she was in the bedroom and bathroom, Shella and Josh arrived at her home. Later that evening, Nazarene left her home via the sliding door in her bedroom. She testified that she only planned to walk to her mother's house down the street. She also carried a wooden stick with her. As Nazarene started walking up the road, she saw Jackson standing in her front yard. When Jackson spotted Nazarene, he ran up to her, grabbed her cell phone, and split the phone in half. Then Jackson started asking Nazarene for his keys. Nazarene informed him that she did not have his keys. She told him that she would go back with him to her home and she would dump her purse in front of him so that he could see that she did not have his keys. They walked back to her home, and she showed Jackson that she did not have his keys.

Meanwhile, Shella and Josh were putting away groceries they had transported to Nazarene's from their apartment. Shella also indicated that they were retrieving laundry they left at Nazarene's home during the holidays. Shella testified that Nazarene and Jackson were arguing when she and Josh arrived. Shella recalled Jackson asking Nazarene for his keys. Nazarene denied having his keys. Jackson threatened to sic his dog on Nazarene if she did not give him his

keys. At that point, Shella and Josh went upstairs to retrieve the laundry they had left the night before.

When Shella and Josh went upstairs, Nazarene and Jackson were in the den. Shortly thereafter, Nazarene heard something ping on the floor. Jackson started saying, "I'm going to kill you. You're not going to have to worry about God, your mama, your friends, or nobody no more. I'm going to kill you." Nazarene left the den and went to check email in her study. Jackson came into the study later, and he shut the door. When Nazarene attempted to open the door to get out of the room, Jackson started pushing her towards the bedroom. Nazarene held onto the door for a short period. She fell. Nazarene stated, "when I fell, he started working on me with the bat... I mean, just hitting me, just hitting, and just hitting me, and just wouldn't stop... I mean just kept hitting me. He just kept hitting me."

Nazarene started screaming for Shella, yelling that Jackson was trying to kill her. Shella testified that she heard Nazarene cry out for help. Josh told Shella that he did not want her to go downstairs. He then went downstairs. When Josh came down, he walked into the room, and he grabbed the bat away from Jackson. Shella came downstairs minutes later. Nazarene noted there was no physical confrontation or argument between Josh and Jackson. Josh started asking Jackson to stop and think about what he was doing, and what he was thinking. Jackson started holding his head, and he started saying "what did I do?"

At some point, Josh set the bat down. Shella and Josh saw that Nazarene was injured, and they encouraged Nazarene to leave and go seek medical attention. They also told Nazarene that they would help Jackson find his keys so that he could leave. While Nazarene initially hesitated, she did leave the home to seek help.

When Nazarene finally left the house, Jackson walked towards the door as if he was going after her. Jackson kept hesitating back and forth. Shella started to call her dad at Jackson's insistence. However, when she started to dial his number, Jackson knocked the phone out of her hand. Jackson then left the house through the front door. He had the baseball bat in his hand by that point. Shella and Josh debated about what they should do at that point. They were not sure where Jackson was, and they did not know if they could go upstairs, retrieve their son, and leave before Jackson returned to the home. They tried to figure out where Jackson was outside, but they could not determine his location because it was dark.

The couple eventually decided that Shella would go upstairs to get the baby, and then they would leave. As Shella turned to head up the stairs, she saw Jackson behind Josh. Jackson was walking towards Josh with the bat raised in the air. Shella froze. As Josh started to turn towards Jackson, Jackson started beating Josh with the baseball bat. Jackson did not say anything. He just started swinging. Shella indicated that Jackson hit Josh approximately six or seven times. The first strike caught Josh halfway on the side of his face because Josh had started to turn as Jackson started swinging. Shella described Jackson as hitting Josh harder and harder until he went down. Josh did not put up a fight because he was caught off guard. Josh did not have a weapon.

Shella noted that at no point in time did she see either Nazarene or Josh hit Jackson. She also testified that Josh never threatened Jackson. Shella never saw Josh or Nazarene with a stick. Shella also testified that she did not have a stick when Jackson attacked her, and Josh did not have a stick when Jackson attacked him.

Shella did not decide to move until after Jackson came back up after beating Josh. She thought that Jackson might chase her if she ran, so she took off towards the front door. Shella ran

straight across the street and attempted to get to a neighbor's house. Jackson gave chase, and as Shella made it to a neighbor's trailer, Jackson caught up with her. Shella knocked on the side of the trailer and started screaming for help. She then lay down and started begging Jackson for her life. Jackson then started beating Shella with the bat. Shella testified that she balled up in a corner. She took three or four hits to her head. The rest of the hits connected all over her body. Shella recalled begging for her life, but she did not recall Jackson saying anything. Jackson just kept hitting Shella very hard. Shella did not know when Jackson stopped hitting her because she blacked out.

In processing the scene, law enforcement found a stick in the master bedroom. It was the only object found by law enforcement that they believed could have been used as a weapon. Deputy Eric Calendine, who assisted in processing the scene, did not recall seeing any items that could have been considered a weapon near Josh's body. Calendine noted the stick did have blood on it when it was collected. He also noted that the entertainment center in the master bedroom appeared to have blood on it as well.

Jackson turned himself into police in Jasper County. According to the report issued by the officer who arrested Jackson, Jackson's cousin told him that Jackson had told her that people were trying to kill them, that he had hit them with a bat, and he was not sure if they were dead. Law enforcement did not recover the baseball bat that was used by Jackson in the attacks.

IV. SUMMARY OF RELEVANT TESTIMONY

Counsel testified that he met with Applicant upwards of two dozen times. Counsel testified that he reviewed the discovery with Applicant. Counsel testified that he reviewed Applicant's right to testify and went over the pros and cons with him. Counsel testified that after reviewing Applicant's right to testify Applicant decided knowingly and voluntarily to not testify. Counsel testified that he was not concerned about Applicant's criminal record on cross, but rather that he did not believe that Applicant would be a good witness to present to the jury. Counsel testified that he did not hire a DNA expert because he did not feel it was necessary in this case. Counsel testified that he did not think that this was a forensic case, as there was never a doubt as to who was in the house that night. Counsel testified that he did not call other witnesses in the case because he did not feel that they would have been helpful to the defense. Counsel testified that he felt that he got what he needed out of the State's witnesses on cross examination.

Applicant testified that he does not remember counsel meeting with him that many times, he feels it was closer to eight times. Applicant testified that counsel did not review all of the discovery with him. Applicant testified that counsel discussed with him his right to testify, but that Counsel essentially told him not to testify. Applicant feels that he should have testified at trial in an effort to better explain to the jury his theory as to why it was self-defense. Applicant testified that he wanted counsel to hire a DNA expert to test the blood that was on the stick found at the scene and the blood that was on his t-shirt. Applicant testified that the DNA expert could have proved that the blood found on the stick and the shirt was Applicant's, thus supporting his theory of self-defense. Applicant testified that there were a number of other witnesses that he wanted called at trial. Applicant felt that a number of the investigating officers should have

testified and that they would have brought issues to light that could have helped swing the jury in his favor.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 1985. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 1984. The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant's testimony lacked credibility and Counsel's testimony was credible. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Trial Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's

performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to hire a DNA expert

Applicant alleges that counsel was ineffective for failing to hire a DNA expert to test the blood on the stick found at the scene and on Applicant's shirt. Testimony from counsel at the evidentiary hearing was that he did not feel a DNA expert was necessary as this was not a forensic evidence case. Counsel testified that it was never in dispute as to who was in the house that night and felt that hiring a DNA expert would not have helped the defense. Applicant also failed to show what a DNA expert would have shown had one been hired, there was no evidence presented to this Court outside the speculation of the Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to hire a DNA expert. This Court also finds Applicant failed to prove he was prejudiced by

Counsel's failure to hire a DNA expert such that there was a reasonable probability the result of the trial would have been different had the witnesses been called. Accordingly, this Court denies and dismisses this allegation.

2. Failure to call additional witnesses.

Applicant failed to show how what the testimony of the witnesses Applicant alleged Counsel would have been or that it would have benefited Applicant at trial. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant, whose testimony was found to lack credibility.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to call witnesses. This Court also finds Applicant failed to prove he was prejudiced by Counsel's failure to call witnesses such that there was a reasonable probability the result of the trial would have been different had the witnesses been called. Accordingly, this Court denies and dismisses this allegation.

3. Failure to advise Applicant to testify.

Applicant alleges that counsel was deficient for improperly advising him not to testify at trial. Counsel testified at the evidentiary hearing that he advised Applicant of his right to testify, the pros and cons of testifying, and ultimately left the decision up to Applicant. Counsel testified that he did advise Applicant that he did not think it was a good idea for Applicant to testify, but that it was ultimately his decision. The trial transcript also indicates that Applicant made a knowing waiver of his right to testify in a colloquy with Judge Mullen.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for advising him not to testify at trial. This Court also finds Applicant failed to prove he was prejudiced by Counsel's advice not to testify such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from 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 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf.

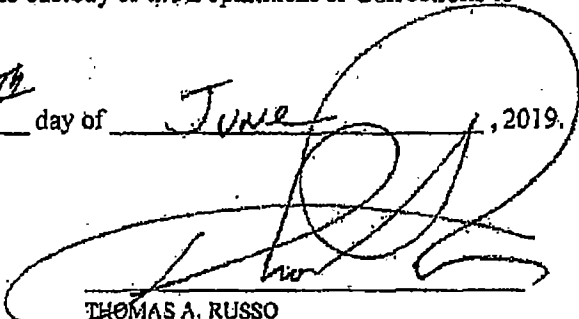
Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 11th day of June, 2019.



THOMAS A. RUSSO
Presiding Judge
Fourteenth Judicial Circuit

Flowers, South Carolina

WITNESSES

L. Williams/BCSO

ARREST WARRANT NUMBER

J331914

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-07-00174

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

THE STATE

vs.

HAROLD LEE JACKSON

Indictment for

MURDER

SC Code: 16-3-10

CDR Code:0116

Class FEL/EXM(V)

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT

At a Court of General Sessions, convened on February 22, 2007, the Grand Jurors of Beaufort County present upon their oath:

MURDER

That Harold Lee Jackson did in Beaufort County on or about January 3, 2007, feloniously, willfully and with malice aforethought, kill Josh Pringle by means of blunt force trauma and that the said victim died of the injuries which was a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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



ISAAC M. STONE, III, SOLICITOR

WITNESSES

L. Williams/BCSO

ARREST WARRANT NUMBER

J331672

ACTION OF GRAND JURY

TRUE Bill

Foreperson of Grand Jury
Date: FEB 22 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-07-00175

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

**THE STATE
vs.**

HAROLD LEE JACKSON

Indictment for

**ASSAULT & BATTERY
WITH INTENT TO KILL
SC Code: 16-003-0620
CDR Code: 0014
Class FEL**

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

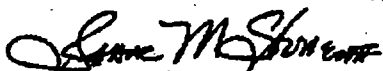
INDICTMENT 2007-GS-07-00175

At a Court of General Sessions, convened on February 22, 2007, the Grand Jurors of Beaufort County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Harold Lee Jackson did in Beaufort County on or about January 3, 2007, with malice aforethought commit an assault and battery with intent to kill upon one Shella Laurent, in violation of Section 16-03-0620, Code of Laws of South Carolina, (1976, as amended).

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


ISAAC M. STONE, III, SOLICITOR

WITNESSES

L. Williams/BCSO

ARREST WARRANT NUMBER

J331673

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: FEB 2 1 4 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-07-00176

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2007

THE STATE
vs.

HAROLD LEE JACKSON

Indictment for
ASSAULT & BATTERY
WITH INTENT TO KILL
SC Code: 16-003-0620
CDR Code: 0014
Class FEL

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT 2007-GS-07-00176

At a Court of General Sessions, convened on February 22, 2007, the Grand Jurors of Beaufort County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Harold Lee Jackson did in Beaufort County on or about January 3, 2007, with malice aforethought commit an assault and battery with intent to kill upon one Nazerene Laurent, in violation of Section 16-03-0620, Code of Laws of South Carolina, (1976, as amended):

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


ISAAC M. STONE, III, SOLICITOR