

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Cherokee County  
Honorable J. Mark Hayes, Circuit Court Judge

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**RECEIVED**

**Apr 23 2020**

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

WILLIAM D. PENNINGTON,

APPELLANT

APPELLATE CASE NO 2018-001619

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RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE’S EXHIBIT NO. 1 (911 CALL)  
STATE’S EXHIBIT NO. 15 (BODY CAM VIDEO)**

1 handled a loaded shotgun, the way he was cleaning it, the  
2 way it discharged; or whether it was just an accident, in  
3 which case, as I have described early on, if it's just an  
4 accident, he wasn't necessarily being reckless, it would be  
5 not guilty. To me, as I said, from beginning to end, that's  
6 really the issue in the case. The shooting was  
7 unintentional. The issue is was it criminal negligence,  
8 recklessness on his part, or whether it was simply an  
9 accident.

10 Again, I thank you for your time and service. And  
11 as I said, again I'll say it again now, we all come looking  
12 for justice. We all want to see justice done. Only the  
13 twelve of you can do justice. That's what I'm asking for,  
14 justice in this case. The justice in this case of these  
15 facts would be a verdict of either guilty of involuntary, or  
16 not guilty by reason of accident. Thank you.

17 MR. KENDALL: Thank you, Your Honor.

18 Thank you very much, ladies and gentlemen.

19 I'm not going to go back through everything again.  
20 I'm not going to touch on all the evidence, but I would like  
21 to go over a few things, address a few things Mr. Pruett  
22 brought up in his closing.

23 A few moments ago he indicated that basically what  
24 the State was doing was determining Mr. Pennington was a  
25 criminal mastermind. Ladies and gentlemen, he was basically

1 far from that.

2 What we are alleging is that he shot his wife that  
3 morning and then attempted to clean it up. That's very  
4 different, ladies and gentlemen. We are just required to  
5 show at the time of the shooting he had malice aforethought,  
6 not that he made some grand plan in the past; not that he  
7 had been planing out this for weeks or months; that he  
8 had -- when he shot her, had the intention of doing it.  
9 There is no time limit on it. He decides one minute before,  
10 ten seconds before he was going to shoot her and then he  
11 shot her, that's what we have to prove, ladies and  
12 gentlemen.

13 But I would also like to point out something else  
14 about him not being a criminal mastermind, and that is how  
15 things were laid out. There is more rounds on the bed than  
16 there are that go in the gun.

17 We are not alleging that he had been planning this  
18 for months. What we are saying is he's been angry for  
19 months and that on this day he acted on it and shot her and  
20 then hastily tried to clean it up, tried to wipe off the  
21 blood, move the body, put shells on the bed, broke the  
22 shotgun down and sprayed some stuff on it.

23 Now, Mr. Pruett also talked about Rita's -- about  
24 how there wasn't any stippling on her hand. Not at all.  
25 And that's fair, ladies and gentlemen, there was not

1 stippling on her hands. She might not have had her hands  
2 up. We know she didn't have her hands in front of her face,  
3 because if she had it in front of her face, the rounds would  
4 have gone through it, but not everybody puts their hands up  
5 when they point a gun at them. Mr. Pruett had the shotgun  
6 in court. I don't think everybody put their hands up and  
7 there was some ducking. Sometimes people duck looking at  
8 it. That would explain back, down.

9 Now, defense also talks about Dr. Ross testifying  
10 there was no bruising on the body. That's true. At least  
11 not talks about anything other than where she's laying, but  
12 that's true. Let's talk about why that is. At this time  
13 you heard testimony that William Pennington, is it because  
14 he's didn't hit her, but was he able to, or was the gun his  
15 way of revenge? You heard testimony from his relatives  
16 saying that he was having a hard time getting around, that  
17 Scarlett (sic) was going to work, but he was unable to. His  
18 way of taking out his vengeance, ladies and gentlemen, was  
19 to shoot her. Not beat her. That may not have been a  
20 possibility, but to shoot her. She was clearly more active  
21 than he off to work and that's how he did it. As his anger  
22 brewed and brewed and brewed, he shot her. If unable, he  
23 beat her.

24 Now, you also heard testimony, ladies and  
25 gentlemen, you heard Mr. Pruett ask me to come up and show

1 the difference between fake crying and real crying. I'm not  
2 going to cry in front of you. I'm not a very good actor,  
3 never really have been, but I will say this. If you are  
4 looking for a way of whether someone's crying is sincere,  
5 look at when they are doing it. No crying on that tape.  
6 You listened to that 911. That is the 911 call that shows  
7 the gap in time between when he called 911 on that open line  
8 and when the police get there. What you don't hear on that  
9 thing? Any crying, which means he either went someplace  
10 else with his wife laying on the floor and crying someplace  
11 else. That doesn't appear the case. When the police get  
12 there, they still don't hear any crying. They come in the  
13 house, still don't hear any crying. When they say they're  
14 the police, suddenly you start hearing the wailing, and it's  
15 not just quiet sobbing, you saw it on the video, a full-on  
16 wailing.

17 Now, Mr. Pruett brought up the video. We did have  
18 an officer who had a body camera. He didn't keep it on  
19 apparently the whole time. You can sort of see at the end.  
20 You are welcome to do that. If you wish to watch that video  
21 again, we can bring you back out and you can watch the whole  
22 thing right up until the end.

23 We also heard testimony there wasn't anything  
24 going on out there, right? The scene was done. What we  
25 would have it if somebody came in and photographed

1 everything. We saw actually hundreds of pictures they took.  
2 The I think sixty or so of them. Simply no reason to keep  
3 that running. There is nothing going on. Mr. Pennington  
4 was out there and the scene didn't change any. It's a pure  
5 crime scene.

6 Next Mr. Pruett brought up his statement, said it  
7 wasn't everything, the whole story. Well, they are provided  
8 with our notes, officer notes at the time.

9 And more importantly, they were provided with the  
10 written statement that Mr. Pennington gave. It was read  
11 back to him and he had the opportunity to adopt. It was his  
12 statement, ladies and gentlemen. He signed it after they  
13 read it. And what's in that statement? Is there something  
14 in there that we're bending the facts that suit our needs?  
15 No, in that statement, ladies and gentlemen, he is  
16 testifying -- or, excuse me, he is writing -- or they are  
17 writing and he's accepting that this was an accident. This  
18 is his statement. This isn't the State's story. This isn't  
19 us putting something on him that he's not authored. This  
20 is -- this is the story he gave to the police and it's a  
21 story of an accident, and it's from that that we have sought  
22 to disprove it. But this wasn't something the police  
23 were -- you could judge for yourselves and look at that  
24 statement and see and just determine if this looks like a  
25 statement the police were writing to get Mr. Pennington on

1 the hook. Our case is based on things in that statement  
2 that aren't true, not the statement being true. We don't  
3 think that's what happened. We think something else  
4 happened, that statement is incorrect, and there are lots of  
5 things in this statement, ladies and gentlemen, that we have  
6 problems with. We have gone over that, and I won't dwell on  
7 it at length, but some things are just factually inaccurate.  
8 Seven rounds on the bed. It only holds six.

9 Now, Mr. Pruettt also talks about the shotgun on  
10 the bed and the angle. And the first thing I would disagree  
11 with him with is you have to be sitting. That's -- that's  
12 an over-simplification. I'm not sure it matters in this  
13 case, but what's important to a crime scene is we can't tell  
14 the position of the shooter, if he's sitting, if he's  
15 kneeling, could have been crouched down. I don't think  
16 that's particularly important. Well, what the evidence  
17 shows is the angle of the gun, not the position of the  
18 shooter, and that was very, very important.

19 But don't be confused by the false choice, ladies  
20 and gentlemen. The State's contends that he shot her from  
21 that side of the room. Just because he shot her from that  
22 side of the room doesn't make it an accident. You can't  
23 simply say well, he says he was sitting on the bed when the  
24 gun went off, therefore, he didn't mean to shoot her. There  
25 is another piece in there. There is another piece that we

1 have to determine of what his intent was. Just because he's  
2 sitting on the bed when he shoots her doesn't mean it's an  
3 accident. You can't tell it was an accident. You can just  
4 tell where he is sitting on the bed. We agree that's where  
5 he is sitting, or at least from where the shot came from.  
6 Again, you can't talk about -- you can't determine his  
7 position.

8 Now, I would like to talk to you a second. He  
9 mentioned a few moments ago the statements of Rocky and  
10 Scarlett, and he's correct. It was not in his original  
11 statement. Not everything is, as Mr. Pruett testified -- or  
12 excuse me, Mr. Pruett said moments ago regarding Mr.  
13 Pennington. Let's both look at those stories and see if  
14 they ring an air of truth. When he's talking about shooting  
15 at her -- or, excuse me, shooting near Ms. Pennington, he  
16 doesn't say he is shooting her, right? This isn't another  
17 attempted murder. We are not alleging he was trying to kill  
18 her at that point. Rocky doesn't allege he was trying to  
19 kill her at that point, but just shooting in her direction.

20 He doesn't allege at the time where he threatened  
21 her that Dean pulled that gun out. He doesn't make -- make  
22 some allegation he pulled the gun out and pointed it at her  
23 at that point.

24 And Scarlett's testimony, which was primarily  
25 focused on going and picking up the note, something that

1 seems consistent with what had happened regarding Dean, she  
2 testified that it happened frequently. This wasn't an  
3 allegation of another attempted murder, ladies and  
4 gentlemen. We weren't saying that he tried to kill her a  
5 bunch of times and this time he succeeded. I asked him  
6 about what happened to Mr. Pennington and he told us.

7 Now, Mr. Pruett started off, and I think this is  
8 important, discussing whether or not it's unusual for  
9 someone to behave as Mr. Pennington did with regard to Rita.  
10 And certainly over the course of the marriage there are  
11 probably going to be things that every marriage isn't  
12 particularly perfect with. That's understandable. There is  
13 certainly things in there, one or two to be odd, but you  
14 have seen a lot of evidence, ladies and gentlemen. This  
15 wasn't an isolated thing. It wasn't -- our evidence isn't  
16 simply he told Vicki Teague he would blow her away six  
17 months ago, murder, but it's the entire pattern of conduct.

18 Dean Pennington started following her while she  
19 was at Snack Time. He tried to sneak in there while she was  
20 at Snack Time. Did that stop? No. When she got fired, he  
21 comes back demanding to know what's going on. He isn't told  
22 what's going on. He threatens to blow the H.R. away. He  
23 gets more and more upset about that. He's threatening to  
24 kill Rita. Told Ms. Swofford that. After that when she  
25 gets terminated, she starts working at Hamrick's, he starts

1 showing up at Hamrick's again -- or, excuse me, he starts  
2 continuing to be threatening, continuing to call there -- or  
3 calls there and makes statements disparaging Rita. A car  
4 that looks like his comes back up there and is turned away  
5 at the gate. He attempts to bribe Judy Sparks. This isn't  
6 simply an isolated pattern of conduct. It's not simply one  
7 thing happened, that's it, but you are allowed, ladies and  
8 gentlemen, to look at the entirety of that evidence and to  
9 believe what you believe in making that determination. This  
10 isn't an isolated thing. You can't look at it, well, it's  
11 no big deal if he followed her at work and they didn't let  
12 him in. You can look at that across the entirety of his  
13 conduct, overall of what he did. And it's reasonable to  
14 say -- or, ladies and gentlemen, the evidence shows he did  
15 not know back in January why she was fired. That was  
16 something he found out later and continued to brew on. And  
17 then finally that morning, ladies and gentlemen, he killed  
18 her. Not an accidental shot in the entirety of that room,  
19 360 degrees around, up and down, that round just happened to  
20 hit her in the forehead. His story that it was an accident  
21 just simply does not match and it's consistent on the scene.  
22 There is seven shells and no cleaning kit. It's not  
23 consistent with what had happened over the months leading up  
24 to that.

25 I would ask you to return a verdict of guilty.

1 Thank you.

2 THE COURT: Ladies and gentlemen, if you would  
3 stand and stretch your legs for a few moments.

4 (Off the record).

5 (Back on the record)

6 THE COURT: Thank you, ladies and gentlemen.

7 (Whereupon, at 12:40 p.m., the Court gave the jury  
8 panel their jury instructions).

9 THE COURT: Ladies and gentlemen, the indictments  
10 charge the defendant with murder and possession of a firearm  
11 during the commission of a violent crime.

12 Now, I will remind you that the fact that the  
13 defendant was arrested, charged and indicted in this case is  
14 not evidence in this case and cannot be considered by you as  
15 evidence of guilt in this case, nor does it create any  
16 presumption or inference of guilt. This document is simply  
17 the formal written instrument which contains the charges  
18 made against the defendant. It is the formal document by  
19 which this case is brought into court.

20 The indictment in this case alleges two different  
21 offenses against the defendant; the charge of murder and the  
22 charge of possession of a weapon during the commission of a  
23 violent crime. You will be asked to write a verdict of  
24 guilt or not guilty for each of those charges.

25 The defendant has pled not guilty to this

1 indictment and that plea puts the burden on the State to  
2 prove the defendant guilty.

3 A person charged with committing a criminal  
4 offense in South Carolina is never required to prove himself  
5 innocent.

6 I charge you that it is an important rule of law  
7 that the defendant in a criminal trial, no matter what the  
8 seriousness of the charge may be, will always be presumed to  
9 be innocent of the crime for which the indictment was  
10 issued, unless guilt has been proven by evidence satisfying  
11 you of that guilt beyond a reasonable doubt.

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

17 The presumption of innocence is like a robe of  
18 righteousness placed about the shoulders of the defendant,  
19 which remains with the defendant until it has been stripped  
20 from the defendant by evidence satisfying you of the  
21 defendant's guilt beyond a reasonable doubt.

22 The presumption of innocence is not mere legal  
23 theory. It is not just a legal phrase. It is a substantial  
24 right to which every defendant is entitled, unless you, the  
25 jury, are satisfied from the evidence of the defendant's

1 guilt beyond a reasonable doubt.

2           What is reasonable doubt in the law? A reasonable  
3 doubt is the kind of doubt that would cause a reasonable  
4 person to hesitate to act. The State has the burden of  
5 proving the defendant guilty beyond a reasonable doubt.

6           Some of you may have served on juries in civil  
7 cases where you were told that it is only necessary to prove  
8 that a fact is more likely true than not true, such as by  
9 the greater weight or the preponderance of the evidence. In  
10 criminal cases the State's proof must be more powerful than  
11 that. It must be beyond a reasonable doubt.

12           Proof beyond a reasonable doubt is proof that  
13 leaves you firmly convinced of the defendant's guilt. There  
14 are very few things in this world that we know with absolute  
15 certainty and in criminal cases the law does not require  
16 proof that overcomes every possible doubt.

17           If, based on your consideration of the evidence,  
18 you are firmly convinced that the defendant is guilty of the  
19 crimes charged, you must find the defendant guilty.

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

24           I'll remind you that during this trial you and I  
25 have had certain duties to perform.

1           As the trial judge it has been my responsibility  
2 to preside over the trial of this case, and I also have the  
3 duty to rule on the admissibility of evidence offered during  
4 this trial. You are to consider only the competent evidence  
5 before you. You are to consider only the testimony which  
6 has been presented from the witness stand and any exhibits  
7 which have been made part of the record of this case.

8           Now, I have the additional duty to charge you the  
9 law applicable to this case. As the presiding judge I am  
10 the sole judge of the law in this case and it is your duty  
11 as jurors to accept and apply the law as I now state it to  
12 you. If you already have any idea that what the law is or  
13 what the law ought to be and it does not agree with what I  
14 now tell the law is, you must abandon this idea because you  
15 were sworn to accept the law and apply the law exactly as I  
16 state it to you.

17           In every case tried in this court before a jury  
18 the jury becomes the sole and exclusive judge of the facts  
19 in the case. A trial judge cannot intimate, state, comment  
20 on, or make any statement to a trial jury about the facts of  
21 a case. Since you, the jury, are the sole judge of the  
22 facts in this case, you are not to infer from what I have  
23 said during the progress of this trial in ruling on the  
24 admissibility of evidence, or otherwise, or anything that I  
25 say now during the course of this instruction that I have

1 any opinion about the facts. The law does not allow me to  
2 have an opinion about the facts in this case. This is a  
3 matter solely for you, the jury, to determine.

4 As jurors it is your duty to determine the effect,  
5 value, weight, and truth of the evidence presented during  
6 this trial.

7 Ladies and gentlemen, there are two types of  
8 evidence which are generally presented during a trial;  
9 direct evidence and circumstantial evidence.

10 Direct evidence is the testimony of a person who  
11 claims to have actual knowledge of a fact, such as an  
12 eyewitness.

13 Circumstantial evidence is proof of a chain of  
14 facts and circumstances indicating the existence of a fact.

15 The law makes absolutely no distinction between  
16 the weight or value to be given to either direct or  
17 circumstantial evidence, nor is a greater degree of  
18 certainty required of circumstantial evidence than of direct  
19 evidence. You should weigh all the evidence in this case.  
20 After weighing all the evidence, if you are not convinced of  
21 the guilt of the defendant beyond a reasonable doubt, you  
22 must find the defendant not guilty.

23 Now, necessarily, ladies and gentlemen, you must  
24 determine the credibility of witnesses who have testified in  
25 this case. Credibility simply means believability.

1           It becomes your duty as jurors to analyze and to  
2 evaluate the evidence and determine which evidence convinces  
3 you of its truth.

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

15           Ladies and gentlemen, the Rules of Evidence  
16 ordinarily do not permit witnesses to testify to opinions or  
17 conclusions. An exception to this rule exists for witnesses  
18 called expert witnesses. A witness who by education and  
19 experience has become expert in some art, science,  
20 profession, or calling may state an opinion as to relevant  
21 and material matters in which the witness claims to be an  
22 expert and may also state the reason for that opinion.

23           You should consider any expert opinion received in  
24 evidence in this case and, like any other evidence, give it  
25 the weight that you think that it deserves.

1           If you decide that the opinion of an expert is not  
2 based on sufficient education and experience, or if you  
3 conclude that the reasons given in support of the opinion  
4 are not sound or that the opinion is outweighed by other  
5 evidence, you may disregard the opinion in its entirety.

6           An expert's opinion is to be given no greater  
7 weight than that of other witnesses simply because the  
8 witness is an expert.

9           Further, you are not required to accept the  
10 experts opinio's, even though it is not contradicted.

11           Ladies and gentlemen, I instruct you and emphasize  
12 that the fact that the defendant did not testify is not a  
13 factor to be considered by you in any way in your  
14 deliberation and in your consideration on the question of  
15 the guilt or innocence of the defendant. It may not be  
16 considered by you in any manner whatsoever. A defendant has  
17 the Constitutional Right to remain silent and the assertion  
18 of this right must not be considered by you in your  
19 deliberation.

20           I repeat, under your oath you are to draw no  
21 conclusion whatsoever from the fact that the defendant in  
22 this case did not testify. The fact that the defendant did  
23 not testify should not even be discussed in the jury room.

24           The burden of proof, as I have stated to you, is  
25 on the State. The defendant is not required to prove his

1 innocence. The burden of proof remains on the State to  
2 prove guilt beyond a reasonable doubt.

3 In order to establish criminal liability, criminal  
4 intent is required. For example, the mental state required  
5 to be proven by the State for a particular crime might be  
6 purpose, intent, knowledge, reckless or criminal negligence.  
7 Criminal intent must be proven by the State beyond a  
8 reasonable doubt. Criminal intent is always a matter that  
9 must be determined by the jury from the circumstances  
10 surrounding the situation.

11 There is no way to prove intent to a mathematical  
12 certainty. There is no way that medical science can dissect  
13 a person's brain and determine what the person had in mind,  
14 so the law says that criminal intent may be inferred from  
15 the circumstances shown to have existed. This is how you  
16 make a determination whether or not the element requiring  
17 intent is present.

18 It is not necessary to establish intent by direct  
19 or positive evidence, but intent may be established by  
20 inference, in the same way as any other fact, by taking into  
21 consideration the acts of the parties and all of the facts  
22 and circumstances of the case.

23 Criminal intent is a mental state, a conscious  
24 wrongdoing.

25 It is up to you to determine what the defendant

1 intended to do based on the circumstances shown to have  
2 existed.

3 The defendant is charged with murder.

4 The State must prove beyond a reasonable doubt  
5 that the defendant killed another person with malice  
6 aforethought.

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

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

18 Malice aforethought may be express or inferred.  
19 These terms expressed and inferred do not mean different  
20 kinds of malice, but merely the manner in which malice may  
21 be shown to exist; that is, either by direct or by  
22 inference from the facts and circumstances which are proved.

23 Expressed malice is shown when a person speaks  
24 words which express hatred or ill will for another, or when  
25 the person prepared beforehand to do the act which was later

1 accomplished.

2 For example, lying in wait for a person, or any  
3 other acts of preparation going to show that the deed was in  
4 the defendant's mind would be expressed malice.

5 Malice may be inferred from conduct showing a  
6 total disregard for human life.

7 If facts are proved beyond a reasonable doubt  
8 sufficient to raise an inference of malice to your  
9 satisfaction, this inference would be simply an evidentiary  
10 fact to be considered by you, along with other evidence in  
11 the case and you may give it the weight you decide it should  
12 receive.

13 Now, ladies and gentlemen, if you find that the  
14 State has failed to prove beyond a reasonable doubt that the  
15 defendant committed murder, you may consider whether the  
16 State has proved beyond a reasonable doubt that the  
17 defendant committed involuntary manslaughter.

18 To prove involuntary manslaughter the State must  
19 prove beyond a reasonable doubt that the defendant  
20 unintentionally killed the victim without malice, but while  
21 engaged in an unlawful activity not naturally tending to  
22 cause death or great bodily harm, or that the defendant  
23 unintentionally killed the victim without malice while  
24 engaged in lawful activity with reckless disregard for the  
25 safety of others.

1           Unintentional means that the defendant did not  
2 intend for anyone to be killed or seriously injured.

3           Reckless disregard for the safety of others is  
4 more than the mere negligence or carelessness.

5           Mere negligence or carelessness is the failure to  
6 use the care that a person of ordinary reason would use  
7 under the same circumstances. Recklessness is a conscious  
8 failure to use ordinary care.

9           Reckless disregard for the safety of others means  
10 that you are not interested in the consequence of your acts  
11 or the rights and safety of others.

12           If a person knows or should know that ordinary  
13 care requires certain precautions be taken for the safety of  
14 others when using a dangerous instrumentality, such as a gun  
15 or a car, but that person fails to use those precautions  
16 without concern, the person's actions are considered  
17 reckless.

18           The State must also prove beyond a reasonable  
19 doubt that the defendant's acts was the proximate cause of  
20 death.

21           Proximate cause is the direct cause. It is the  
22 immediate cause. It is the efficient cause. It is the  
23 cause without which the death of the victim would not have  
24 resulted. There must be a chain of causation from the time  
25 of the injury inflicted by the defendant until the time of

1 the victim's death.

2 Proximate cause does not necessarily mean that it  
3 occurred immediately prior to death.

4 There may be more than one proximate cause. The  
5 acts of two or more persons may combined together to be a  
6 proximate cause of death of a person.

7 The defendant's acts may be regarded as proximate  
8 cause if it is a contributing cause of the death of the  
9 victim. The fact that other causes also contributed to the  
10 death of the victim does not relieve the defendant from  
11 responsibility. The defendant's acts need not be the sole  
12 cause of death, but must be a proximate cause contributing  
13 to the death of the victim.

14 It is not a defense to show that the victim might  
15 have recovered had she been treated according to the most  
16 approved surgical medical standards or as a reasonable  
17 prudent doctor would have treated in the case or even by  
18 showing that the treatment was negligent. If, however, the  
19 death was caused not by the wound or the injury that the  
20 victim had, but was caused by gross, erroneous, willful,  
21 deliberate treatment, the defendant would not be liable. In  
22 other words, negligence on the part of someone else would  
23 not relieve the defendant from liability if the injury was  
24 the proximate cause of the victim's death. However, gross  
25 negligence or intentional activity on the part of the

1 practitioner would relieve the defendant of liability. The  
2 propriety of medical procedures is an intricate question in  
3 determining causation.

4 The violation of a statute is the proximate cause  
5 of the injury is evidence of recklessness.

6 Now, ladies and gentlemen, the defendant is  
7 charged with possession of a weapon during the commission of  
8 or attempt to commit a violent crime.

9 The State must prove beyond a reasonable doubt  
10 that the defendant was in possession of a firearm or visibly  
11 displayed what appeared to be a firearm during the  
12 commission of a violent crime.

13 A firearm means any machine gun, automatic rifle,  
14 revolver, pistol, or any other weapon which will, is  
15 designed to, or made to be readily converted to expel a  
16 projectile.

17 In order to find the defendant guilty of the  
18 possession of a weapon during the commission of a violent  
19 crime, you must first find that the defendant -- you must  
20 first find the defendant guilty of either committing a  
21 violent crime, or attempting to commit a violent crime.

22 Murder is a violent crime.

23 However, involuntary manslaughter is not a violent  
24 crime.

25 The State must prove beyond a reasonable doubt

1 that the weapon further advanced or helped in the commission  
2 of the crime.

3 Ladies and gentlemen, the defense of accident is a  
4 complete defense to a criminal charge of homicide. Harm  
5 caused to another, even including death, cannot entail  
6 criminal responsibility for the defendant if the harm was  
7 accidentally inflicted without the intent to do harm and  
8 without recklessness or criminal negligence.

9 The defense of accident -- I'm sorry, the defense  
10 of accident involving a deadly weapon will apply, if, one,  
11 the harm was unintentional; two, the defendant was acting  
12 lawfully; and three, the defendant exercised due care in the  
13 handling of the weapon.

14 The defense of accident does not have to be proved  
15 by the defendant, because the intent to commit a crime is an  
16 element of every criminal offense, and such element of  
17 intent must be established by the State by proof beyond a  
18 reasonable doubt.

19 Now, ladies and gentlemen, there are two possible  
20 verdicts to each of the charges that you will consider.  
21 There is no significance to the fact that I put one charge I  
22 put not guilty or guilty. I had to somehow write up the  
23 form, so I wrote them that way. There is no significance in  
24 the way that I have written the form.

25 Mr. Foreman, ladies and gentlemen, your verdict

1 must be unanimous. Your verdict must be based solely on the  
2 evidence that is presented during the trial. Your verdict  
3 cannot be arbitrary or capricious or based on passion or  
4 prejudice.

5 Mr. Foreman, I need for you to be sure that the  
6 deliberations that are conducted are done in the jury room  
7 when all twelve members are present. If by chance somebody  
8 has to leave to go to the restroom, make a telephone call,  
9 or for some other reason, the deliberations need to stop,  
10 but they should resume only when all twelve members are  
11 present.

12 Once the jury has reached their verdict, Mr.  
13 Foreman, I will need for you to complete the verdict form  
14 that I have prepared for you.

15 The verdict form is prepared in two pages.

16 The first page is first you will consider the  
17 charge of murder. If you find that the defendant not guilty  
18 of murder, then you would only consider -- that is the only  
19 time that you would consider involuntary manslaughter. If  
20 you find the defendant guilty of murder, you do not consider  
21 at all involuntary manslaughter.

22 The second page of the verdict form deals with the  
23 charge of possession of a weapon during the commission of a  
24 violent crime.

25 I have written on the verdict form that if you

1 find the defendant guilty of murder, then you will consider  
2 the charge of possession of a weapon during the commission  
3 of a violent crime.

4 If you find the defendant guilty of manslaughter,  
5 or if you find the defendant not guilty of either murder  
6 or -- if you find the defendant not guilty at all, then you  
7 do not consider the charge of possession of a weapon during  
8 commission of a violent crime.

9 Now, Mr. Foreman, once the jury has reached a  
10 unanimous decision you will complete the form appropriately.

11 One other thing that you have to do. Knock on the  
12 door and let the bailiff know when you are finished. One  
13 time I had a jury to go back. They spent hours in the back  
14 on what we thought was a relatively simple case. Finally I  
15 sent the bailiff back to the room to find out what's going  
16 on and they said "well, you didn't tell us we had to knock  
17 on the door." So remember to knock on the door and let the  
18 bailiff know, once you are finished.

19 Now, ladies and gentlemen, at this time I am going  
20 to ask for you to retire to the jury deliberation room, but  
21 do not begin your deliberations. There is still a few  
22 matters I need to take up with the attorneys.

23 Once the bailiff has brought you the evidence and  
24 tells you to begin, then you will begin your deliberations.

25 Also, I'm informed that you probably -- lunch is

1 either probably here or on their way, so you can also start  
2 with your lunch.

3 You any retire with the bailiff.

4 (Whereupon, at 1:03 p.m., the jury panel retired  
5 to the jury room, awaiting instructions to begin  
6 deliberations)

7 THE COURT: Any exceptions to the charge from the  
8 State or defense?

9 MR. KENDALL: No, Your Honor.

10 MR. PRUETT: No, Your Honor.

11 THE COURT: All right. Be sure that -- however  
12 y'all need to do it, be sure the evidence is there before we  
13 send it back.

14 Be sure that the gun is -- that thing is put back  
15 on the gun to secure the gun, because they are going to have  
16 the gun, as well as the ammunition in the back. I don't  
17 want them playing with it and shooting somebody.

18 MR. KENDALL: Your Honor, do we want to address  
19 the juror issue?

20 THE COURT: Yeah.

21 All right. We had discussed it in chambers that  
22 on the first day of the trial we had a juror that was  
23 obviously sleeping. I alerted the lawyers to it. The  
24 lawyers did -- this morning we conferenced about it and we  
25 are going to remove juror number 34 from the jury, and I

1 instructed to begin with deliberations)

2 (Whereupon, at 1:34 p.m., proceedings were  
3 adjourned, pending the verdict of the jury panel).

4 (Whereupon, at 3:02 p.m., proceedings were  
5 reconvened)

6 THE COURT: I have been told that the jury has  
7 reached a verdict.

8 Anything before we bring the jury out?

9 MR. KENDALL: No, sir, Your Honor.

10 MR. PRUETT: No, sir.

11 THE COURT: Let's bring the jury in.

12 (Whereupon, at 3:03 p.m., the jury panel returned  
13 to open court to report its verdict)

14 THE COURT: Mr. Carter, I'm told that the jury has  
15 reached a verdict, is that correct?

16 JURY FOREPERSON: Yes, Your Honor.

17 THE COURT: Will you give the verdict form to the  
18 bailiff.

19 Madam Clerk, please publish the verdict.

20 THE CLERK: 2014-GS-11-911, State of South  
21 Carolina versus William Dean Pennington, as to the charge of  
22 murder, we, the jury, unanimously find William Dean  
23 Pennington guilty.

24 As to the charge of possession of a weapon during  
25 the commission of a violent crime, we, the jury, unanimously

1 find William Dean Pennington guilty.

2 Signed by Foreman Jacob Carter.

3 Ladies and gentlemen of the jury, if this is the  
4 verdict of you all, please indicate by raising your right  
5 hand.

6 (Whereupon, all the jurors raised their right  
7 hand)

8 THE CLERK: Thank you.

9 THE COURT: Anything before we dismiss the jury,  
10 from the State?

11 MR. KENDALL: No, sir, Your Honor.

12 THE COURT: Anything from the defense?

13 MR. PRUETT: No, sir.

14 THE COURT: Mr. Foreman, ladies and gentlemen, I  
15 want to thank you for your service over the last several  
16 days as jurors.

17 When we started the trial I made the comments that  
18 our justice system has been referred to as the greatest  
19 justice system ever created. You might have considered that  
20 as I said those words in passing, but after having done this  
21 job for the length of time that I have, every day I have  
22 grown my respect for the justice system in this country, has  
23 grown. And your role in it as jurors is vital to the  
24 justice system that we have here in America. In every  
25 county, in every community, all across all fifty states,

1 Tuesday you play a very important role in the judicial  
2 system.

3 (Whereupon, at 3:05 p.m., the jury panel was  
4 discharged from further service)

5 (Off the record).

6 (Back on the record).

7 THE COURT: Lawyers approach a moment.

8 (Whereupon, the lawyers approached for an  
9 off-the-record discussion)

10 THE COURT: All right. Are y'all ready to proceed  
11 with the sentence?

12 MR. PRUETT: Your Honor, just one matter for the  
13 defense.

14 We make a motion for a new trial based upon Your  
15 Honor's earlier rulings. The matters I think through the  
16 course of this trial might have been only a handful of  
17 objections related to the admissibility and inadmissibility  
18 of evidence that related to the bad act evidence or  
19 something along those lines relating to I think Terry  
20 Swofford's testimony, Virginia Randolph, Ms. Teague, her  
21 testimony, and the testimony of Rocky Pennington. So I  
22 would move for a new trial based upon prior rulings of the  
23 court and ask the court to consider that and grant a new  
24 trial.

25 MR. KENDALL: We feel the court's holdings in this

1 were correct and we would ask the court to move forward.

2 THE COURT: All right. I would not grant the  
3 motion. I think the prior rulings were correct.

4 MR. KENDALL: Thank you, Your Honor.

5 THE COURT: Are you ready to proceed?

6 MR. KENDALL: Yes, sir.

7 MR. PRUETT: I'll hand this up to Your Honor. We  
8 did confer during the deliberations. Mr. Kendall and I  
9 calculated the actual time the defendant has served in jail,  
10 which was 224 days.

11 THE COURT: 224?

12 MR. PRUETT: Yes, sir, I have that note down, and  
13 395 home detention with GPS monitoring.

14 THE COURT: A total of 619?

15 MR. PRUETT: Yes, Your Honor.

16 THE COURT: Yes, sir.

17 MR. KENDALL: Thank you very much, Your Honor.

18 I don't know if the victims -- they do not wish to  
19 address the court.

20 THE COURT: Any prior record?

21 MR. KENDALL: I was going to confer with Mr.  
22 Pruett.

23 On the NCIC it indicates he had a distribution of  
24 valium, two counts of that, from 1986, but it indicates  
25 there is another charge that's been pardoned. I'm not sure

1 all three of those were pardoned at the same time.

2 MR. PRUETT: That's correct, he's pardoned.

3 That's how he was able to have his CWP permit. He has no  
4 prior record.

5 THE COURT: All right.

6 And Mr. Pennington, could I ask you a few  
7 questions?

8 Sir, are you presently seventy-two years old?

9 THE DEFENDANT: Sir?

10 THE COURT: Are you seventy-two?

11 THE DEFENDANT: What did he say?

12 MR. COOK: Are you seventy-two?

13 THE DEFENDANT: I will be seventy-three December.

14 THE COURT: All right. And how far did you go in  
15 school?

16 THE DEFENDANT: 5th grade.

17 THE COURT: Did you ever obtain a GED?

18 THE DEFENDANT: (No response).

19 MR. COOK: Do you have a GED?

20 THE DEFENDANT: No.

21 THE COURT: And you have, was it five children?

22 MR. COOK: How many children?

23 THE DEFENDANT: Six.

24 THE COURT: Six. All right.

25 And presently you're disabled. When you worked,

1 what type of work did you do?

2 THE DEFENDANT: I was working with Duke Power.

3 THE COURT: Did you ever serve in the military?

4 MR. PRUETT: Did you serve in the Army, Navy,  
5 military?

6 THE DEFENDANT: No.

7 THE COURT: Okay.

8 Yes, sir, Mr. Pruett, is there anything?

9 MR. PRUETT: Well, Your Honor, I know you are  
10 restricted, obviously, to the type of sentence that I know  
11 the persons present in the courtroom may not know, but the  
12 sentence for murder is thirty years to life.

13 The pistol violation, weapons violation, is up to  
14 five years.

15 So, you know, as a practical matter, given Mr.  
16 Pennington's age, or his health conditions, any sentence,  
17 even the minimum, for him is a life sentence, so I would ask  
18 for the imposition of the minimum, since it may be in this  
19 case just for him would be a life sentence.

20 And I know I have to discuss with him, you know,  
21 his rights to appeal. I think I need to file an appeal  
22 regardless and I'll explain that to him after we recess.

23 THE COURT: All right.

24 And anybody wish to address the court on his  
25 behalf?

1 MR. PRUETT: Your Honor, again, if you give him a  
2 thirty year sentence, he will be in his nineties, assuming  
3 he lives at that age.

4 THE COURT: Mr. Pennington, is there anything that  
5 you would like to say to me or want me to know?

6 THE DEFENDANT: Only this, that I'm not guilty of  
7 what they said I am. It was an accident. That's all I can  
8 say.

9 THE COURT: Thank you, sir.

10 All right. I do not have to accept the plea,  
11 since it was a guilty verdict, but on these cases, these  
12 would be concurrent sentences. It will be a thirty year  
13 sentence on the murder charge. It will be a five year  
14 sentence on the weapons charge.

15 He gets credit for the 619 days.

16 Good luck to you, sir.

17 MR. KENDALL: Thank you, Your Honor.

18 (END OF REQUESTED TRANSCRIPT OF RECORD)

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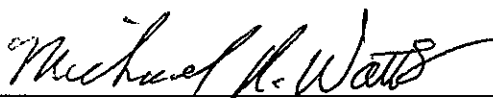
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## CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 27th, 28th, 29th, and 30th days of August, 2018.

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

March 19, 2017



---

Michael R. Watts  
Circuit Court Reporter



### Pre-Interrogation Waiver Form

Name: William Dean Pennington Address: [Redacted] Ford Rd  
Gaffney, SC 29340  
Telephone Number: 492-6889 Social Security Number: [Redacted]  
Date of Birth: [Redacted] 1945 Today's Date: 6-21-14 Time: 11:05 AM Education: 6th grade

#### STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

DR  
DR  
DR

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court law.
3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
5. You have the right to stop answering questions at any time.

The above rights have been read to me by Tracy Fowler

I have read the above rights, and I understand them fully.

Signed William Dean Pennington Witness [Signature]

#### WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to

Deputy Tracy Fowler in reference to A shooting incident

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed William Dean Pennington Witness [Signature]

Time Interview Began: 11:05 a.m. Time (Statement/Interview) was completed: 1:58 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 2 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 21<sup>st</sup> DAY OF June, 20 14

[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 050321

Signed William Dean Pennington

Witness: Tracy Fowler

Witness: \_\_\_\_\_

## VOLUNTARY STATEMENT

PAGE 1 OF 2

CASE NUMBER

NAME: William Dean Pennington

(DP) My wife Rita and I have been together for 40 years and married for 37 years. This morning I woke up the first time at 5:00 AM. I fell back asleep until around 7:00 AM. I layed in bed watching Pastor Chapel on TV. I got up and Rita brought me a cup of coffee and left it on the table by the bed. Rita was in a good mood and we were talking about going to Hardee's and to buy groceries. I told Rita I was going to clean my gun before we left. I had just shot the gun Thursday or Friday evening before dark. I sat on the bed on the left side facing the headboard. I ejected the shells out of the gun by pumping the forearm of the gun. I counted 6 shells on the bed. The gun holds 5 shells in the tube and one in the chamber. I removed the <sup>screw</sup> ~~shot~~ from the front of the gun to take the barrel off. The barrel was still on the gun loose as I was oiling it and wiping it down with a rag. The stock was resting on my leg with the barrel up at an angle. I was facing the chest of drawers not the headboard. As I was wiping the gun down it fired. The barrel came out a little and I could see the shell. I pulled the barrel up and took the shell out. I heard Rita fall and ~~she~~ saw blood in the floor. I got some towels and tried to stop the bleeding, but wasn't able to. I tried to pick Rita up but I couldn't. I pulled Rita away from → (DP)

WITNESS: TracyWITNESS: Paul

William Dean Pennington  
Signature of person giving voluntary statement

# VOLUNTARY STATEMENT

CASE NUMBER

NAME: William Dean Pennington

DP the wall and moved her leg from under the bed. I ran out to the camper in the front yard and knocked trying to get my son Rocky. No one answered so I went back to the house and called 911. Then I went back in the bedroom and put another towel on Rita's head. I tried to clean blood off of Rita and the floor with a towel until the police got there. Rita has been working at Hamrick Mills for the past 2 months. Rita got fired from Sunek Foods, on Beech Street, for sexual harassment about 3 or 4 months ago. Rita and I argued a lot when we first got together, but we get along good recently. I think the last time I shot the shotgun I was standing on the back porch looking into the woods. I shot the gun by accident I would not have shot my wife on purpose. DP

WITNESS: [Signature]  
WITNESS: [Signature]

[Signature]  
Signature of person giving voluntary statement

DOC# 14GS-11-00911

WITNESSES

Cherokee County Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

2014A1110100386 (Count One)

Direct Indictment (Count Two)

ACTION OF GRAND JURY

TRUE BILL

*Wayne Adams*

Foreperson of Grand Jury

Date: 9-4-14

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: 8-30-18

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

WILLIAM DEAN PENNINGTON

Indictment for

MURDER AND  
POSSESSION

OF FIREARM DURING COMMISSION OF A  
VIOLENT CRIME

SC Code: 16-03-0010, 0020; 16-23-490

CDR CODE: 116; 0549

CLASS: FEL-EXM; FEL/F

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2014 SEP 4 AM 10 13

BRANDY W. MCBEE





Grand Jurors of Cherokee County present upon their oath:

**COUNT ONE-MURDER**

That William Dean Pennington, did in Cherokee County on or about June 21, 2014, feloniously, willfully, and with malice aforethought, kill one Rita Pennington, by shooting the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING  
COMMISSION OF A VIOLENT CRIME**

That William Dean Pennington, did in Cherokee County on or about June 21, 2014, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, in violation of Code §16-23-490, *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.

  
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

**RECEIVED**  
**Apr 23 2020**  
**SC Court of Appeals**

Respectfully Submitted,

s/Adam Ruffin

Adam Ruffin  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 22nd day of April, 2020.