

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Opinion No. 5586 (S.C. Ct. App. filed August 8, 2018)

The State,

Respondent,

v.

Sha'Quille Washington,

Petitioner.

**APPENDIX
VOLUME II OF II**

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INDEX

Record on Appeal.	1
Final Brief of Appellant.....	659
Final Brief of Respondent.	681
Final Reply Brief of Appellant.....	732
Opinion No. 5586 (S.C. Ct. App. filed August 8, 2018).....	753
Petition for Rehearing.	788
Order Denying Petition for Rehearing.....	804

Motion for Directed Verdict
Court's Ruling
October 14, 2015

1 Mr. Davis, call your first witness.

2 MR. DAVIS: Kevin Watson.

3 THE COURT: Sir, please come forward and be sworn.

4 [Whereupon, Mr. Watson comes forward]

5 THE CLERK OF COURT: Please raise your right hand.

6 Place your left hand on the Bible.

7 [Whereupon, Mr. Watson is duly sworn by the clerk

8 of court as follows: do you solemnly swear or affirm

9 the testimony you will give the Court in the trial of

10 this case will be the truth, the whole truth, and

11 nothing but the truth, so help so you God]

12 THE WITNESS: Yes, ma'am.

13 THE CLERK OF COURT: Please be seated.

14 [Whereupon, Mr. Watson takes the witness stand]

15 THE CLERK OF COURT: State your full name. Spell

16 your last name for the record.

17 THE WITNESS: All right. First name is Kevin

18 Watson. Middle name is Justine.

19 You say spell my last name?

20 THE CLERK OF COURT: Yes, sir.

21 THE WITNESS: W-A-T-S-O-N.

22 THE COURT: Mr. Davis, your witness.

23 MR. DAVIS: Thank you.

24 - - -

25 - - -

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

KEVIN WATSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Kevin? How old are you, Kevin?

A. Twenty-five.

Q. And you finished high school?

A. Yeah.

Q. Sir?

THE COURT: Was that a yes?

A. Yes, sir.

Q. [Mr. Davis] And --

THE COURT: Sir, I'm going to need you to sit up,
and speak loudly into the microphone. Thank you. I
remind you that you are in a courtroom.

THE WITNESS: All right.

THE COURT: Thank you.

MR. WEST: Your Honor, may we briefly approach?

THE COURT: You may.

[Whereupon, an off-the-record bench conference is
held]

THE COURT: Ladies and gentlemen, there is a matter
of law that I must take up outside of your presence.

Do not begin your deliberations. Do not discuss

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 your case amongst yourselves. We will bring you back in
2 momentarily.

3 Please rise for the jury. Mr. Watson, stay seated.

4 [Whereupon, the jury exits the courtroom at
5 2:43 p.m.]

6 THE COURT: Thank you. Please be seated.

7 Mr. West?

8 MR. WEST: Thank you, Your Honor.

9 It's been indicated to me by court personnel that
10 the witness was present in violation of the
11 sequestration order granted by Your Honor at the
12 beginning of trial.

13 THE COURT: Mr. Watson, have you been in the
14 courtroom to hear any testimony?

15 THE WITNESS: No, 'ma'am.

16 THE COURT: No?

17 THE WITNESS: Uh-huh.

18 THE COURT: When was the first time you came into
19 the courtroom.

20 THE WITNESS: Today.

21 THE COURT: Today what time?

22 THE WITNESS: Yes, ma'am.

23 I was actually outside. I was told my name was
24 called, yes, ma'am.

25 THE COURT: And so you haven't sat and listened to

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 any of the witnesses?

2 THE WITNESS: No, ma'am.

3 THE COURT: All right. Anything further, Mr. West?
4 Do we need to call the person that indicated that to
5 you?

6 MR. WEST: We'll get Lieutenant Mark Hamilton.

7 THE COURT: All right. Thank you.

8 [Whereupon, Lieutenant Hamilton comes forward]

9 THE COURT: Lieutenant Hamilton, could you come
10 over here? I'm going to place you under oath.

11 THE CLERK OF COURT: Raise your right hand.

12 [Whereupon, Lieutenant Hamilton is duly sworn by
13 the clerk of court as follows: do you solemnly swear or
14 affirm the testimony you give the Court in this matter
15 will be the truth, the whole truth, and nothing but the
16 truth, so help you God]

17 LIEUTENANT HAMILTON: Yes, ma'am.

18 THE CLERK OF COURT: Please state your name for the
19 record.

20 LIEUTENANT HAMILTON: Lieutenant Mark Hamilton.

21 THE COURT: You can scoot over here. I just didn't
22 want Mr. Watson to have to move.

23 LIEUTENANT HAMILTON: Yes, ma'am.

24 THE COURT: Tell me your name for the record.

25 LIEUTENANT HAMILTON: Lieutenant Mark Hamilton.

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 THE COURT: Lieutenant Hamilton, it's come to my
2 attention that you believe that this witness was in the
3 courtroom today?

4 LIEUTENANT HAMILTON: We thought we saw him in here
5 earlier on a break.

6 THE COURT: When you saw him, was there anyone on
7 the witness stand? Do you recall?

8 LIEUTENANT HAMILTON: There wasn't nobody on the
9 witness stand, but he was sitting in the area right in
10 front of my officers right over there.

11 THE COURT: Thank you, Lieutenant.

12 Were you in the courtroom?

13 THE WITNESS: Yes, ma'am, I was here today. But I
14 was talking about yesterday. I wasn't here yesterday.

15 THE COURT: I'm worried about any time, today,
16 yesterday.

17 THE WITNESS: Oh. Yes, ma'am, I was here today.

18 THE COURT: And did you hear any testimony today?

19 THE WITNESS: I seen a thing on the screen that you
20 guys had, but besides that, no, ma'am.

21 THE COURT: Did you not understand my question as
22 to whether or not you were here and heard testimony from
23 that witness stand?

24 THE WITNESS: I mean, I was -- like I said, I
25 thought you was talking about yesterday, not today. I

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 came in the court today.

2 MR. WEST: Your Honor, I'm not particularly clear
3 as to what he did and didn't see.

4 MR. DAVIS: We ask --

5 THE COURT: Were you here today, sir, and only
6 today?

7 THE WITNESS: Yes, ma'am, I was here today.

8 THE COURT: All right. Thank you.

9 Please approach.

10 [Whereupon, an off-the-record bench conference is
11 held]

12 THE COURT: Were you here when Detective Shuler was
13 testifying? Do you remember that? Is that -- when you
14 said stuff on the screen, was there a video being
15 played?

16 THE WITNESS: Yes, sir. Yes, ma'am.

17 THE COURT: Did you see that video?

18 THE WITNESS: Yes, ma'am. I was here when he was.
19 Yeah.

20 THE COURT: Thank you. You may step down. Thank
21 you.

22 [Whereupon, Mr. Watson is excused and exits the
23 witness stand]

24 [Whereupon, an off-the-record bench conference is
25 held]

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 THE COURT: Mr. Watson, we need to proffer your
2 testimony.

3 MR. DAVIS: That's correct.

4 THE COURT: Thank you.

5 MR. DAVIS: Thank you. And I would like to be
6 heard.

7 THE COURT: Mr. Watson, right here. Have a seat.

8 [Whereupon, Mr. Watson retakes the witness stand]

9 MR. DAVIS: I would like to be heard, also.

10 THE COURT: Well, I have determined that Detective
11 Shuler -- this witness indicted that he saw the video,
12 which the purpose of the rule of sequestration is to
13 prevent exactly what has happened.

14 I am not going to allow this witness to testify,
15 but I will allow you to proffer his testimony.

16 MR. DAVIS: I would like to put on the record that
17 this young man, Kevin Watson, was not listed as one of
18 the witnesses when this matter commenced on Monday on
19 the State's list of witnesses. I know he wasn't on my
20 list of witnesses. And so therefore, he would not have
21 been in a position to receive the sequestered [phonetic]
22 instruction that you gave because he was not in --

23 THE COURT: But you, as an officer of the Court,
24 knew what the rule of sequestration was and you should
25 have advised your client.

Kevin Watson
Direct Examination by Mr. Davis
October 14, 2015

1 MR. DAVIS: Judge --

2 THE COURT: I'm going to allow you to proffer him,
3 and then we are moving on. Thank you.

4 MR. DAVIS: He did not come to me until today and
5 share with me that he was going to testify, so I thought
6 it was no need for me to consider him to be sequestered.
7 He came to me this morning for --

8 THE COURT: All right. I have --

9 MR. DAVIS: -- the first time and told me --

10 THE COURT: Mr. Davis --

11 MR. DAVIS: -- he wanted to testify.

12 THE COURT: -- proffer his testimony. Thank you.

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Kevin Watson
Proffer by Mr. Davis.
October 14, 2015

PROFFER

BY MR. DAVIS:

Q. Son, when was the first time you approached me about this matter?

A. You called me over, and then I come.

Q. What day are we talking about I called you over?

A. Today.

Q. And what time was that?

A. I'm not too sure.

Q. Yeah.

And what -- your name have been brought up in reference to a statement that was presented by Christina Lockwood.. What is your relationship with Christina Lockwood?

A. Third cousin.

Q. Third cousin.

And it relates back to a statement that she gave to law enforcement back on August the 25th, 2013, almost two years ago. She said that she was at A Place In The Woods, that you were along with her, and that y'all --

THE COURT: No, no, no. How a proffer works is you ask him -- don't testify for him. You ask him what he would testify to if he were allowed to testify.

Q. [Mr. Davis] Were you at A Place In The Woods on August the 25th?

A. Yes, sir, I was.

MIA PERRON, CVR-CM-M

-591-

Kevin Watson
Proffer by Mr. Davis
October 14, 2015

1 Q. Tell the Court what you were prepared to testify to
2 the Court.

3 A. I went outside to smoke a cigarette and just I
4 walked off away from the side, and been a little tussle or
5 whatnot, and I saw some fighting and I basically left.

6 Q. Did you see individuals with weapons?

7 A. No, sir.

8 Q. Did you see Larry Kinloch with a weapon?

9 A. No, sir.

10 Q. Did you see Mr. Sha'Quille Washington with a
11 weapon?

12 A. No, sir.

13 MR. DAVIS: No further questions, Your Honor.

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

15 [Whereupon, Mr. Watson is excused and exits the
16 witness stand]

17 MR. DAVIS: It's noted for the record.

18 THE COURT: Thank you. Who is your next witness,
19 Mr. Davis?

20 MR. DAVIS: Aja Williams.

21 THE COURT: Where is Aja Williams? No Aja Williams
22 is on the witness list --

23 MR. DAVIS: She was, Your Honor. The jury got to
24 hear it.

25 THE COURT: And then Mr. Freeman is your next

Kevin Watson
Proffer by Mr. Davis
October 14, 2015

1 witness?

2 MR. DAVIS: No, not Mr. Freeman. Too fast. Slow
3 down.

4 THE COURT: All right. Let's bring in -- let's
5 bring in jury.

6 [Whereupon, the jury enters the courtroom at
7 2:52 p.m.]

8 THE COURT: Ladies and gentlemen, I have determined
9 as a matter of law that the previous witness was not for
10 you to hear. Please strike his name. Do not infer,
11 from the fact that he did not testify, anything
12 whatsoever. It was strictly a matter of law left up to
13 the Court to make a determination.

14 Call your next witness.

15 MR. DAVIS: Aja Williams.

16 THE COURT: Ma'am, please come forward and be
17 sworn.

18 [Whereupon, Ms. Williams comes forward]

19 THE CLERK OF COURT: Please raise your right hand.
20 Place your left hand on the Bible.

21 [Whereupon, Ms. Williams is duly sworn by the clerk
22 of court as follows: do you solemnly swear or affirm
23 the testimony you will give the Court in the trial of
24 this case will be the truth, the whole truth, and
25 nothing but the truth, so help so you God]

Kevin Watson
Proffer by Mr. Davis
October 14, 2015

1 THE WITNESS: Yes.

2 THE CLERK OF COURT: Please be seated.

3 [Whereupon, Ms. Williams takes the witness stand]

4 THE CLERK OF COURT: State your full name, and
5 spell your last name for the record.

6 THE WITNESS: Aja Williams. A-J-A Williams.

7 W-I-L-L-I-A-M-S.
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MIA PERRON, CVR-CM-M

-594-

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015.

AJA WILLIAMS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Ms. Williams, where do you live?

A. North Charleston, South Carolina.

Q. And do you know why you're here today?

A. Yes.

Q. Tell us in your own words why you're here.

A. Because I was bartending at a club where a tragic incident happened.

Q. You were bartending at a club --

THE COURT: Ms. Williams, the air-conditioner just came on. I'm going to need you to speak loudly.

THE WITNESS: Okay.

MR. DAVIS: If I get in this corner, you'll speak a little louder.

Q. [Mr. Davis] You were bartending at a club where something tragically happened? That's what you were saying?

A. Yes.

Q. How long had you been bartending that night?

A. I was asked by my cousin to bartend at a party for him, and that was the only night.

Q. Do you recall seeing -- if you can identify -- a

MIA PERRON, CVR-CM-M

-595-

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1 person by the name of Francis Larry Jenkins?

2 MR. DAVIS: Could you stand, Mr. Jenkins?

3 [Whereupon, Mr. Jenkins complies]

4 Q. [Mr. Davis] Can you identify this person?

5 THE COURT: Counsel approach.

6 MR. POULOS: Objection.

7 [Whereupon, an off-the-record bench conference is
8 held]

9 Q. [Mr. Davis] Ms. Williams?

10 A. Yes.

11 THE COURT: Thank you. I will sustain your
12 objection --

13 MR. DAVIS: Thank you, Judge.

14 THE COURT: -- Mr. Poulos.

15 Q. [Mr. Davis] Can you identify this individual right
16 here, Mr. Sha'Quille Washington?

17 A. Yes, sir.

18 Q. Taking you back to August the 25th, 2015. Do you
19 recall serving any alcohol to this individual?

20 A. I don't recall.

21 Q. Do you recall serving any alcohol to an individual
22 by the name of Mr. Herman Manigault, III?

23 A. Yes.

24 Q. Ma'am?

25 A. Yes.

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1. Q. How would you describe that service in relationship
2 to optimum amount of drinks? Or what would you say?

3 A. I can recall that he was drinking Hennessy. If I
4 wasn't mistaken, it was Hennessy he was drinking that night.

5 THE COURT: I'm going to need you to speak up.

6 THE WITNESS: Okay.

7 A. He was drinking Hennessy. Drinking -- he was
8 requesting for Hennessy.

9 Q. [Mr. Davis] And so if you were to review an
10 autopsy report that show that his --

11 MR. POULOS: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q. [Mr. Davis] -- blood alcohol is --

14 THE COURT: Sustained. Lay a foundation.

15 MR. DAVIS: I would like to mark for
16 identification.

17 THE COURT: Is that 8, Madam Court Reporter?
18 Defendant's 8?

19 THE COURT REPORTER: I'm sorry. Yes.

20 [Whereupon, Defendant's Exhibit Number 8 is marked
21 by the court reporter]

22 Q. [Mr. Davis] Which other work you do, ma'am?

23 A. I work at a plasma center.

24 Q. At where?

25 A. Plasma center.

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1 Q. Plasma center?

2 A. Yes, sir.

3 Q. Where you draw blood?

4 A. Yes.

5 Q. I'm going to hand you what's been marked as this
6 Defendant's Exhibit, and tell me if you've ever seen these
7 type of documents before.

8 MR. POULOS: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q. [Mr. Davis] Can you identify that?

11 A. Yes, I can.

12 Q. What is it?

13 MR. POULOS: Objection, Your Honor.

14 A. It's a --

15 THE COURT: Counsel, just approach. Bring the
16 document.

17 [Whereupon, an off-the-record bench conference is
18 held]

19 THE COURT: Sustained.

20 Q. [Mr. Davis] Okay. So it's your recollection that
21 Mr. Herman Manigault, III, was drinking Hennessy?

22 A. Yes.

23 Q. Do you render an opinion whether he was heavily
24 intoxicated?

25 A. When he came to me, not really, no.

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1 Q. Now, did you have an occasion to see a fellow by
2 the name of Larry Kinloch that night?

3 A. Yes.

4 Q. Tell us what encounter you had with Larry Kinloch.

5 A. I just saw Larry walking everywhere Herman went.
6 They were together.

7 Q. Everywhere that Herman --

8 A. The area. The areas that Herman walked or walked
9 -- in the club, the dimmer areas, whenever he went to the back
10 of the club where the pool table is --

11 MR. DAVIS: Just a minute.

12 Q. [Mr. Davis] You're familiar with this club, are
13 you not?

14 A. Yes.

15 Q. Well, you're going to help us a little bit. This
16 is Defendant's Exhibit Number 2. It's an outline, somewhat,
17 of that club, okay, A Place In The Woods. Do you agree?

18 A. Yes.

19 Q. Now, I'm going to give you a marker and you tell me
20 the best you can how this place is divided, since you were
21 doing the bartending. Tell us where the bar is located in
22 there. I want you to section off the bar.

23 A. [Witness complies]

24 Q. Then put the dance floor. And if there's a kitchen
25 in there, put the location of the kitchen.

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1 A. [Witness complies]

2 Q. Then I want you to use one of these black letters
3 to put kitchen and then put bar. Okay? And then put that
4 in -- put dance floor, too, with those colors.

5 A. I already did it.

6 Q. You did it?

7 Q. I know this is --

8 A. Pool table, bar, kitchen.

9 Q. So pool table, bar, kitchen. Is it sectioned off?

10 THE COURT: I need you to speak into the
11 microphone. You are very soft-spoken. Even as close as
12 you are, I cannot hear you.

13 A. The bar is right -- the bar and the kitchen are
14 connected, so you have to walk -- this is a section where the
15 bar is. You would have to walk behind the bar to get to the
16 kitchen. When you make -- go to the left of the bar, that's
17 another area where the pool tables are.

18 Q. [Mr. Davis] Where's the dance floor?

19 A. And the dance floor -- this is the front of the
20 bar, the front bar, where you can leave like right here. And
21 this is the dance floor.

22 Q. Excuse me. Have you got dance floor? I'm sorry.

23 A. Uh-huh.

24 Q. Yeah.

25 And it is your testimony that everywhere that

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015

1 Herman Manigault went, who would follow?

2 A. It was Larry. Larry and Sha'Quille.

3 But Sha'Quille was walking and he sat down, and
4 then Larry walking with him. Like he was -- Herman was
5 playing pool, so he was off in the pool area. Then it was
6 Sha'Quille. Sha'Quille was sitting at a table where the pool
7 area was.

8 When Herman -- the last thing Herman said to me
9 when he walked to the bar, said, Larry going to shoot me, they
10 going to kill me. And I was like, what? So I asked him, I'm
11 like, why. He was like, I don't know.

12 Q. Said Larry's going to shoot him?

13 A. Uh-huh.

14 So then Sha'Quille was still sitting there. I
15 guess it was over and everybody was walking out. And --

16 Q. So the club was shutting down? Everybody's going
17 outside now?

18 A. Uh-huh.

19 It was like -- yeah, everyone was going. And he
20 was already walking. That's when they walked out and I heard
21 shots.

22 Q. Did you witness or see when Ms. Coakley had the
23 bottle in an effort to hit Mr. Washington?

24 A. She -- I didn't see that part but --

25 Q. You didn't see that?

Aja Williams
Direct Examination by Mr. Davis
October 14, 2015.

1 A. Yeah, I didn't see that part.

2 After I heard the shots, I saw her over Herman,
3 shaking him. And we said don't shake him because he's
4 bleeding, we don't know where he's bleeding at, so lay him
5 back down.

6 So we had him -- had her -- you know, someone move
7 her, and we laid him down because we didn't know where he was
8 shot at. And we just held pressure where the -- where we just
9 saw the blood coming from.

10 Q. Did he have a shirt on when you came outside?

11 A. Who?

12 Q. Did Herman have his shirt on?

13 A. Yes, he still did have his shirt on.

14 Q. He still had his shirt on?

15 A. Uh-huh.

16 MR. DAVIS: Okay. No further questions.

17 THE COURT: Mr. Poulos, your witness.

18 MR. POULOS: Thank you, Your Honor.

19 Good afternoon, Ms. Williams.

20 THE WITNESS: Good afternoon.

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Aja Williams
Cross-Examination by Mr. Poulos
October 14, 2015

CROSS-EXAMINATION

1
2 BY MR. POULOS:

3 Q. Do you recall meeting with myself, Mr. West, and
4 Mr. McGowan a couple of months ago to talk about this case?

5 A. Yes.

6 Q. It was at your house?

7 A. Yes.

8 Q. Do you recall at that time, Ms. Williams, you told
9 us --

10 A. Uh-huh.

11 Q. -- that it was the defendant, Sha'Quille
12 Washington, and Larry Kinloch, who was following Herman around
13 the bar that night.

14 A. Uh-huh.

15 Q. So both of them were following Herman around the
16 bar?

17 A. And I said that both of them were and at a certain
18 point Sha'Quille sat. You didn't ask me that.

19 Q. And at some point Trey came up to you --

20 A. Uh-huh.

21 Q. -- and he said, they are going to kill me. That's
22 what he said; right?

23 A. Uh-huh.

24 Q. They?

25 A. They.

Aja Williams
Cross-Examination by Mr. Poulos
October 14, 2015

1 Q. They, including Larry Kinloch and Sha'Quille
2 Washington?

3 A. And I said Larry to you-all when you were sitting
4 in my living room. I did state --

5 Q. Right.

6 A. -- that to you-all, didn't I?

7 Q. Uh-huh.

8 A. Okay.

9 Q. You said they. That includes Mr. Washington?

10 A. Uh-huh.

11 Q. Correct?

12 A. Yes.

13 Q. Now, you didn't see the shooting?

14 A. No.

15 Q. You didn't see the fight?

16 A. I was inside the bar.

17 Q. But what you did see is Mr. Washington, along with
18 Mr. Kinloch, follow Trey out of the bar; correct?

19 A. Correct.

20 Because they were leaving. Everyone inside was
21 leaving.

22 Q. Trey walked out. Six feet behind him were both
23 Mr. Washington and --

24 A. Uh-huh.

25 Q. -- Mr. Kinloch; correct?

Aja Williams
Cross-Examination by Mr. Poulos
October 14, 2015

1 A. Uh-huh.

2 THE COURT: Was that a yes?

3 A. Yes.

4 THE COURT: Thank you.

5 Q. [Mr. Davis] You heard four to five shots?

6 A. Correct.

7 Q. Did you see Mr. Washington leave?

8 A. I saw when he was walking out and he was like
9 walking out behind.

10 Q. Did you tell us you saw him jump in a truck?

11 A. Yes.

12 Q. What about security? Do you recall if there was
13 security?

14 A. I recall security.

15 Q. You do recall security?

16 A. Yes.

17 Q. Okay. Tell me about security.

18 A. There were like two securities out there, I
19 believe. I can't really recall, but I -- it was I think I
20 would believe two.

21 Q. At the time of the shooting, where was the
22 security?

23 A. I was at the bar. There was someone at the door.

24 Q. After Trey was shot, you went outside; right?

25 A. Yes.

Aja Williams
Cross-Examination by Mr. Poulos
October 14, 2015

1 Q. You stayed?

2 A. Uh-huh.

3 Q. Tell me about that.

4 A. Me and my cousin, we just was talking to him. We
5 was just talking to him and just telling him, you know, calm
6 down, an ambulance is coming. And, you know, we just was
7 telling him, you know, breathe.

8 Q. Was he able to talk back?

9 A. He tried.

10 THE WITNESS: I'm sorry.

11 MR. POULOS: Take your time.

12 A. He was trying to talk back to us, and we told him
13 not to talk. We was just -- you know, we were trying to
14 figure out shot -- got shot at.

15 Q. [Mr. Poulos] Ms. Williams, after Trey was shot,
16 did you see security anywhere around him?

17 A. I can't recall.

18 Q. Were you there when the police showed up?

19 A. Yes.

20 Q. Do you recall if security was there when the police
21 showed up?

22 A. They had everyone there. They wouldn't let anyone
23 leave at that time when the police showed up.

24 Q. So if security had been there when the police
25 showed up, they would not have been allowed to leave? That's

Aja Williams
Cross-Examination by Mr. Poulos
October 14, 2015

1 what you remember?

2 A. Uh-huh.

3 MR. POULOS: Nothing further.

4 MR. DAVIS: Ms. Williams, other than --

5 THE COURT: Mr. Davis?

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Aja Williams
Redirect Examination by Mr. Davis
October 14, 2015

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Other than the solicitor's office coming out to see you two months ago, a month ago, did anybody from the sheriff's department ever take a statement from you?

A. I can't recall.

Q. In the two years, did Detective Shuler ever come out and take a statement pertaining to what you have just testified to -- this is Detective Shuler [indicates] -- or anybody from the Berkeley County Sheriff's Department in the past two years?

A. I can't recall.

Q. Do you recall writing any statement or being provided any copy of any statement that you have written in the past two years?

A. I can't recall.

Q. Now, when you met with the solicitors, they came to your home?

A. Yes.

Q. And you told them they -- you simply told them that Larry Kinloch -- the guy told you, said Larry Kinloch is going to shoot me?

A. Uh-huh.

Q. You said Larry Kinloch, did you not?

A. Yes.

Aja Williams
Redirect Examination by Mr. Davis
October 14, 2015

1 I did -- I said -- I told them -- I told them what
2 -- no. I told them --

3 Q. Told them what?

4 A. I told them who I -- who was following, and I told
5 them what he said to me.

6 Q. Who said that to you?

7 A. Herman.

8 Q. Who he said was going to kill him? shoot him?

9 A. He said Larry.

10 Q. And you have had this information since August the
11 25th of 2013; isn't that true?

12 A. Yes.

13 MR. DAVIS: No further questions, Your Honor.

14 THE COURT: Mr. Poulos?

Aja Williams
Recross-Examination by Mr. Poulos
October 14, 2015

RECROSS-EXAMINATION

BY MR. POULOS:

Q. Ms. Williams, I just want to clarify something.

A. Uh-huh.

Q. You told us that Herman said to you, they are going to kill me.

A. Uh-huh.

THE COURT: Is that a yes?

A. Yes.

Q. [Mr. Poulos] Now, when he was saying they, he was referring to Mr. Washington and Mr. Kinloch, who were together and at a club; correct?

A. When he -- yes.

Q. You spoke to the sheriff's department that night, correct, at around 6:03 in the morning?

A. Correct.

Q. Does that sound right?

A. Uh-huh.

THE COURT: Is that a yes?

A. Yes.

Q. [Mr. Poulos] And, again, you didn't see who shot Mr. Manigault, did you?

A. No, I don't -- didn't.

MR. POULOS: Thank you.

THE COURT: Thank you. You may step down,

Aja Williams
Recross-Examination by Mr. Poulos
October 14, 2015

1 Ms. Williams.

2 MR. DAVIS: Thank you.

3 THE COURT: I'm sorry. Did you have anymore -- I'm
4 sorry, Mr. Poulos. Did you have anymore questions?

5 MR. POULOS: One more, Your Honor.

6 THE COURT: I'm sorry, Ms. Williams. He walked
7 away and I was -- I thought you were done. Just have a
8 seat. I apologize.

9 MR. POULOS: I'm sorry, Ms. Williams. One last
10 question.

11 Q. [Mr. Poulos] Did you refuse to give a written
12 statement to Detective Shuler?

13 A. I don't -- I cannot recall.

14 MR. POULOS: No further questions.

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

16 [Whereupon, Ms. Williams is excused and exits the
17 witness stand]

18 THE COURT: Call your next witness, Mr. Davis.

19 MR. DAVIS: Yeah. We call Kenneth Grant, Your
20 Honor.

21 THE COURT: Sir, please come forward and be sworn.
22 Right up here. Right up here to the lady in the white
23 sweater.

24 [Whereupon, Mr. Grant comes forward]

25 THE CLERK OF COURT: Please raise your right hand.

Aja Williams
Recross-Examination by Mr. Poulos
October 14, 2015

1 Place your left hand on the Bible.

2 [Whereupon, Mr. Grant is duly sworn by the clerk of
3 court as follows: do you solemnly swear or affirm the
4 testimony you will give the Court in the trial of this
5 case will be the truth, the whole truth, and nothing but
6 the truth, so help so you God]

7 THE WITNESS: Yes.

8 THE CLERK OF COURT: Please be seated.

9 [Whereupon, Mr. Grant takes the witness stand]

10 THE CLERK OF COURT: State your full name, and
11 spell your last name for the record.

12 THE WITNESS: Spell it?

13 THE CLERK OF COURT: Yes.

14 THE WITNESS: My name is Kenneth Gordon [phonetic]
15 Grant. G-R-A-N-T.

16 THE COURT: Mr. Davis, your witness.

17 MR. DAVIS: Thank you.
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Kenneth Grant
Direct Examination by Mr. Davis
October 14, 2015

KENNETH GRANT,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Mr. Grant, where do you live?

A. In Huger.

Q. Huger? You've always lived in Huger?

A. Yes. Well, you know, Charleston, Huger.

Q. What is your relationship to Sha'Quille Washington?

A. He's my little cousin.

Q. Little cousin? First, second, third, or do you
recall? Which one?

A. Second.

Q. Second cousin? That makes his mother your first
cousin?

A. Yes.

Q. And what kind of work do you do, sir?

A. Self-employed.

Q. What is that?

A. Trucks.

Q. Truck? You got a CDL license?

A. Yes.

Q. Back on August the 25th, 2013, do you have any
information of any substance that you can lend to this jury in

Kenneth Grant
Direct Examination by Mr. Davis
October 14, 2015

1 relationship to State versus Sha'Quille Washington? Any
2 information?

3 A. Yes.

4 Q. Tell us.

5 A. That night, that night after it had happened, well,
6 whatever had happened at the club, when we got back -- I came
7 back. I came back because Larry had called me.

8 MR. WEST: Objection. Hearsay.

9 THE COURT: Is there an exception?

10 MR. DAVIS: Yes.

11 THE COURT: What is it?

12 MR. DAVIS: Larry already testified. My God.

13 THE COURT: Overruled.

14 MR. DAVIS: Yeah. Thank you.

15 THE COURT: I mean, I'm sorry. Sustained.

16 Overrule your response, Mr. Davis.

17 Q. [Mr. Davis] As a result of the conversation with a
18 specific individual, you --

19 MR. WEST: Objection. Hearsay.

20 MR. DAVIS: I didn't name anybody.

21 THE COURT: Mr. Davis, ask your question.

22 He may be able to ask that question without
23 eliciting hearsay.

24 MR. DAVIS: Thank you.

25 Q. [Mr. Davis] You returned to the club?

Kenneth Grant
Direct Examination by Mr. Davis
October 14, 2015

1 A. Yes. Yes. Larry Kinloch told -- said he did it.

2 Q. Larry said he did it?

3 A. He said he did it.

4 MR. WEST: Objection, Your Honor.

5 A. He told me he did it.

6 THE COURT: Hold on one second. I need you to stop
7 speaking when there is an objection.

8 All right. Counsel approach.

9 [Whereupon, an off-the-record bench conference is
10 held]

11 THE COURT: Ladies and gentlemen, I instruct you --
12 we had a couple of questions and answers that got a
13 little out of control, people speaking over each other,
14 which you've heard me admonish attorneys all trial.

15 Please strike the last statement that this witness
16 made from your notes. You may not consider that at all.

17 Mr. Foreman, you are not to allow any discussion
18 about the last statement this witness made. All right?
19 Thank you.

20 MR. DAVIS: Judge, can we approach one minute?

21 THE COURT: You may.

22 [Whereupon, an off-the-record bench conference is
23 held]

24 THE COURT: Mr. Davis?

25 Q. [Mr. Davis] In relationship to time, Kenneth, you

Kenneth Grant
Direct Examination by Mr. Davis
October 14, 2015

1 said that you came back to the club. You didn't witness any
2 shooting, you said?

3 A. No, I didn't witness the shooting.

4 Q. How soon -- when did you learn of the shooting?

5 A. I got to say about ten to fifteen minutes after
6 everything happened.

7 Q. So ten to fifteen minutes after the shooting, you
8 heard?

9 A. I never heard --

10 Q. No. I don't mean that. How soon after the
11 shooting did you see --

12 A. Did I --

13 Q. -- Larry Kinloch?

14 A. Probably about I would say twenty, twenty-five,
15 minutes later.

16 Q. Within that twenty-five minute frame of time?

17 A. Yes.

18 Q. Okay. And that's when you heard what he said?

19 A. Yes.

20 Q. That, in fact, he had did it?

21 A. Yes.

22 MR. WEST: Objection, Your Honor.

23 THE COURT: Sustained.

24 Ladies and gentlemen, please strike that from your
25 notes.

Kenneth Grant
Direct Examination by Mr. Davis
October 14, 2015

MR. DAVIS: No further questions.

THE COURT: Mr. West?

MR. WEST: Thank you, Your Honor.

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

CROSS-EXAMINATION

BY MR. WEST:

Q. Mr. Grant, do you remember coming to my office last week?

A. Yes.

Q. Now, when you met me at my office, you told me you weren't there, you had nothing to say, you knew nothing about this; right?

A. Yeah.

I told -- I told you I was not there at the time of the shooting.

Q. And you told me you didn't know nothing about this; right? You came to my office after you went to visit probation, because you're on probation; right?

A. Yes.

Q. So when you left the probation office -- what are you on probation for?

A. Simple possession.

Q. Simple possession?

A. Possession. Possession.

Q. Let me comb through this. One, two, three, four -- actually, the number is on the top.

A. You asked me --

Q. -- sixteen-page --

A. -- what I'm on probation for.

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 Q. -- rap sheet here. Let me see. Let me see where
2 that simple possession is.

3 [Whereupon, Mr. West reviews documents]

4 Q. [Mr. West] Maybe you can help me out. When were
5 you put on probation? How many times have you been put on
6 probation?

7 A. This could be what?

8 Q. How many times have you been to jail?

9 A. I don't know.

10 Q. You don't know?

11 A. [No response]

12 Q. What's it all for? Drugs, guns --

13 A. Yeah.

14 Q. -- fights?

15 A. Drugs.

16 Q. Just drugs?

17 A. [No response]

18 Q. So let's see. 2009, when you were charged with
19 assault with intent to kill, when you were convicted of
20 assault and battery of a high and aggravated nature, that's
21 just drugs?

22 A. I wasn't convicted. I pleaded no contest.

23 Q. But you went to five years suspended on sixty days
24 and two years probation for that?

25 A. Yes.

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 Q. You violated that probation, didn't you, 2010; is
2 that right?

3 A. No.

4 Q. Didn't violate that probation?

5 A. No.

6 Q. So your rap sheet is wrong?

7 A. I never violated that probation.

8 Q. How about the guns on your rap sheet? Those are
9 just drugs? Unlawful carrying of a pistol?

10 A. I had a unlawful carrying of a firearm when I was
11 seventeen years old, sixteen or seventeen years old.

12 Q. But you didn't bring that up just now in front of
13 this jury, did you?

14 A. Did you ask me that?

15 Q. Yeah. I asked you what you've been convicted of.
16 You said, just drugs, man, just drugs. Right?

17 A. [No response]

18 Q. Use of vehicle without permission, receiving stolen
19 goods. Any of that ringing a bell?

20 A. I don't know.

21 Q. Nothing's ringing a bell.

22 But something that Larry may have said rings a
23 bell; right?

24 A. [No response]

25 Q. Now, how many times did law enforcement try to get

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 in touch with you?

2 A. I don't know.

3 Q. You don't know.

4 So when they went looking for you and tried to talk
5 to you and you refused to talk to them, you didn't want to
6 supply any information to them; right?

7 A. No.

8 Q. No.

9 Why don't you like talking to the police? Why do
10 you like lying to the solicitor's office?

11 A. Why was I lying? I wasn't lying.

12 Q. Okay. So you --

13 A. The questions that you asked me, I answered it
14 honestly.

15 Q. Did you?

16 A. Yes, I did.

17 Q. When you said you didn't know anything about
18 anything?

19 A. About what you were asking me. You asked me was I
20 there. I told you I was there. Did you ask me was I there
21 when the shooting happened? And I told you I wasn't there.
22 So what are you talking about?

23 A. I asked you if you had been at the club at all that
24 night and you said you had left. You never said anything
25 about going back, now, did you?

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 A. Did you ask me if I went back?

2 Q. Yes. I asked you when were you at the club that
3 night.

4 A. You asked me -- I never went back to the club.
5 That's where you wrong at. I never went back to the club.
6 That's not where I saw Larry at.

7 Q. Okay. So when you just testified a little while
8 ago and told Mr. Davis you went back to the club, that's not
9 true?

10 A. No. No. That's not where I saw Larry at after the
11 club -- I mean, after everything happened. That's not where I
12 saw him at. I didn't go back to the club. I went to his
13 house. That's where I saw him at.

14 Q. So if I was to look at one of Detective Wilson's
15 reports involving this incident and it said that you advised
16 him that the only information you knew concerning the homicide
17 of Herman Manigault you had picked up from the streets, is he
18 a liar or are you a liar?

19 A. Who?

20 Q. Detective Wilson. If that's in his report and you
21 told him the only thing you knew you picked up from the
22 streets --

23 A. Oh. I don't never even remember talking to a
24 Detective Wilson.

25 Q. You said that you did not witness anything and

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 therefore you did not feel you needed to provide any
2 information.

3 A. Yes, that's how I felt.

4 Q. But you changed your mind today; right?

5 A. Yes. Yes, I do -- I did.

6 Q. How are you related to Mr. Washington again?

7 A. This is my second cousin.

8 Q. How many times have you talked to his mom about
9 this case?

10 A. I don't really talk to her about this case too
11 much.

12 Q. Really? Because the other day when you were in our
13 office, you said she was pressuring you to come talk to us;
14 right?

15 A. No. I never told you that.

16 I told you -- I told you that I don't know whose --
17 I mean, who -- because you told me you don't know -- you told
18 me you wasn't the one who subpoenaed me. So I'm figuring out
19 -- I asked you who subpoenaed me. You said Mr. Davis
20 subpoenaing me.

21 Q. And Mr. Davis called you as a witness today; right?

22 A. Yes.

23 Q. Does that make sense?

24 A. Yes.

25 Q. So is that the truth, then? We had an exchange of

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

1 information that is based on the same quality of information
2 being provided by both sides. It doesn't sound like it;
3 right?

4 A. [No response]

5 Q. Now, yesterday the jury got to hear a pretty good
6 phone call from Larry Kinloch where he describes Sha'Quille
7 Washington shooting Herman Manigault. And the jury will
8 recall that you did talk to Larry after this, and that you
9 supplied information to him; right?

10 A. I supplied information to who?

11 Q. Larry Kinloch.

12 A. No. That's not true.

13 Q. Where do you live, Mr. Grant?

14 A. Right at the moment?

15 Q. Sure.

16 A. In Hanahan. I'm from Huger.

17 Q. You talk to Larry Kinloch a lot?

18 A. Yes. He's like my -- he was like my best friend.

19 Q. He's your best friend?

20 A. Yeah.

21 Q. How about Mr. Washington?

22 A. I don't talk to Mr. Washington as much, but he's my
23 second cousin.

24 Q. So it's your testimony today you didn't see
25 anything; right?

Kenneth Grant
Cross-Examination by Mr. West
October 14, 2015

- 1 A. No, I didn't.
- 2 Q. You did not see any shooting and didn't hear a
- 3 shooting and you weren't there when it happened --
- 4 A. Yes.
- 5 Q. -- you weren't there right after it happened. And
- 6 the only thing you can provide is what? Nothing; right?
- 7 A. You wrong. He told me --
- 8 Q. No. Nope. No, sir.
- 9 MR. WEST: Thank you.
- 10 THE COURT: Mr. Davis?
- 11 MR. DAVIS: Just one -- just one question.
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Kenneth Grant
Redirect Examination by Mr. Davis
October 14, 2015

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. He asked you why are you here today. Why are you here?

A. I'm here today to say that Larry --

MR. WEST: Objection.

THE COURT: Sustained.

You cannot testify as to what someone told you, unless there is an exception and I have established there is no exception.

MR. DAVIS: Judge, what about Rule 803, presence sense --

THE COURT: Okay.

[Whereupon, an off-the-record bench conference is held]

THE COURT: You may continue.

MR. DAVIS: Yes.

Q. [Mr. Davis] Mr. Grant, did myself or my investigator come out to you in the last two years to discuss this matter?

A. Yes.

Q. And when was that?

A. Like in the beginning.

Q. In the beginning; right?

And some of the same discussion we are having today

Kenneth Grant
Redirect Examination by Mr. Davis
October 14, 2015

1 was a discussion that was said two years ago; isn't that true?

2 A. Yes.

3 Q. But the sheriff's department apparently didn't
4 follow up on it; isn't that true?

5 A. Yes.

6 MR. DAVIS: No further questions.

7 THE COURT: Mr. West, recross?
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Kenneth Grant
Recross-Examination by Mr. West
October 14, 2015

RECROSS-EXAMINATION

BY MR. WEST:

Q. So when you say the sheriff's department didn't follow up on something, but you refused to talk to them, does that make any sense?

A. Umm --

Q. No?

A. Huh-uh.

MR. WEST: Thank you.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Grant is excused and exits the witness stand]

MR. DAVIS: Nothing further.

THE COURT: Call your next witness.

MR. DAVIS: Dr. Presnell. Susan Presnell.

THE COURT: I believe she goes by -- it's Dr. Erin Presnell.

THE CLERK OF COURT: Is she still under oath?

THE COURT: She's still under oath.

Doctor, please come forward and take the witness stand. Welcome back.

[Whereupon, Dr. Presnell takes the witness stand]

THE COURT: Dr. Presnell, I remind you that you are still under oath --

THE WITNESS: Yes, ma'am.

Kenneth Grant
Recross-Examination by Mr. West
October 14, 2015

THE COURT: -- and we all remember who you are.
Mr. Davis, your witness.

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Erin Presnell, M.D.
Direct Examination by Mr. Davis
October 14, 2015

ERIN PRESNELL, M.D.

Having Been Previously Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. I'm going to hand you what's been marked as
Defendant's Exhibit Number 8 and ask can you identify that for
me, please.

A. This is a copy of the toxicology report that was
performed on the blood that we drew at the time of autopsy.

Q. What was the alcohol level --

MR. WEST: Objection, Your Honor. 404.

THE COURT: Counsel approach.

[Whereupon, an off-the-record bench conference is
held]

THE COURT: Sustained.

MR. DAVIS: When are we going to proffer it, Your
Honor?

THE COURT: When I send the jury back out. But
it's on the report, --

MR. DAVIS: That's the only question I had for her.
I need to proffer her so she can go, please.

THE COURT: Ladies and gentlemen, there is a matter
of law that I must take up outside of your presence.

Do not begin your deliberations. Do not discuss

MIA PERRON, CVR-CM-M

-630-

Erin Presnell, M.D.
Direct Examination by Mr. Davis
October 14, 2015

1 this case amongst yourself. Leave your notepads right
2 where they are or take them with you.

3 Please rise for the jury. Dr. Presnell, stay
4 seated.

5 [Whereupon, the jury exits the courtroom at
6 3:34 p.m.]

7 THE COURT: Thank you. Be seated.

8 All right. Mr. Davis?

9 MR. DAVIS: Yes?

10 THE COURT: My understanding is you wish to inquire
11 of Dr. Presnell what the blood-alcohol level is. I have
12 sustained the State's objection --

13 MR. DAVIS: Yes.

14 THE COURT: -- as to the actual amount. There has
15 been abundant testimony as to the fact that there was
16 drinking or not drinking by the victim, and so I have
17 excluded this testimony, but you may continue.

18 MR. DAVIS: Thank you.

Erin Presnell, M.D.
Proffer by Mr. Davis
October 14, 2015

PROFFER

BY MR. DAVIS:

Q. Dr. Presnell, a toxicology report --

A. Right.

Q. -- is that part of the autopsy protocol?

A. Yes.

Q. Why is that part of the autopsy protocol?

A. Well, all of our autopsies are complete. So like say even if somebody -- like say we did the autopsy on Mr. Manigault and we found the fatal injury, we still complete the whole autopsy. And so part of the complete autopsy includes toxicology.

Q. And one was performed on Mr. Manigault in this case?

A. Yes.

Q. And what was the finding in reference to the toxology [phonetic] report?

A. He had a blood-alcohol level of .235.

Q. And can you share with us, as an expert, the significance -- is that considered high?

A. Yes, that is high.

Q. And high to the extent that -- you know, we do breath alcohol. How is breath alcohol different from blood alcohol content concentration?

A. Well, they correspond. And, of course, .08 being

Erin Presnell, M.D.
Proffer by Mr. Davis
October 14, 2015

1 the limit for driving. He's .235, so that's substantially
2 higher.

3 Now, with just a number, I can't predict. I
4 imagine he acted intoxicated. I can't predict how he would
5 act, though, whether he was aggressive or subdued or what his
6 actual mannerisms were under this influence. Although I can
7 say that is a high level.

8 Q. What's the lethal amount a human being should have
9 in his system?

10 A. Well, it all depends on the individual and other
11 diseases that they might also have. But certainly when we get
12 up to .4, we're considering that could be an acute alcohol
13 toxicity. Although I will have to preference that by saying
14 some chronic alcoholics are walking around with levels higher
15 than that.

16 Q. But this is extremely high in relationship that you
17 find in this toxicology report?

18 A. This toxicology -- this alcohol is high, yes.

19 Q. Now, you would surmise that it could impair
20 judgment?

21 A. Certainly.

22 MR. DAVIS: No further questions, Your Honor.

23 And note for the record that we attempted to get
24 this introduced into evidence. Thank you.

25 THE COURT: All right. And that is Defendant's 8;

Erin Presnell, M.D.
Proffer by Mr. Davis
October 14, 2015

1 is that correct?

2 MR. DAVIS: I'll have it marked as a Court Exhibit,
3 since it didn't get in, though.

4 THE COURT: Well, it's still Defendant's 8, marked
5 as Defendant's 8, so the record is clear.

6 MR. DAVIS: That's right.

7 THE COURT: It just won't go back. It hasn't been
8 admitted.

9 MR. DAVIS: Thank you.

10 THE COURT: May Dr. Presnell be excused?

11 MR. DAVIS: Judge, she can be excused.

12 And thank you for coming back.

13 THE WITNESS: I'm dismissed from both sides?

14 THE COURT: You are released from both sides.

15 Thank you. Feel free to stay with us, though.

16 [Whereupon, Dr. Presnell is excused and exits the
17 witness stand]

18 THE COURT: Mr. Davis, who is your next witness?

19 MR. DAVIS: Call Renard Deveau.

20 THE COURT: All right. Let's have Mr. Deveau on
21 the front row.

22 Let's bring in the jury.

23 [Whereupon, the jury enters the courtroom at
24 3:37 p.m.]

25 THE COURT: Thank you. Be seated.

Erin Presnell, M.D.
Proffer by Mr. Davis
October 14, 2015

1 Call your next witness.

2 MR. DAVIS: Renard Deveau.

3 THE COURT: Sir, please come forward and be sworn.

4 Ms. Hill?

5 [Whereupon, Mr. Deveau comes forward]

6 THE CLERK OF COURT: Please raise your right hand.
7 Place your left hand on the Bible.

8 [Whereupon, Mr. Deveau is duly sworn by the clerk
9 of court as follows: do you solemnly swear or affirm
10 the testimony you will give the Court in the trial of
11 this case will be the truth, the whole truth, and
12 nothing but the truth, so help so you God]

13 THE WITNESS: Yes.

14 THE CLERK OF COURT: Please be seated.

15 [Whereupon, Mr. Deveau takes the witness stand]

16 THE CLERK OF COURT: State your full name. Spell
17 your last name for the record.

18 THE WITNESS: Renard Deveau.

19 THE COURT: Spell your last name, please.

20 THE WITNESS: D-E-V-E-A-U-X.

21 THE COURT: Mr. Davis, your witness.

22 MR. DAVIS: Thank you.

23 - - -

24 - - -

25 - - -

Renard Deveau
Direct Examination by Mr. Davis
October 14, 2015

RENARD DEVEAUX;

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Where do you live, young man?

A. 2052 Cainhoy Road.

Q. How long have you lived out there?

A. All my life.

Q. And do you know why you're here today?

A. Yes.

Q. Now, there's no question that Berkeley County Sheriff's Department engaged and had a -- took a statement from you some time ago, did they not?

A. Yes, they did.

Q. So you were cooperative with the Berkeley County Sheriff's Department?

A. Yes, I was.

Q. And you're from Huger; is that correct?

A. Yes, I am.

Q. Now, you provided a statement; right?

A. Yes, I did.

Q. Do you need to review that to refresh your memory, or can you recall and tell the jury what you shared with the detectives from the Berkeley County Sheriff's Department back

MIA PERRON, CVR-CM-M

-636-

Renard Deveau
Direct Examination by Mr. Davis
October 14, 2015

1 on August the 25th -- I'm sorry -- August -- September the
2 24th of 2013?

3 A. Yes, sir.

4 Q. Do you need to refresh your memory, or can you do
5 it on your own?

6 A. On my own.

7 Q. Okay. Tell us what your recall?

8 A. Well, the first one, like I told him, I was home
9 and I placed an order.

10 Q. Placed an order for what?

11 A. For some food at the club, at the restaurant.

12 Q. And the name of the club?

13 A. A Place In The Woods.

14 Q. What kind of food you placed the order for?

15 A. That order is chicken wings and fries.

16 Q. What time was it?

17 A. Maybe -- I can't recall the exact time, but I know
18 it was real late.

19 Q. And what happened?

20 A. All right. When I -- well, I walked from home to
21 the club, because it ain't that far from my house. When I
22 walked up to the club, I walked through the parking lot. And
23 when I waked out going to the door, there was a young man
24 standing there. I don't know who it was, because his back was
25 turned to me. He had on like a brown pair of sort pants, I

MIA PERRON, CVR-CM-M

-637-

Renard Deveau
Direct Examination by Mr. Davis
October 14, 2015

1 believe.

2 And when I was walking past him, the guy that was
3 standing in front of him, the guy with the short pants, on he
4 pulled off his shirt like about to engage in a fight or
5 whatever the case may be. And I know they -- everybody like
6 to horseplay, whatever the case may be.

7 So when I got up on the step and I went in through
8 the first door, by the time I hit the second door that's when
9 I overheard gunshots.

10 Q. Now, the guy who pulled out his shirt, was he in
11 place proximity to someone that you know or were familiar
12 with?

13 A. Yes.

14 He was standing in the opposite direction of Larry
15 Kinloch.

16 Q. Did you hear them engage in any argument?

17 A. That's what I say. I heard them fussing.

18 Q. And you saw him remove his shirt?

19 A. The guy with the short pants removed his shirt.
20 Brown shorts --

21 Q. As if they were --

22 A. -- as in engaging --

23 Q. -- getting ready to get in an engagement?

24 A. -- to a fight. Yes.

25 Q. And a few seconds later, you heard some gunshots?

Renard Deveau
Direct Examination by Mr. Davis
October 14, 2015

1. A. By the time I got to the second door to enter the
2. club, that's when I heard the gunshots.

3. MR. DAVIS: No further questions.

4. THE COURT: Mr. West? Mr. Poulos?

5. MR. POULOS: Thank you, Your Honor.
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Renard Deveau
Cross-Examination by Mr. Poulos
October 14, 2015

CROSS-EXAMINATION

BY MR. POULOS:

Q. Mr. Deveau, you didn't see any -- who fired the shots; right?

A. No, I didn't. I was in the club.

Q. You didn't see the fight?

A. No.

Like I said, when I walked up, the young man with the brown short pants pulled off his shirt. They already engage in a verbal argument. Once I hit the second door, that's when I heard the shots. I can't see nothing behind me from the club.

Q. Who else was outside?

A. It was multiple people outside.

Q. The defendant was outside, wasn't he?

A. I didn't notice the defendant. Did not see him.

Q. Didn't notice him?

A. No.

Q. Mr. Deveau, you've got a criminal record?

A. Okay.

Q. Right?

A. Yes.

Q. Car-jacking, assault and battery of a high and aggravated nature, CDV first. And just last year, you were convicted of giving false information; correct?

Renard Deveau
Cross-Examination by Mr. Poulos
October 14, 2015

1 A. Okay. Can I -- can I ask you a question?

2 THE COURT: You need to answer --

3 A. Yes.

4 THE COURT: -- Mr. Poulos' questions.

5 A. That's what I was charged with.

6 Q. [Mr. Poulos] And that's what you -- that's what
7 you were convicted of?

8 A. No.

9 I was convicted of assault on -- assault and
10 battery.

11 Q. If I show you your rap sheets, it says charge,
12 giving false information, court disposition, convicted, court
13 date 4/16/2014, warrant number 92798EW, North Charleston
14 Police Department, you're telling me that's not true? That's
15 false?

16 A. In North Charleston I got arrested in and I was
17 convicted of assault.

18 Q. Read your rap sheet for me --

19 A. There's a difference in North Charleston and
20 Berkeley County.

21 Q. Mr. Deveau, read with me here. Court disposition,
22 convicted. Do you see that?

23 A. Yeah. I can read.

24 Q. So you're saying this is not true?

25 A. I didn't say that's not true.

Rénard Deveau
Cross-Examination by Mr. Poulos
October 14, 2015

1. Q. So it is true?

2. A. I was convicted of assault in Berkeley County.
3. Charleston County came and picked me up from prison and
4. brought me back and charged me with it.

5. Q. Charged you with giving false information?

6. A. Exactly.

7. Q. And you were convicted of that charge?

8. A. Yes.

9. MR. POULOS: Okay. I have nothing further, Your
10. Honor.

11. THE COURT: Mr. Davis, any redirect?

12. MR. DAVIS: No further questions, Your Honor.

13. THE COURT: You may step down, Mr. Deveau. Thank
14. you.

15. [Whereupon, Mr. Deveau is excused and exits the
16. witness stand]

17. THE COURT: Call your next witness.

18. MR. DAVIS: Robin Williams.

19. THE COURT: Please come forward and be sworn.

20. Right here to the lady in the white sweater.

21. MR. DAVIS: Judge, I think I'll have it marked for
22. identification purposes.

23. THE COURT: So Defendant's 9?

24. MR. DAVIS: Yes. 9 and 10, Your Honor.

25. THE COURT: 9 and 10.

Renard Deveau
Cross-Examination by Mr. Poulos
October 14, 2015

1 [Whereupon, Defendant's Exhibit Number 9 is marked
2 by the court reporter]

3 [Whereupon, Defendant's Exhibit Number 10 is marked
4 by the court reporter]

5 [Whereupon, Ms. Williams comes forward]

6 THE CLERK OF COURT: Please raise your right hand.
7 Place your left hand on the Bible.

8 [Whereupon, Ms. Williams is duly sworn by the clerk
9 of court as follows: do you solemnly swear or affirm
10 the testimony you will give to the Court in the trial of
11 this case will be the truth, the whole truth, and
12 nothing but the truth, so help so you God]

13 THE WITNESS: Yes.

14 THE CLERK OF COURT: Please be seated.

15 [Whereupon, Ms. Williams takes the witness stand]

16 THE CLERK OF COURT: State your full name, and
17 spell your last name for the record at this time.

18 THE WITNESS: My name is Robin Williams.

19 W-I-L-L-I-A-M-S.

20 THE COURT: Mr. Davis?
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Robin Williams
Direct Examination by Mr. Davis
October 14, 2015

ROBIN WILLIAMS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Where do you live, Ms. Williams?

A. Huger.

Q. Huger, South Carolina?

A. Yes.

Q. And you've been living there since August the 25th
of 2013?

A. Yes.

Q. And there's no question that people from the
Berkeley County Sheriff's Department, on September the 4th of
2013, they -- you gave them a statement about what transpired
that night, did you not?

A. Yes.

Q. I want to ask you can you identify this.

A. Yes, sir.

Q. Do you need to refresh your memory or --

A. No.

Q. Tell us what you recall stating.

A. I was walking out of the club and I was talking to
my cousin. And I heard a lot of fussing and whatever, and I
looked up and I see a young lady holding a glass bottle in.

Robin Williams
Direct Examination by Mr. Davis
October 14, 2015

1 Sha'Quille's face. And maybe like five seconds later, shots
2 fired, three, and then that was it.

3 Q. After the shots, where did you see Mr. Washington
4 go? Or did you see --

5 A. He runs. He ran on the second shot.

6 Q. So in the second shot -- but did you hear shots
7 after he was still running --

8 A. Yes.

9 Q. -- away?

10 A. That's when I heard the two last shots.

11 Q. So there were five shots?

12 A. No. There was four.

13 Q. Four? So you recall hearing the first two shots?

14 A. Uh-huh. There was another one, and maybe two
15 seconds there was another one.

16 Q. And he's running away --

17 A. Yes.

18 Q. -- when you heard the other two shots?

19 A. Uh-huh. He ran.

20 Q. And you --

21 MR. DAVIS: No further questions.

22 THE COURT: Mr. West?

23 MR. WEST: Hi, Ms. Williams.

24 THE WITNESS: Hello.

25 MR. WEST: I just want to clarify something.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

CROSS-EXAMINATION

BY MR. WEST:

Q. You didn't give a statement to Berkeley County Sheriff's Office; right?

A. I gave it to an investigator. I don't know. With the county.

Q. So when Mr. Davis asked you if you were cooperative with the Berkeley County Sheriff's Office --

A. I don't --

Q. -- that was Mr. Davis' investigator?

A. Okay. I don't know --

Q. Did he have on a blue --

A. -- what county.

Q. Did he have on a blue uniform like this beautiful lady right here?

A. Huh-uh.

Q. No?

A. He had on just clothes like --

Q. Okay. A badge that said Berkeley County Sheriff's Office?

A. No, no badge.

Q. No? Just plain clothes?

A. I can't remember.

Q. Did he tell you --

A. -- what --

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 Q. -- did he tell you he was working for the Davis Law
2 Firm?

3 A. He was the investigator. That's what he told me.

4 Q. So he didn't tell you he was working for the Davis
5 Law Firm?

6 A. No.

7 Q. On the top of your statement does it say -- you saw
8 your statement?

9 A. Yes.

10 Q. Does it indicate to you who you're making the
11 statement to?

12 A. I didn't read all that.

13 Q. So you gave your name and number at the top of it.
14 And it says, I'm about to make these statements known to the
15 Davis Law Firm. You didn't read it?

16 A. No.

17 Q. Did you make a complete statement?

18 A. Yes.

19 Q. Are you saying somebody from the Davis Law Firm
20 added some stuff to your statement?

21 A. No.

22 Q. That's not what you're saying?

23 A. That's mine. That's my handwriting.

24 Q. Okay. Now, let's clarify some things about the
25 shots.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 A. Uh-huh.

2 Q. You recognize the defendant; right?

3 A. I do.

4 Q. And you saw a young lady holding a glass bottle --

5 A. A bottle. Yes.

6 Q. -- in Shike's face?

7 A. Uh-huh.

8 Q. So at the time when the glass bottle was in Shike's
9 face, did you also see him pointing a gun --

10 A. No.

11 Q. -- in her face?

12 A. No.

13 Who would -- I mean, like who would have a glass
14 bottle in someone's face when they armed?

15 Q. Well, wouldn't say if he -- if somebody put a glass
16 bottle up first, they would put it down --

17 A. No. She had it up the whole time.

18 Q. Okay.

19 A. Yes. She had it in his face.

20 Q. But Mr. Washington never had a gun?

21 A. No.

22 Q. You didn't see him with a gun?

23 A. I -- no. I know how a gun looks.

24 Q. You know how a gun looks?

25 A. Yes. Uh-huh.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 Q. How do you know how a gun looks?

2 A. Because, I mean, police officers --

3 Q. I don't --

4 A. -- they carry guns.

5 Q. But you didn't know that it wasn't a police officer
6 you were talking to earlier?

7 A. When?

8 Q. You know what police officers look like?

9 A. Right.

10 Q. But you didn't know you were not giving a statement
11 to police officers earlier?

12 A. For the statement?

13 Q. Right.

14 A. No. He's an investigator.

15 Q. You realize that the young man, Herman Manigault,
16 was only shot twice; right?

17 A. Well, I heard four shots.

18 Q. Okay. But you said you saw two shots before he
19 ran.

20 A. No. I heard two shots before he ran.

21 Q. You heard two shots before he ran?

22 A. Yes.

23 Q. And he has two shots in his back, doesn't he?
24 Mr. Manigault.

25 A. I don't know.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 Q. You don't know?

2 A. I don't know.

3 Q. So if the evidence showed during the course of this
4 trial, that this jury has witnessed, that Herman Manigault had
5 two shots in his back, that would be consistent with the two
6 shots that you heard?

7 A. I don't know.

8 Q. Who else was out there?

9 A. It was me and my two cousins.

10 Q. Who's your two cousins?

11 A. Sabrina Pinckney and Lasheena Williams [all
12 phonetic].

13 Q. What's the last one?

14 A. Williams.

15 Q. What was the first name?

16 A. Lasheena.

17 Q. Lasheena?

18 A. Yes.

19 Q. Are you related to Aja Williams?

20 A. Yes.

21 Q. How are you related to her?

22 A. She's my first cousin.

23 Q. First cousin. Did you see her out there that
24 night?

25 A. Yeah. She was the bartender.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

- 1 Q. Did you ever know anybody named Larry Jenkins?
- 2 A. No.
- 3 Q. Larry Kinloch?
- 4 A. No.
- 5 Q. You don't know Larry Kinloch?
- 6 A. No. I have seen him. I don't know him.
- 7 Q. Do you know what he looks like?
- 8 A. Yeah.
- 9 Q. Did you see him there?
- 10 A. Down to the club? Yeah.
- 11 Q. Did you see him when you heard the shots?
- 12 A. No. I only saw him, Sha'Quille.
- 13 Q. Only saw Sha'Quille?
- 14 A. Yeah.
- 15 Q. Only saw Sha'Quille, heard two shots --
- 16 A. Uh-huh.
- 17 Q. -- two shots in the victim.
- 18 And you saw the defendant run. Did you see him get
- 19 in anybody's car?
- 20 A. No. Huh-uh.
- 21 Q. So if --
- 22 A. I didn't know him. I just saw when he ran. I
- 23 didn't --
- 24 Q. Where did he run?
- 25 A. He run like up the road, like towards his home.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 Q. So if this jury heard testimony that the defendant
2 ran after the first shot, which one is the lie?

3 A. Huh? Excuse me?

4 Q. If the defendant's statement said that he ran after
5 the first shot.--

6 MR. DAVIS: I'm going to object, Your Honor.

7 THE COURT: What's the basis?

8 MR. DAVIS: Pitting one witness against the next,
9 Your Honor.

10 THE COURT: Sustained.

11 Q. [Mr. West] Do you know where Sha'Quille went
12 after?

13 A. Do I know where he went?

14 Q. Do you know where he went after?

15 A. His home, I guess.

16 Q. But you never actually saw the shots; right?

17 A. I heard it.

18 Q. You just heard them?

19 A. Yes.

20 Q. Was Christina Lockwood in the parking lot?

21 A. [Indicates negatively]

22 Q. You don't know who that is?

23 A. I don't know.

24 Q. Do you know who Drequan Lockwood is?

25 A. Yes.

Robin Williams
Cross-Examination by Mr. West
October 14, 2015

1 Q. Yes? Is he in the courtroom?

2 A. No.

3 Q. He's not? Did you see him sitting over with the
4 defendant's family earlier today?

5 A. No.

6 MR. WEST: Okay. No further questions.

7 MR. DAVIS: Just a few.

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Robin Williams
Redirect Examination by Mr. Davis
October 14, 2015

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Was this young man in your line of sight when you heard these shots?

A. Yeah, I saw him. Like I saw the girl and the glass bottle to him. I saw that --

Q. Now, the question is, when you heard the shots, though --

A. Uh-huh.

Q. -- was he running or was he --

A. On maybe the second shot he ran. Because it happened right after, like --

Q. By the second shot, he's running?

A. Yes, he run.

Q. And then after that you heard --

A. The third one. Then maybe two seconds, the last one.

Q. So there's no doubt that he was not in that proximity when them other shots were there?

A. No. Uh-huh.

That -- when those shots fired, it was like it -- whoever was fighting was on the other side of the van.

Q. Did you see Larry Kinloch that afternoon, too?

A. I saw him that night.

Q. Yeah.

MIA PERRON, CVR-CM-M

-654-

Robin Williams
Redirect Examination by Mr. Davis
October 14, 2015

1 A. Yeah.

2 Q. Where did you see him at?

3 A. In the club.

4 Q. At the club. Okay.

5 Was he outside when all of this was going on, or do
6 you know?

7 A. I don't know.

8 Q. You don't know.

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Robin Williams
Recross-Examination by Mr. West
October 14, 2015

RECROSS-EXAMINATION

BY MR. WEST:

Q. Tell me about this van that -- you said the fight was on the other side of the van?

A. Uh-huh.

Q. So where exactly were you standing when this happened?

A. I was like on the far right of the building.

Q. Far right of the building?

A. Yeah. Maybe like fifteen steps.

Q. Mr. Davis has a diagram.

A. Okay.

MR. DAVIS: Wow. Got it pretty deep back there.

MR. WEST: I'll just hold it up.

Q. [Mr. West] When you say right -- this is Defense's Exhibit Number 2. When you say right of the building: this is Hammond Corner Road.

A. Uh-huh.

Q. This is A Place In The Woods. Is it right -- to my right or you're facing to the street right?

A. Yeah. This here.

Q. This side?

A. Uh-huh. Yeah.

Q. So how far over this way were you?

A. Can I show you? Can I --

Robin Williams
Recross-Examination by Mr. West
October 14, 2015

1 Q. Yeah.

2 A. Okay. I guess this is the white van, and I was
3 like right here. Maybe right here and --

4 THE COURT: Mr. West, the jury cannot see or hear
5 her.

6 THE WITNESS: Sorry.

7 MR. WEST: All right. I apologize.

8 A. Okay. I was like right here and the young lady was
9 like in front of him and he was behind -- or in front of her,
10 and she was holding a glass bottle.

11 Q. [Mr. West] All right. And where were you when you
12 heard the first shot?

13 A. I was like standing right here because my cousins,
14 they -- they had -- heard the shots --

15 Q. All right. So which way did Shike run?

16 A. He ran. Like he was running. He run toward --

17 Q. So he was never on this side?

18 A. No.

19 Q. Never was on this side?

20 A. Huh-uh.

21 I saw him -- that's how I saw him, because I was
22 standing over here and he was like right here and the lady was
23 in front of him with a bottle.

24 Q. The fight was on what side of the van?

25 A. The fight? I guess right here.

Robin Williams
Recross-Examination by Mr. West
October 14, 2015

1 Q. So Shike wasn't anywhere near the fight --

2 A. No.

3 Q. -- according to your testimony?

4 A. No, he wasn't.

5 Q. So he would never have been threatened by the
6 victim in this case?

7 A. I don't know. I wasn't -- I don't know. That's
8 why I saw them two.

9 Q. But what you remember is the defendant is
10 completely on the other side of the van. A van was in between
11 them; right?

12 A. He was like behind -- like he was just how I show
13 you on the board.

14 Q. Okay.

15 A. Yeah.

16 Q. But absolutely, to your memory, there's a white --

17 A. Van.

18 Q. -- cargo van in between the defendant and the
19 victim?

20 A. They -- okay. They was on the -- the fight was on
21 the left, I guess, and they was like behind the van like
22 farther to the left. He wasn't near the fight.

23 Q. So your testimony is that there is no way that the
24 defendant could have been threatened by any physical force
25 through that van; right?

Robin Williams
Recross-Examination by Mr. West
October 14, 2015

1 A. [Indicates negatively]

2 Q. No?

3 A. No.

4 Q. No claim of self-defense?

5 A. No.

6 MR. WEST: Okay. Thank you.

7 MR. DAVIS: In your statement you said --

8 THE COURT: All right.

9 MR. DAVIS: I'm not finished.

10 THE COURT: No, no. Mr. Davis, you don't get
11 re-recross or re-redirect. We're done.

12 MR. DAVIS: Thank you.

13 THE COURT: You may step down. Thank you so much.

14 [Whereupon, Ms. Williams is excused and exits the
15 witness stand]

16 MR. DAVIS: We call --

17 THE COURT: Call your next witness.

18 MR. DAVIS: -- Tyson Singleton, Your Honor.

19 THE COURT: Thank you.

20 Sir, please come forward to be sworn.

21 [Whereupon, Mr. Singleton comes forward]

22 THE CLERK OF COURT: Please raise your right hand.
23 Place your left hand on the Bible.

24 [Whereupon, Mr. Singleton is duly sworn by the
25 clerk of court as follows: do you solemnly swear or

Robin Williams
Recross-Examination by Mr. West
October 14, 2015

1 affirm the testimony you will give the Court in the
2 trial of this case will be the truth, the whole truth,
3 and nothing but the truth, so help so you God]

4 THE WITNESS: Yes, ma'am.

5 THE CLERK OF COURT: Please be seated.

6 [Whereupon, Mr. Singleton takes the witness stand]

7 THE CLERK OF COURT: State your full name, and
8 spell your last name for the record.

9 THE WITNESS: Spell my last?

10 THE CLERK OF COURT: Yes, sir.

11 THE WITNESS: My name is Tyson Singleton.
12 S-I-N-G-L-E-T-O-N.
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Tyson Singleton
Direct Examination by Mr. Davis
October 14, 2015

1 TYSON SINGLETON,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. DAVIS:

6 Q. Where do you live, Tyson?

7 A. Hammond Corner Road in Huger.

8 Q. Have you been living there since August the 15th of
9 2013?

10 A. Yes, sir.

11 Q. Do you recall an investigator by the name of
12 William Freeman came out and inquire or tried to find out what
13 happened August the 25th of 2013?

14 A. You said who?

15 Q. Officer William Freeman, a private investigator
16 that was hired by my office to come out there and try to --

17 A. Yes, sir.

18 Q. Do you recall giving him a statement?

19 A. Yes, sir.

20 Q. Do you mind sharing with us exactly what you
21 stated, or as best you recall, from that night?

22 A. Well, I told him I had a point in time this
23 Sha'Quille, he was at -- in the road before the first shot
24 happened. After the second shot, everybody just scatter.

25 Q. How you know that, son?

MIA PERRON, CVR-CM-M

-661-

Tyson Singleton
Direct Examination by Mr. Davis
October 14, 2015

1 A. Sir?

2 Q. How do you know that? Tell us. Where were you and
3 at what time? Tell us how you were in the position to say the
4 things that you've just said.

5 A. I was in the position inside a parking lot.

6 Q. Had you been at the club?

7 A. Yes, sir.

8 Q. So, what, everybody was leaving the club at this
9 particular time?

10 A. Yes, sir.

11 Q. But you were not engaged in any fight or anything
12 at the club?

13 A. No, sir.

14 Q. But how many shots did you heard?

15 A. I heard three.

16 Q. And it's your testimony that in relationship to
17 these shots, were this young man visible in your sight?

18 A. Yes, sir.

19 Q. And being visible in your sight, were he anywhere
20 near where the shots were being dislodged when you saw him
21 running down the road?

22 A. No, sir.

23 Q. And that's your testimony?

24 A. Yes, sir.

25 Q. Any relationship you have with this young man?

MIA PERRON, CVR-CM-M

-662-

Tyson Singleton
Direct Examination by Mr. Davis
October 14, 2015

- 1 A. That's my neighbor.
2 Q. Your neighbor?
3 A. Yes, sir.
4 Q. How old are you, son?
5 A. Twenty-seven.
6 Q. So you would have been about twenty-five when this
7 happened?
8 A. Yes, sir.
9 Q. Did you finish high school?
10 A. No, sir.
11 Q. How far you went in school?
12 A. Twelfth grade.
13 Q. Twelfth grade? What kind of work do you do?
14 A. Landscaping.
15 Q. Landscaping?
16 A. Yes, sir.
17 MR. DAVIS: No further questions.
18 THE COURT: Mr. West, your witness.
19 MR. WEST: Thank you, Your Honor.
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Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

CROSS-EXAMINATION

BY MR. WEST:

Q. Mr. Singleton, law enforcement tried to get a statement from you; right?

A. Huh?

Q. Did law enforcement ever try to get a statement from you?

A. No, sir.

Q. That's not true?

A. No, sir.

Q. So when Detective Dan Wilson puts in a report that on September the 9th, 2013, he tried to make contact with you, he's telling a lie?

A. You talking to me, or you just talking?

Q. Yeah. I'm asking. I mean, this is question and answer time.

A. Okay. Can you repeat that, please?

Q. Yeah. Sure.

So you said law enforcement never tried to contact you; right?

A. Yes, sir.

Q. But Detective Dan Wilson, if he put in a report that he tried to contact you on September the 9th, 2013, he's telling a lie?

A. I wasn't even -- wouldn't even recall that, because

MIA PERRON, CVR-CM-M

-664-

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 I was at work. I wouldn't even know if he was or not.

2 Q. So you never made contact with Detective Dan
3 Wilson?

4 A. No, sir.

5 Q. Never?

6 A. Who's Detective Dan, anyway?

7 Q. All right. Well, we're figuring that out right
8 now, sir.

9 So at 1080 Hammond Corner Road; where is that?

10 A. My house.

11 Q. That's your house? Okay.

12 And your testimony is you never talked to Dan
13 Wilson at 1080 Hammond Corner Road on September the 9th, 2013?

14 A. No, sir.

15 Q. So you never told Detective Dan Wilson that you had
16 already spoken to Steve Davis' private investigator and that
17 you would not provide detectives a statement about the
18 homicide?

19 A. I never did that.

20 Q. So Detective Dan Wilson is a liar and you're
21 telling the truth today.

22 Did you ever give a fake name to him?

23 A. No, sir.

24 Q. Okay. Let's talk a little bit about some other
25 things.

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 You've been in some trouble before; right?

2 A. Yes, sir.

3 Q. All right. Tell the jury what you've been in
4 trouble for.

5 A. [No response]

6 Q. Tell the jury --

7 MR. DAVIS: Judge, I think it's incumbent upon him
8 to ask him and see whether he deny it. I think that's
9 the proper manner to cross-examine to impeach.

10 THE COURT: Counsel approach.

11 [Whereupon, an off-the-record bench conference is
12 held]

13 Q. [Mr. West] Mr. Singleton, have you ever been
14 convicted of a crime?

15 A. Yes, sir.

16 Q. What, exactly?

17 A. Assault and battery --

18 Q. Assault and battery of a high and aggravated
19 nature?

20 A. Yes, sir.

21 Q. Now, let's talk a little bit about your statement.

22 You just testified that the defendant was in the
23 road when the first shot happened; correct?

24 A. [Indicates affirmatively]

25 THE COURT: Is that a yes?

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 A. Yes.

2 THE COURT: I need you to answer out loud.

3 THE WITNESS: I apologize.

4 Q. [Mr. West] I'm going to show you what's marked as
5 Defendant's Exhibit Number 2. You see this map? Do you
6 recognize this?

7 A. Yes, sir.

8 Q. This is the club, A Place In The Woods. This is
9 Hammond Corner Road. Where were you when you first saw the
10 defendant, Sha'Quille Washington?

11 A. Right here.

12 Q. You were right here?

13 A. Yes, sir.

14 Like the club is not like -- I been all the way at
15 the end of the club, because this was like nothing but grass
16 and a little parking area here.

17 Q. Did you see Robin Williams?

18 A. I was talking to her.

19 Q. Where was she?

20 A. Right by me.

21 Q. So right in here?

22 A. Not right in here. It was right up in here,
23 because it's nothing but parking spots, parking spaces.

24 Q. So farther to the right --

25 THE COURT: You need to speak into the microphone.

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 Thank you.

2 MR. WEST: Yeah. That's all right.

3 Q. [Mr. West] I'm just trying to get where you and
4 Robin were standing. So farther in the parking lot over here?

5 A. Yes, sir. Yes, sir.

6 Q. You were standing right next to her?

7 A. Yes, sir.

8 Q. Where was the defendant?

9 A. He was in the woods.

10 Q. Like over here?

11 A. Like right -- when you come right here, there's
12 nothing but trees.

13 Q. Right.

14 A. You can't see what's been going on inside the club.

15 Q. I'm going to leave this right here, but I'm going
16 to get a picture for you. Maybe that will help.

17 MR. WEST: Could you put State's Number 4 up?

18 Q. [Mr. West] There's a picture behind you, State's
19 Number 4. That's a view towards Hammond Corner Road. Okay?
20 Do you recognize that?

21 A. Yeah.

22 Q. Yeah.

23 And that's the van that's marked on Defense's
24 Number 2; right?

25 A. [Indicates affirmatively]

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 Q. Where were you, facing Hammond Corner Road, when
2 you heard the first shot?

3 A. Where I was facing?

4 Q. Where were you standing, like in relation to this
5 picture.

6 A. Sir, I can't see where I been standing at because I
7 don't.--

8 Q. Would it be far to the right?

9 A. All the way to the right.

10 Q. And where was the defendant?

11 A. You say where we were?

12 Q. Where was Shike?

13 A. Like all the way to the next side where trees at.
14 I can --

15 Q. Oh.. All the way --

16 A. -- see him. I can see him where the trees at.

17 MR. WEST: Can you put State's Number 2 up?

18 Q. [Mr. West] Is that the tree you're talking about?

19 A. No.

20 Q. No?

21 A. Huh-uh. There's a road right here.

22 Q. Right.

23 A. Trees. There's way -- there's like --

24 Q. Way down there?

25 A. Not like way down there. You still can't see

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 inside the club even if you go by the tree. You can't see
2 where the parking lot.

3 Q. He was that far away when the first shot happened?

4 A. Yes, sir.

5 Q. How many shots did you hear?

6 A. Three.

7 Q. Three shots. And the first one the defendant was
8 nowhere around?

9 A. Nowhere around.

10 Q. Nowhere around. Okay.

11 I'm going to go back to the exhibit, okay? Defense
12 Exhibit Number 2. Where -- do you know Herman Manigault?

13 A. No, sir.

14 Q. Do you know the person who was shot in this case?

15 A. Who?

16 Q. The person that was shot and killed?

17 A. No, I didn't know him.

18 Q. Did you see where he was when he was shot?

19 A. No, sir.

20 Q. Did you see him after he was shot?

21 A. No, sir.

22 Q. Where did you go?

23 A. I went home. I ran in the car and go home.

24 Q. What kind of car do you drive?

25 A. I don't drive a car.

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 Q. So you -- explain that. I'm confused.

2 A. I was -- I did jump in somebody else car when I
3 heard --

4 THE COURT: Sir, I need you speak into the
5 microphone.

6 A. I did jump in somebody else car when I heard the
7 shot.

8 Q. [Mr. West] Whose car did you jump in?

9 A. Quite a way. Robin Williams.

10 Q. Robin Williams?

11 A. Yes, sir.

12 Q. And she just testified; right?

13 A. Yes, sir.

14 Q. Who else was with y'all?

15 A. That's the only person I see.

16 Q. So Robin was by herself?

17 A. With me.

18 Q. So she wasn't with any other cousins or anything?

19 A. Not that I know of.

20 Q. Did you see Larry Kinloch?

21 A. No, sir.

22 Q. You didn't see Larry Kinloch at all?

23 A. I saw him inside the club.

24 Q. Oh. So he was inside the club when the shots
25 happened?

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 A. Before.

2 Q. Before.

3 A. Like when the -- people be inside the club and you
4 see them, they have their --

5 THE COURT: Sir, I need you to speak into the
6 microphone. Mr. West, I need you to --

7 MR. WEST: Yeah, I'll --

8 THE COURT: -- position yourself --

9 MR. WEST: Thank you, Your Honor.

10 THE COURT: -- so that he speaks into the
11 microphone. Thank you.

12 MR. WEST: Thank you, Your Honor.

13 I'll stand up here, try to ease everybody's
14 mind.

15 Q. [Mr. West] Tell the jury where Larry Kinloch was
16 when you heard the shots.

17 A. I didn't see Larry Kinloch in no light. Can't see
18 it in a view I was in because I was in front of the van.
19 Can't see no view.

20 Q. The van blocked your view of the shooting?

21 A. Yes, ma'am. Yes, sir.

22 Q. Well, did you ever see anybody with a gun?

23 A. No, sir.

24 Q. Did you see who did the shooting?

25 A. No, sir.

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 Q. When you heard the shots, your testimony is you
2 immediately turned and went in Robin Williams' car?

3 A. Yes, sir.

4 Q. Did you ever go back to the club that night?

5 A. No, sir.

6 Q. You didn't.

7 Okay. So when -- if somebody said that you back --
8 you went back and got in the defendant's car, that's not true?

9 A. No, it's not. I don't even know what you're
10 talking about what car.

11 Q. Didn't have a car at all?

12 A. I did not have a car. I didn't have --

13 Q. The defendant, Shike.

14 A. I wouldn't even tell you if he had a car or not. I
15 didn't see if he came in a car or not, sir.

16 Q. Do you know if he had a car?

17 A. I don't know now if he have a car. He previously
18 saying he did had a car, but I don't know.

19 Q. What kind of car did he have then?

20 A. He had a white challenger, that I know of.

21 Q. White Challenger?

22 A. Yes, sir.

23 Q. A Dodge Challenger?

24 A. Yes, sir.

25 Q. Do you know what model or year that would have

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 been?

2 A. No, sir. Not exactly.

3 Q. You said you heard two shots. Number 2 and 3,
4 where was Shike?

5 A. I done leave after the first shot, sir.

6 Q. But you said you heard three shots.

7 A. I did heard three shots.

8 Once you run to a car, you can hear three shots
9 after you done run to the car when. You gonna have time --

10 Q. You were inside the car when you heard the second
11 and third shot?

12 A. Yes, sir. Cranking up.

13 Q. Was the defendant ever on the stoop at the time of
14 the shooting?

15 A. I can't even -- I wouldn't even recall that, sir.

16 Q. Was he four or five feet away from the victim?

17 A. Huh?

18 Q. Was he four or five feet away from the victim?

19 A. I wouldn't even tell you or not, yeah or no.

20 Q. Were he close enough to see a tattoo on his chest?

21 A. If I can see a tattoo?

22 Q. Was the defendant close enough where he could have
23 seen a tattoo?

24 A. He was close enough to me to see a tattoo?

25 Q. To the victim, Herman.

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 A. I wouldn't even see that, sir.

2 Q. But your testimony is he was so far away he
3 wouldn't have been able to see that; right?

4 A. [No response]

5 Q. Okay. What kind of car did Robin Williams drive?

6 A. A Taurus. Ford Taurus.

7 Q. Ford Taurus.

8 All right. Did you see any security there that
9 night?

10 A. No, sir, not if --

11 Q. You did not?

12 A. -- not if I recall.

13 Q. Did you ever talk to my investigator, Kevin
14 McGowan, from the solicitor's office?

15 A. Who?

16 Q. Kevin McGowan.

17 Q. Who is Kevin McGowan?

18 A. The guy that served you the subpoena.

19 A. From Friday? He showed me -- served me -- somebody
20 served me a subpoena Friday to come here Monday.

21 Q. Okay. Cooperate with him or --

22 A. Yeah.

23 Q. -- did you run?

24 A. No.

25 Q. You didn't run? You didn't yell back at him you

Tyson Singleton
Cross-Examination by Mr. West
October 14, 2015

1 don't want to talk to him?

2 A. No.

3 Q. Weren't you wearing a black shirt with the white
4 letters security on the back of it?

5 A. No.

6 Q. You were not wearing that shirt at the time that
7 Kevin McGowan served you your subpoena?

8 A. No.

9 MR. WEST: Okay. No further questions for this
10 witness.

11 THE COURT: Mr. Davis?

12 MR. DAVIS: No further questions.

13 THE COURT: You may step down. Thank you, sir.

14 [Whereupon, Mr. Singleton is excused and exits the
15 witness stand]

16 THE COURT: Call your next witness.

17 MR. DAVIS: Call Francis Larry Jenkins, Your Honor.

18 THE COURT: Sir, please come forward and be -- I
19 remind you you have already been sworn. You're still
20 under oath. Please come forward and take the seat
21 again.

22

23

24

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Francis Larry Jenkins
Direct Examination by Mr. Davis
October 14, 2015

FRANCIS LARRY JENKINS,
Having Been Previously Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. I'm going to hand you what's been marked as State's Exhibit Number 36 and ask you can you identify this.

A. That one there?

Q. Yes.

A. Silver weapon. Silver gun.

Q. Is this -- yeah. Is this similar to the weapon that you saw Mr. Washington had in his possession that night on August the 25th, 2013?

A. I saw the barrel, the barrel of the weapon, because it was kind of like cupped in his hand. But it looks like a similar barrel, yes.

MR. DAVIS: No further questions.

THE COURT: Anything from the State?

MR. WEST: Nothing from the State, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: All right.

[Whereupon, Mr. Jenkins is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. DAVIS: Call Mr. William Freeman.

Francis Larry Jenkins
Direct Examination by Mr. Davis
October 14, 2015

1 THE COURT: Sir, please come forward and be sworn.

2 [Whereupon, Mr. Freeman comes forward]

3 THE CLERK OF COURT: Please raise your right hand.

4 Place your left hand on the Bible.

5 [Whereupon, Mr. Freeman is duly sworn by the clerk
6 of court as follows: do you solemnly swear or affirm
7 the testimony you will give the Court in the trial of
8 this case will be the truth, the whole truth, and
9 nothing but the truth, so help so you God]

10 THE WITNESS: So help me God.

11 THE CLERK OF COURT: Please be seated.

12 [Whereupon, Mr. Freeman takes the witness stand]

13 THE CLERK OF COURT: State your full name, and
14 spell your last name for the record.

15 THE WITNESS: Wayne Porter Freeman. F-R-E-E-M-A-N.

16 THE COURT: Mr. Davis.
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William Freeman
Direct Examination by Mr. Davis
October 14, 2015

WILLIAM FREEMAN,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. William, what type of work do you do?

A. I'm a private investigator.

Q. How long have you been a private investigator?

A. Thirty-two years.

Q. Are you certified by SLED?

A. Yes, sir.

Q. Are you competent and ethical, and all that good stuff, to continue to be a SLED -- be said -- SLED certified?

A. Yes, sir.

Q. Do you work just for the Davis Law Firm?

A. Yes, sir.

Q. Answer that question. Just -- do you work just for the Davis Law Firm?

A. Oh. No, sir.

Q. Tell us some of the other law firms that you work for in the area.

A. Before he passed away, the Lanier Law Firm, Mitch Lanier, Williams and Hughes, Bishop Law Firm, just in the area here.

Q. Give me the Charleston area. Anybody in the Tri-

William Freeman
Direct Examination by Mr. Davis
October 14, 2015

1 County area? Any Charleston lawyers?

2 A. Yes, sir. There's quite a few of them. The
3 Columbia area.

4 Q. Andy Savage?

5 A. I have in the past, yes.

6 Q. Very well. So you have worked for most of the
7 prominent lawyers in the Tri-County area?

8 A. Yes, sir.

9 Q. And you're in good standing with SLED?

10 A. Yes, sir.

11 Q. Yeah. Now, I employed your services on behalf of
12 Mr. Washington back in I would say early -- late August of
13 2013?

14 A. It was September the 3rd, 2013.

15 Q. September the 3rd?

16 A. Yes, sir.

17 Q. And what was the purpose for me hiring you back
18 then, as you recall?

19 A. To investigate the allegations against Mr.
20 Sha'Quille Washington.

21 Q. And you went out just -- tell the jury what you
22 went out and attempted to do.

23 A. Went out and attempted to locate different people
24 and talk to them, you know, see if they had any information
25 that would be pertinent to the investigation. We located two

MIA PERRON, CVR-CM-M

-680-

William Freeman
Direct Examination by Mr. Davis
October 14, 2015

1 individuals in the area that shed what I would call reasonable
2 doubt on the charges against Mr. Washington.

3 Q. And those two people were Robin Williams and Tyson
4 Singleton?

5 A. Yes, sir.

6 Q. Were you ever able to locate or found Mr. Larry
7 Kinloch?

8 A. No, sir, I don't think so.

9 Q. Now, were you able to retrieve or obtain possession
10 of a weapon that is into evidence now, State's Number 36 --
11 I'm going to hand it to you -- for identification purposes.
12 There's been some discussion about it. Do you recall this
13 weapon?

14 A. Yes, sir. It is a Taurus .38 caliber revolver.

15 Q. And where had you received it or who presented that
16 to you?

17 A. Ms. Melissa Washington presented it to me.

18 Q. And how -- do you recall how long that -- after she
19 presented it to you, how long has it been in your possession?

20 A. It's been in my possession since she presented it
21 to me on or about September the 15th of 2013, up until
22 recently when I turned it over to the solicitor's office.

23 Q. Now, do you have any control as to -- strike that.

24 At some point I directed you to present this weapon
25 to the solicitor's office, did I not?

William Freeman
Direct Examination by Mr. Davis
October 14, 2015

1 A. Yes, sir.

2 Q. And did you follow my course of instruction?

3 A. Yes, sir.

4 Q. And you did?

5 A. Yes, sir.

6 Q. Now, you understand the significance of a weapon in
7 relationship to projectiles that are found at the crime scene,
8 are you not?

9 A. Yes, sir.

10 Q. In the sense that they can determine a match of
11 whether this particular weapon in reference to a projectile
12 that are taken from an individual who has been shot matches
13 the weapon. Isn't that true?

14 A. That is true.

15 Q. Now, you don't do that type of stuff, do you?

16 A. No, sir.

17 Q. The capability -- unless you are prepared to pay a
18 sum of money from some private outside source, the best source
19 to do that in the state of South Carolina is what department?

20 A. That would be SLED.

21 Q. And that's what happened in this matter; right?

22 A. Yes, sir.

23 Q. Thank you. Now, when you went out and talked to
24 these people, you didn't misguide them that you represented
25 the sheriff's department, did you?

William Freeman
Direct Examination by Mr. Davis
October 14, 2015

1 A. No, sir. Not at all.

2 Q. Now, you received a subpoena to be here from the
3 solicitor's office; right?

4 A. Yes, sir.

5 Q. Matter of fact, you received that subpoena the same
6 day you handed the gun over; right?

7 A. Yes, sir.

8 Q. And you required to give a statement how you got
9 that gun that same day; right?

10 A. Yes, sir.

11 Q. Has the statement changed any today than what you
12 give to them when they handed that subpoena to you and
13 required you to give a statement that day?

14 A. No, sir.

15 MR. DAVIS: No further questions

16 THE COURT: Mr. West?

17 MR. WEST: Thank you, Your Honor.

18 Good morning, Mr. Freeman.

19 THE WITNESS: Good morning.

20 MR. WEST: Or afternoon. I'm sorry.

21 THE WITNESS: Yeah. It is, isn't it?

22 MR. WEST: My days are running together.

23 THE COURT: Almost evening.

24 MR. WEST: Yes. I'm sorry for that.

25 - - -

William Freeman
Cross-Examination by Mr. West
October 14, 2015

CROSS-EXAMINATION

BY MR. WEST:

Q. Now, you collected a revolver in this case?

A. Yes, sir.

Q. Who did you collect it from?

A. Melissa Washington.

Q. Who is Melissa Washington?

A. From my understanding, she is Sha'Quille
Washington's mother.

Q. You got a piece of evidence from the defendant's
mom?

A. Yes, sir.

Q. Where did she get it from? Do you know?

A. I do not know.

She got it from an individual. I do not know the
individual's name that she got it from.

Q. She didn't get it from the defendant?

A. No, sir, I didn't.

Q. Now, let's talk about you getting the weapon. How
many times did you attempt to get the weapon?

A. Twice.

Q. Twice?

A. Yes, sir.

Q. For this very, very, very important piece of
evidence, you went one time and she couldn't find it; right?

MIA PERRON, CVR-CM-M

-684-

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 A. Correct.

2 Q. She couldn't find the gun?

3 A. Correct.

4 Q. And then a couple of days later, she miraculously
5 found it; right?

6 A. She called me and said she had possession of it,
7 and I agreed to meet with her to obtain it.

8 Q. So two tries and you finally got it?

9 A. [Indicates affirmatively]

10 Q. And you got it on September 15th, 2013?

11 A. Yes, sir.

12 Q. And let's talk about -- you never told anybody at
13 the sheriff's office you had it, did you?

14 A. No, sir.

15 Q. Not Captain Rick Ollic?

16 A. No, sir.

17 Q. You've never told Captain Rick Ollic you had that
18 weapon?

19 A. To the best of my knowledge, I did not.

20 I talked to him a lot, but whether I mentioned that
21 to him I really couldn't say.

22 Q. Do you think that if you would have -- it would
23 have been an important part of your personal investigation
24 into this matter, this so-called search for reasonable doubt,
25 as you stated it --

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 A. Uh-huh.

2 Q. -- that if you talked to the captain of the
3 detectives, you would have memorialized that in some way?

4 A. If I talked to him, I would have.

5 Q. So if somebody said that you talked to Captain Rick
6 Ollic, and it's not memorialized, then most likely your
7 recollection, while your hand's on the Bible, the truth is it
8 didn't happen?

9 A. I do not recall having that conversation with
10 Captain Ollic.

11 Q. Okay. So this gun sat in your desk drawer for two
12 years?

13 A. No, sir.

14 Q. Where did it sit?

15 A. It sat in my safe for two years.

16 Q. Sat in your safe for two years. You didn't tell a
17 soul; right?

18 A. I told the Davis Law Firm the day that I received
19 the weapon.

20 Q. And when were you instructed to turn that evidence
21 over to the solicitor's office?

22 A. It was either October 1st or October 2nd, 2014.

23 Q. 2014 or 2015?

24 A. I'm sorry. 2015.

25 Q. Okay. September 15th, 2013, October 3rd? What did

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 you say? 2nd?

2 A. Two years.

3 Q. Okay. Two years -- for two years.

4 Now, you talked to Tyson Singleton; right?

5 A. Yes, sir.

6 Q. And you talked to Robin Williams; right?

7 A. Yes, sir.

8 Q. Tell me about your interaction with Melissa
9 Washington on the 15th of September, 2013.

10 A. On what day of September?

11 Q. The 15th, when you actually collected the gun.
12 Tell me about the collection process.

13 A. I met her at a boat landing at the intersection of
14 402 and Dock Evans Road. She got out of her vehicle, got into
15 mine. Handed me the weapon. We talked for a couple of
16 minutes concerning the investigation, and then she left.

17 Q. And that was it.

18 You have no testimony, that you can give this jury,
19 as to where that weapon came from prior to Melissa Washington
20 delivering it to you?

21 A. No, sir.

22 Q. You have no idea, between the date of September --
23 or, excuse me -- August the 25th and September 15th, who on
24 earth could have touched that gun?

25 A. No idea.

MIA PERRON, CVR-CM-M

-687-

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 Q. No idea? Okay. When you collected it, did you
2 wear gloves?

3 A. Yes, I did.

4 Q. Was Ms. Washington wearing gloves?

5 A. I don't recall that she was, no, sir.

6 It seems the weapon was in -- seems it was in a
7 plastic bag.

8 Q. It was in a plastic bag? Was it dated when they
9 put it in a plastic bag?

10 A. No, sir.

11 Q. Any stickers or chains of custody that would be
12 attached to it, much like law enforcement does on their proper
13 handling of evidence?

14 A. No, sir.

15 Q. None of that happened in this case with this gun;
16 right?

17 A. [No response]

18 Q. Right?

19 A. I'm sorry?

20 Q. None of that proper handling -- until you got it.
21 I mean, you're an investigator. You know what to do.

22 A. Uh-huh.

23 Q. You've got to put your gloves on. You handled it
24 just like you're supposed to; right?

25 A. Right.

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 Q. But none of that happened beforehand?

2 A. No, sir.

3 Q. Now, in your statement you said that she obtained
4 it from a relative; right?

5 A. Yes, sir.

6 Q. A relative. We've had a lot of relatives of Shike
7 coming in here this week. Which relative was it?

8 A. I couldn't tell you.

9 Q. Couldn't tell you.

10 But it could have been any one of these relatives
11 that came in here during this week to testify; right?

12 A. I would imagine it could be.

13 Q. Now, you say you investigated this but you only got
14 two statements from people?

15 A. Yes, sir.

16 Q. Did you make any reports? Did you make reports
17 like law enforcement makes reports during an investigation?

18 A. Just the written statements that I took.

19 Q. Why don't you make any reports?

20 A. It wasn't required at the time.

21 Q. Because something's not required, you don't do it?
22 I mean, I'm just trying --

23 A. I took --

24 Q. -- how do you --

25 A. I took the statements. I passed them off to the

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 Davis Law Firm, and that's where it was.

2 Q. How do you remember what you did? Dates? Times?

3 A. I had field notes.

4 Q. Did you give those to Mr. Davis?

5 A. No, sir.

6 Q. Do you have them with you today?

7 A. Sir?

8 Q. Do you have them with you today?

9 A. No, I do not. Not all of them.

10 Q. So some of them?

11 A. Some of them.

12 Q. Mind if I take a look at them?

13 A. Sure. There's both of them right there.

14 [Whereupon, the witness proffers documents to
15 Mr. West]

16 Q. [Mr. West] So on -- I'm sorry. You're going to
17 have to help me with the handwriting. Tell us what your field
18 notes say.

19 A. This one looks like on 9/4 got a notation, Robin,
20 who saw the defendant run after the first shot, heard three
21 more shots after defendant ran, Robin left and the defendant
22 was halfway down the road.

23 Q. Okay. Next.

24 A. Got a notation, 9/4, Tyson -- don't have a last
25 name -- eighty-five years old, heard about it, not there, no

MIA PERRON, CVR-CM-M

-690-

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 information. 9/5, I met with Tyson Singleton and obtained his
2 statement.

3 Q. Any relation, Tyson?

4 A. I think his grandfather.

5 Q. There's two Tysons involved?

6 A. Uh-huh.

7 Q. No report or anything to jog your memory about what
8 you did?

9 A. No, sir. That's it. I just read it to you.

10 Q. And that's the only two people you talked to?

11 A. Correct.

12 Q. Did you ever try to figure out where that gun came
13 from?

14 A. The only thing I had to go by was what Ms.
15 Washington told me.

16 Q. She would be honest with you because you were
17 working for the Davis Law Firm; right?

18 A. Correct.

19 Q. But you couldn't figure out who that relative was?

20 A. I'm sure she told me, but I didn't jot it down at
21 the time.

22 Q. Do you think if you would have told Captain Shuler,
23 that he would have been able to follow up on that?

24 A. Had I know, yes.

25 Q. But you didn't tell him?

William Freeman
Cross-Examination by Mr. West
October 14, 2015

1 A. I didn't have a name to give him, sir.

2 Q. You didn't tell him that Melissa Washington turned
3 something over to you, did you?

4 A. Yes, sir, I did.

5 Q. Eventually? Last week?

6 A. When I met in your office. Correct.

7 Q. Right.

8 Well, that's what I'm saying. This homicide,
9 murder, happened August the 25th, 2013.

10 A. Okay.

11 Q. And you found out that a potential relative was in
12 possession of a weapon, that there's been a lot being made out
13 about during this trial, and you didn't even tell the
14 sheriff's office to try to follow up; right?

15 A. Correct.

16 MR. WEST: No further questions for this witness.

17 MR. DAVIS: Release him, Your Honor.

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

19 [Whereupon, Mr. Freeman is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness.

22 MR. DAVIS: Other than, you know -- that would be
23 all, except for the defendant, Your Honor. If he has
24 decided. I want you to ask him that question.

25 THE COURT: Ladies and gentlemen, there is a matter

Renewal of Motions by Mr. Davis
October 14, 2015

RENEWAL OF MOTIONS BY MR. DAVIS

THE COURT: Any motions or matters?

MR. DAVIS: We renew our motion that we made at the conclusion of the State's case, Your Honor.

Even with additional information as to witnesses who would testify that this young man was visibly seen running away when other shots were being dislodged, which would negate the State carrying the burden in reference to murder as it aligns to this young man.

THE COURT: I have not heard any additional testimony as to -- to rule on a motion for a directed verdict, it's the existence or nonexistence of evidence presented to the jury, so I haven't heard anything that would negate what I previously ruled at the close of the State's case.

I'll be happy to hear from you regarding self-defense, but I think the fact that you just indicated to the Court that he was running away would necessitate -- would not necessitate an instruction on self-defense. But I'm happy to hear from you.

MR. DAVIS: Judge, the self-defense I think is two part in that instance.

The two part in the instance that there was a moment in time when Ms. Coakley had a Heineken bottle in an effort to strike him. And it would be my position

Renewal of Motions by Mr. Davis
October 14, 2015

1 that he had the right, then, to defend himself. And
2 there's no question that within an immediacy of time,
3 right in that time is when the shots were heard.

4 And so it would be my position the fact that he was
5 running away after, by two eyewitnesses, does not negate
6 the fact that -- of self-defense. I think it all in the
7 congruent [phonetic] of all the fact scenario that's
8 been presented from this witness stand in reference to
9 the young lady who testified very vehemently about her
10 effort to engage or disengage a fight, she was a
11 participate, that this young man then turned around --
12 that's her testimony -- and pointed a weapon at her and
13 a few seconds later she heard some gunshots.

14 And then you have a continuation of witnesses as to
15 how many shots were heard and what manner, or more the
16 position Mr. Washington existed in after those shots
17 were dislodged, Your Honor.

18 I think at the minimum, he is entitled to a charge
19 of self-defense, Your Honor.

20 THE COURT: All right.

21 MR. WEST: Your Honor --

22 THE COURT: Well, let's do it this way. We do not
23 need the jury for the remainder of the day. I'm going
24 to bring them back in and release them, have them come
25 back at 9:30 in the morning.

Renewal of Motions by Mr. Davis
October 14, 2015

1 THE COURT: Ladies and gentlemen, I instruct you
2 and emphasize the fact that the defendant did not
3 testify is not a factor to be considered by you in any
4 way in your deliberation and in your consideration on
5 the question of the guilt of the defendant. It must not
6 be considered by you in any manner whatsoever.

7 A defendant has the Constitutional right to
8 remain silent, and the assertion of this right must
9 not be considered by you in your deliberations. I
10 repeat, under your oath that you took as jurors, you
11 are to draw no conclusion whatsoever from the fact that
12 Mr. Washington did not testify.

13 Mr. Foreman, the fact that the defendant did not
14 testify should not be considered in any way in the jury
15 deliberation room. As I have indicated to you, the
16 burden of proof is on the state. The defendant is never
17 required to prove himself innocent.

18 Ladies and gentlemen, we have reached the stage of
19 the trial where you will hear closing arguments on
20 behalf of counsel. After that, I will instruct you on
21 the law applicable to this case.

22 Ladies and gentlemen, due to the lateness of the
23 hour, we are going to recess for the evening. Please be
24 back in your jury room. We will begin promptly at 9:30
25 in the morning. Again, I want to thank you for your

Renewal of Motions by Mr. Davis
October 14, 2015

1 promptness. Each of you have been here on time and have
2 been considerate of each others' time, as well as to the
3 Court's time, so thank you very much.

4 Please remember all of my admonitions. You have
5 not been instructed on the law applicable to this case.
6 Do not read, watch, listen to any news accounts
7 regarding this case. Do not do any independent
8 investigations. Do not begin deciding any issue in this
9 case until I tell you otherwise.

10 Please take your notepads and other personal
11 belongings with you. I will see you back at 9:30.

12 Please stand.

13 [Whereupon, the jury exits the courtroom at
14 4:39 p.m.]

15 THE COURT: Thank you. Be seated.

16 We're going to take about ten minutes comfort
17 break.

18 What we'll do is we'll go ahead and just do a
19 charge conference, as well. I've got the verdict form
20 and my charges ready. So why don't we just -- we'll
21 just recess. Please be back at 9:15 in the morning.
22 I'll see y'all in chambers in ten minutes.

23 MR. WEST: Okay.

24 THE COURT: All right. Thank you.

25 [JURY TRIAL ADJOURNS AT 4:41 P.M.]

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NO.: 2015-GS-08-01333

STATE OF SOUTH CAROLINA)
)
 VS.)
)
)
)
 SHA'QUILLE MI'LEAK JAMAL WASHINGTON,)
)
 DEFENDANT.)
)

JURY TRIAL

VOLUME 4 OF 5

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on October 15th, 2015, Commencing at 9:23 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	704
CLOSING STATEMENT BY MR. WEST	718
CLOSING ARGUMENT BY MR. DAVIS	726
CLOSING ARGUMENT BY MR. WEST	740
CHARGE OF THE COURT	769
ALLEN CHARGE	788
CERTIFICATE OF COURT REPORTER	796

INDEX TO EXHIBITS

	MARKED/ADMITTED
Court's Exhibit Number 3 [E-mail Containing Cases]	785 /
Court's Exhibit Number 4 [Note From The Jury]	785 /
Court's Exhibit Number 5 [Note From The Jury]	785 /
Court's Exhibit Number 6 [Note From The Jury]	785 /
Court's Exhibit Number 7 [Note From The Jury]	785 /

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

PROCEEDINGS

THE COURT: All right. Counsel, please come take a look at the verdict form.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Mr. West, I received several e-mails you sent over the evening hour. I received them this morning. We had an informal charge conference last evening. I will be happy to hear you on the record.

MR. WEST: Thank you, Your Honor. Briefly, we had discussed not charging identification.

I would like that identification charge to be included within the charge to the jury to save any appellate questions for later down the road.

We also had asked for a refusal to charge voluntary manslaughter. The State has provided several cases that we believe supports the position that this is not a case of self -- where voluntary manslaughter necessarily applies. Specifically, Your Honor, the State has provided a case of State v. Niles, 412 S.C. 515. In that case what we have is a very like scenario where all of this revolves on the heat of passion and the sudden provocation is required for a voluntary manslaughter charge.

In the present case the defendant's own recorded

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 statement, admitted into evidence, asserts that he was
2 not involved in any altercation whatsoever. Defense
3 witnesses Robin Williams and Tyson Singleton stated they
4 observed the defendant at the time of the shooting and
5 he was not involved in any altercation.

6 Where the defendant Niles cannot assert heat of
7 passion while allegedly under fire from the victim,
8 Defendant Sha'Quille Washington certainly cannot assert
9 heat of passion where he has claimed not to be involved
10 in the altercation at all.

11 Furthermore, the State's witness, Arianna Coakley,
12 stated she approached the defendant with a beer bottle,
13 as the defendant was striking the victim, in order to
14 come to the victim's defense. The defense's argument
15 that Ms. Coakley's actions provide evidence of heat of
16 passion is flawed. The engagement had already commenced
17 between the defendant and the victim. Ms. Coakley's
18 attempt at defending the victim from the assault cannot
19 be the predicate of the defendant's passion where the
20 defendant is already engaged in the act before Ms.
21 Coakley's attempt at interceding.

22 Next, Your Honor, the State has provided the case
23 of State v. Starnes, S-T-A-R-N-E-S, 388 S.C. 590, 2010.
24 In that case there was no evidence that the defendant
25 shot victims in the heat of passion upon sufficient

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 legal provocation.

2 In comparing the facts of that case, we have a case
3 that, while being threatened with a gun was not
4 sufficient legal provocation in Starnes, being
5 threatened with a beer bottle by Ms. Coakley is
6 certainly not sufficient legal provocation for the
7 defendant. Certainly, a gun would be more threatening
8 than a beer bottle. And in that case the Court declined
9 to charge voluntary manslaughter. In this case that
10 certainly supports that Sha'Quille Washington could not
11 have been in fear that would cause him to then indulge
12 in the heat of passion.

13 Additionally, there is no evidence or testimony of
14 any kind presented to remotely suggest that Sha'Quille
15 Washington ever lost control or had an uncontrollable
16 impulse. There is no testimony, no evidence, presented
17 that he ever lost his state of mind. The state of mind
18 is the important part of the voluntary manslaughter
19 charge. And with all indications from the evidence,
20 this defendant was acting purposefully, he was acting
21 under a plan that he had, in order to engage in an
22 altercation with Herman Manigault and ultimately shoot
23 him, causing his demise.

24 Next, Your Honor, we have State v. Walker, 324 S.C.
25 257, from 1996. In that case the defendant was charged

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 with murder of his wife and was not entitled to the
2 instruction of voluntary manslaughter because there was
3 an absence that he acted in the sudden heat of passion
4 when he shot his wife. Evidence revealed only that the
5 witness heard a scuffle. The victim was angry at the
6 defendant -- the victim and defendant had a bad
7 relationship -- and the victim charged at the defendant.

8 In comparison to this case, Your Honor, the victim
9 charging at the defendant in Walker was insufficient
10 provocation. The victim in the present case is alleged
11 to have merely taken off his shirt. There is no
12 indication that the victim ever swung at the defendant.
13 The defendant certainly did not have any markings of an
14 altercation that day when Captain Shuler met him only a
15 few hours after the shooting occurred. There was no
16 scrapes, bruises, or anything to suggest that the
17 defendant had ever been struck, or part of an
18 altercation, other than the altercation in which he
19 caused the injuries to the victim.

20 Next, Your Honor, State v. Holland, 385 S.C. 159,
21 from 2009. In Holland, the defendant was not entitled
22 to a charge on voluntary manslaughter because the
23 evidence did not show he acted in a sudden heat of
24 passion upon sufficient legal provocation. The rage
25 experienced by the defendant when he fired the fatal

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 shot had already been continuously sustained from the
2 moment of his initial fury during a verbal argument
3 inside the bar. The defendant saw the victim leaving
4 the bar. He immediately went outside directly to his
5 car to retrieve the gun. He ran towards the passenger
6 side of the car where the victim was. The victim got
7 out of the car. The two grabbed each other, locked
8 arms. The victim had his head down. And while it
9 appeared that the defendant was hitting him in his head,
10 three shots were fired. After the third shot, the
11 victim fell and the defendant then ran to his car and
12 drove away. Very similar fact pattern to what we have
13 here.

14 So in comparison, the facts of Holland certainly
15 show the defendant initiated a hostile interaction
16 inside the bar. He would have several menacing looks,
17 possible statements, from the defendant to the victim.
18 There has been testimony that the victim felt that he
19 was in fear for his life. And this defendant did follow
20 the victim out of the bar. He engaged the victim in a
21 physical altercation outside the bar and he shot him in
22 the course of that interaction and then he fled.

23 The facts in the present case certainly support the
24 insufficiency of the evidence for the voluntary
25 manslaughter charge. These cases support our position,

MIA PERRON, CVR-CM-M

-708-

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 and we respectfully request that you do not charge the
2 jury on the law of voluntary manslaughter.

3 THE COURT: Mr. Davis, let me hear to you as to --
4 I'm sorry.

5 Mr. West, you want hand of one?

6 MR. WEST: I do, Your Honor.

7 One of the things that's been presented in this
8 case has been the theory that Larry Kinloch is the
9 actual shooter. This argument sort of has two parts for
10 me, Your Honor.

11 I don't believe there's any evidence in the record
12 that Larry Kinloch was the shooter, but there's
13 certainly been multiple indications from the defense
14 during this trial that he was, in fact, the person with
15 the gun, he was the shooter, and that he is the reason
16 that Herman Manigault is now dead.

17 Under the hand of one, hand of all concept in our
18 laws, if somebody is involved in an altercation, it
19 doesn't matter what the end results. His participants
20 are also responsible for the end result. So what we
21 need is knowledge and participation.

22 Certainly, the defendant knew there was going to be
23 an altercation. He followed behind the victim. And he
24 certainly participated in the assault of the victim. We
25 have direct testimony that he struck the victim in the

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 eye and he struck the victim in the back of the head
2 causing the victim to break his skull. And then at that
3 point is when the shooting would have occurred,
4 according to the testimony.

5 So even if it was Larry Kinloch that ultimately did
6 shoot the victim in this case, the defendant was part of
7 the assault. He knew the assault was happening. He
8 himself had a weapon. And from that, we should get the
9 hand of one, hand of all charge, Your Honor.

10 THE COURT: Mr. Davis?

11 MR. DAVIS: Your Honor, first, in reference to the
12 issue of voluntary manslaughter, I am going to take
13 issue with the rendition of the facts as presented by
14 the State.

15 There's ample evidence in the record that this
16 is a situation where a fight ensued. If you take the
17 testimony of Francis Jenkins, he said he did not know
18 who struck who first.

19 But this is what we do know. We do know that there
20 is a fight ensuing engaging four individuals. No
21 question whatsoever. And we also know that there is a
22 connection between Ms. Coakley and the victim. They
23 were boyfriend-girlfriend for a period of four years.
24 There is no question whatsoever in relationship that she
25 posed a threat, whatever momentarily, with a Heinekin

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 bottle, about to strike this young man. His state of
2 mind, as he turns to Mr. Washington, was one of actually
3 trying to re-bat or counter a threat that was live and
4 viable.

5 And what's interesting, within a matter of seconds
6 Ms. Coakley's testimony is that she heard some shots.
7 Being presented with one threat, and immediately the
8 firing of some shots. His state of mind was, yes, in
9 that instance he even told Ms. Coakley, if we accept the
10 testimony that's been presented, I'm not playing, or
11 whatever, and then within seconds the shots are fired.

12 But what is even more interesting as you look at
13 segments of the case, segments, there has been no scene-
14 segment corroboration. There is no testimony in the
15 record as what Francis Jenkins, whether he observed --
16 whether he had -- there's no aspect of whether or not
17 what's going on at that time and moment when Ms. Coakley
18 is coming with the bottle towards this young man and
19 then within seconds there is gunshot. Definitely, Larry
20 Jenkins spoke that hotheads, a fight. Ms. Coakley said,
21 I am about to snap -- Victim Manigault, I am about --
22 I'm going to snap in a minute. I am about to snap. I
23 am about to snap. Not in the presence of this young
24 man, but I'm about to snap, in conjunction and language
25 with Ms. Coakley. So Ms. Coakley is fully aware of this

MIA PERRON, CVR-CM-M

-711-

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 whole unit of events. I am about to snap.

2 And that about to snap is a continuation where the
3 boy told -- I think each of the young man followed
4 anybody out. Everybody was exiting the club. The club
5 was over. The party was over. And within a brief
6 moment of span or lure of time, a tragic death occurred.
7 If that's not heat of passion, no moment for cooling
8 off, no moment for refreshing heat of passion, fight
9 ensued.

10 I say voluntary manslaughter definitely is proper
11 instruction. There is some evidence to support
12 voluntary manslaughter. The law says are there any
13 evidence. Yes, there is evidence to support voluntary
14 manslaughter.

15 And, you know, that's why we selected twelve
16 jurors. And they should have the proper law --

17 THE COURT: This isn't closing, Mr. Davis.

18 MR. DAVIS: Okay. Thank you.

19 THE COURT: As to identification?

20 MR. DAVIS: Judge, I have an issue with
21 identification because identification has been --

22 THE COURT: So you don't --

23 MR. DAVIS: No, I don't.

24 THE COURT: -- you don't disagree?

25 MR. DAVIS: No, I don't disagree.

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 THE COURT: As to hand of one?

2 MR. DAVIS: I disagree with the hand of one in this
3 issue. The case theory in this whole case --

4 Judge, could I have a copy of the indictment,
5 please?

6 THE COURT: I don't have a copy of the indictment.

7 MR. DAVIS: I never got a copy --

8 THE COURT: -- I have the indictment.

9 MR. DAVIS: -- of the indictment, neither.

10 I'm just going to give it back to her. I just want
11 to use it for argument sake.

12 That in Berkeley County about August the 25th,
13 2013, the defendant, Sha'Quille Mi'Leak Washington, with
14 malice aforethought, did kill and murder Herman
15 Manigault by means of gunshot, did die as a proximate
16 cause.

17 There is nothing in this indictment about
18 accomplice, aid, abet, to which -- with accomplice with
19 anybody else. Now, the State's own theory that this guy
20 is the murderer, he is the shooter: now, the defense,
21 yes, have tried to make some suggestions or inference.
22 But, you know, there is no evidence in the record that
23 Larry Kinloch had a gun. There is no evidence in the
24 record that Larry Kinloch shot anybody. The witnesses,
25 every last one --

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 The only possible witness that had a chance to say
2 that under an utter excited exception to the hearsay
3 rule, the jury was instructed to disregard that
4 completely from their deliberation and was instructed
5 that they cannot go back in the jury room and discuss
6 the fact that Quinton, Kenneth Quinton Grant, said,
7 Larry; I heard Larry say he did it. You instructed the
8 foreman of the jury --

9 THE COURT: I thought Ms. Williams testified as to
10 they, or the bartender testified as to they. Is that
11 correct?

12 MR. WEST: She did say they followed him out. She
13 never said she saw the shots or who the shooter was.

14 THE COURT: I don't have my notes in front of me.
15 Which --

16 MR. WEST: Aja Williams --

17 MR. DAVIS: Aja Williams.

18 THE COURT: Which witness said that Herman said
19 they are going to kill me?

20 MR. WEST: That was Aja.

21 THE COURT: So there is evidence in the record of a
22 they are going to kill me.

23 Correct, Mr. West?

24 MR. WEST: That was the testimony of Ms. Williams.

25 MR. DAVIS: Ms. Williams said, I said -- she

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 pointedly said -- when put on cross-examination, she did
2 not reach the point of they.

3 THE COURT: Well, she was your witness --

4 MR. DAVIS: Well, Judge, I --

5 THE COURT: -- so it was a direct for you.

6 Cross for you; correct?

7 MR. WEST: That's correct, Your Honor.

8 THE COURT: And so --

9 MR. DAVIS: Just to note, we object strenuously to
10 the hand of one. We do not believe there is any
11 accomplish liability to this case. I think it's
12 contrary to the even theory of the solicitor's case in
13 this matter, it's upside down and reversed, and I think
14 it's improper law charged in this matter, Your Honor.

15 THE COURT: And we just need to place on the record
16 about self-defense. You requested --

17 MR. DAVIS: Yes. Thank you, Judge.

18 THE COURT: -- self-defense.

19 MR. DAVIS: I take issue. I think that there
20 should be a charge on self-defense. There is no
21 connection whatsoever, when you connote the connection
22 between Ms. Coakley and Mr. Herman Manigault and the
23 rules of engagement that he removed his shirt, and that
24 whole scenario where Ms. Coakley attempted to strike
25 this young man with the bottle, that he had a right to

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 self-defense and to quell that threat that was perceived
2 live and viable to him. Therefore, I believe that he is
3 entitled to a charge of self-defense, Your Honor.

4 THE COURT: Mr. West, do you disagree?

5 MR. WEST: I completely disagree, Your Honor.

6 THE COURT: And I think based upon the testimony,
7 and we went over this at length last evening in
8 chambers, there has been no testimony that would justify
9 a self-defense charge.

10 All right. Let me see counsel in chambers.

11 We'll take just a short recess, and then we will
12 get started with closing. All right? Thank you.

13 [Whereupon, a recess is taken from 9:42 a.m. to
14 9:54 a.m.]

15 THE COURT: Bring in the jury.

16 [Whereupon, the jury enters the courtroom at
17 9:55 a.m.]

18 THE COURT: Good morning, ladies and gentlemen. If
19 you complied with my instructions over the evening hour,
20 please raise your right hand.

21 Thank you. All fourteen jurors have indicated they
22 complied with the Court's instructions over the evening
23 hour.

24 Ladies and gentlemen, we have reached the stage of
25 the trial where you will now hear closing arguments on

State vs. Sha'Quille Washington
Proceedings
October 15, 2015

1 behalf of counsel. Just as I instructed you what was
2 contained in opening statements is not to be considered
3 evidence, neither is what is contained in closing
4 argument. Mr. West will give the first close on behalf
5 of the State, Mr. Davis will give his close on behalf of
6 the defendant, and then Mr. West will have an
7 opportunity for rebuttal. After that, you will -- I
8 will instruct you on the law applicable to this case.
9 You will then retire to consider your verdict.

10 As I indicated, Mr. Foreman, you are responsible
11 for writing the verdict, but I'll give you instructions
12 in just a moment when I instruct you on the law
13 applicable to this case.

14 Please remember that all of the exhibits that have
15 been entered into evidence will go back with you in your
16 jury deliberation room. I anticipate that the attorneys
17 will utilize some of these exhibits during their closing
18 so do not feel, again, that you must see each item.
19 They will go back with you.

20 Ladies and gentlemen, please give your strict
21 attention.

22 Mr. West?

23 MR. WEST: Thank you, Your Honor. May it please
24 the Court. Counsel.

25 - - -

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

CLOSING STATEMENT

MR. WEST: Good morning, ladies and gentlemen.

It's been a long week for all of us, and I thank you for paying attention very diligently during this trial. I want to go over sort of the procedure of what's going on this morning. And the judge has already informed you a little bit about it, but I'll go into it a little more.

Right now is the State's chance to present to you what the law of this case is. I want to be very clear on this. The judge is the judge of the law. What she says is the law. Okay? She is going to read it to you, she's going to explain it to you. What she says is the law.

This is the State presenting to you some of what the judge is going to say. I get two chances to talk to you right now because we have the burden of proof. Everything is on us right now. Mr. Davis doesn't have to do a thing or say a thing. Mr. Washington hasn't had to prove anything this whole trial. It's all on the State. So we have two chances to talk to you right now. And the way it is set up is I'll talk to you about the law. Mr. Davis is going to talk to you about the defense, and then I'll get up again and I'll wrap it all up, pull everything together, all of the evidence, how

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 it applies to the law.

2 So I started this case off by telling you that the
3 defendant is charged with murder. At the beginning of
4 the trial, I told you that murder is defined as the
5 unlawful killing of another with malice aforethought.
6 We talked about what malice meant. Malice, again, is
7 the hatred or ill will in someone's heart. It is an
8 evilness, a wicked or depraved spirit, intent on
9 wrongdoing. It's the wrongful intent to injure another
10 person. And you can infer it by the use of a deadly
11 weapon.

12 So throughout this trial, you're going to have to
13 recall some of the things that would show you the
14 wickedness that was in Sha'Quille Washington's heart
15 that day, the menacing looks all night, the things that
16 he said, how Herman felt like he was in fear for his
17 life.

18 One of the biggest things that you're to see is
19 that the defendant was behind Herman. He followed him
20 out. He's the only one with a gun. Herman didn't have
21 a gun, Larry Jenkins didn't have a gun, Larry Kinloch
22 didn't have a gun. Nobody had a gun but Sha'Quille
23 Washington.

24 He had a gun, he knew he had a gun, and he knew he
25 taking a gun to a possible fistfight. That's malice.

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 That's an intent on wrongdoing. That's an intent to use
2 the weapon. And we'll talk about that later when I talk
3 about the facts.

4 The hand of one is the hand of all is a brief
5 concept in the law, and I'm not going to spend much time
6 on it because it really applies when there's multiple
7 people that are involved in a murder. But what we have
8 here is one shooter. One shooter, and everybody knows
9 who the shooter is: Sha'Quille Washington. Okay?

10 There has been some testimony about the possibility of a
11 they from the bartender that night. But what the hand
12 of one, hand of all talks about is whether the defendant
13 knew what was going on and whether he participated. Did
14 he participate in the fight, that he knew that this was
15 likely, if he took a gun to a fight, that the gun he
16 would shoot would kill Herman. Okay? That's the basic
17 concept. But right now, what I want you to focus on is
18 the actual murder statute and the malice that is going
19 to be met at the end of this case when everything is
20 wrapped up.

21 One of the charges the judge is going to instruct
22 you on is what's called voluntary manslaughter.
23 Voluntary manslaughter is a lesser included offense of
24 murder. What it includes is the unlawful killing of
25 another in a sudden heat of passion with legally

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 sufficient provocation. That's an and the big and
2 there, right in between heat of passion and provocation.
3 So you're going to hear a lot about what the heat of
4 passion and what the provocation could have been from
5 the defense, I assure you, in this case. But I want to
6 talk about those two elements real quick.

7 Heat of passion. The first element part of this is
8 it has to be sudden. Was the heat of passion sudden or
9 was this altercation brewing all night? Did the
10 defendant give menacing looks? Did the victim feel
11 threatened for a long period of time, or was this
12 sudden?

13 Now, the best example that people use for this
14 voluntary manslaughter -- this comes up a lot in the law
15 -- imagine a spouse walking in as another spouse is
16 cheating on them. Something flips in their brain.
17 Something immediate happens. They attack the person
18 they're cheating with and that person is killed. That's
19 a sudden heat of passion. It's a rage that is
20 uncontrollable. It's a mental state of mind that you
21 can't control.

22 Could Sha'Quille Washington control pointing the
23 gun in Arianna Coakley's face? Could he control
24 striking Herman Manigault in the eye, in the back of the
25 head? Could he control how many shots he fired?

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 Absolutely. This was not sudden. It is something that
2 brewed all night. It was not that sudden heat of
3 passion. It was not an uncontrollable impulse to do
4 violence. So that's heat of passion. Heat of passion
5 is that flip -- or that switch flipping in your mind.
6 Okay?

7 Provocation. The big thing with provocation is
8 there has to be sufficient provocation. What is
9 sufficient provocation? Does everybody bring a gun to a
10 fistfight? No. You know who brings guns to fistfights?
11 People that intend on using it. That intent goes back
12 to that heat of passion to prove that it wasn't sudden,
13 and it's going to go back to the provocation, was there
14 sufficient provocation.

15 One of the lines the judge is going to read you in
16 the instruction is very important. I have it here on
17 the board. The display of a willingness to fight is not
18 enough, it is absolutely not enough, under our law, that
19 somebody go into a parking lot and say they are willing
20 to fight. That is not enough. Who struck who first?
21 That's going to be a big deal. During the fight -- if a
22 fistfight is going on, does a fistfight normally lead to
23 the use of a weapon that results in the killing of
24 another, or do people just leave with black eyes and
25 bruises? Those are questions you're going to have to

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 ask yourself. Is the provocation sufficient?
2 Absolutely not in this case.

3 That's why the defendant was originally charged
4 with murder. Murder is the correct charge here because
5 this was murder. This was malice. This was malice
6 aforethought. Malice before what the murder happened --
7 when the murder happened.

8 So, again, that's just a brief overview of the law
9 in this case. Mr. Davis has an opportunity to explain
10 some things to you. Listen to him. He is going to talk
11 about what his theory of events is. And then I'm going
12 to have my chance to talk again, like I said, and we'll
13 address these elements specifically through each of the
14 witnesses the State presented and also through some of
15 the witnesses that Mr. Davis presented.

16 One of the other things the judge is going to talk
17 to you about at the end of the trial is going to be
18 instruction on credibility. Credibility is the
19 believability of witnesses. The believability of
20 witnesses is going to be your job to judge. Your job is
21 to look at the witnesses as they testify, and determine
22 whether they're telling the truth. So how do you do
23 that? You look at the totality of the circumstances,
24 everything surrounding what they said. Does what they
25 say matched with what somebody else says? And if it

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

1 does, it's probably the truth. Okay?

2 So what we have here is a situation where the State
3 has presented several witnesses that had several key
4 pieces of information that corroborate each other. And
5 it's not just what they say matches what they said.
6 Because there's also physical evidence in this case and
7 you're going to see that and you're going to be able to
8 judge the credibility of the witnesses based on what the
9 physical evidence presents.

10 Was Herman hit in the eye? Yeah. Absolutely, as -
11 - was he hit in the back of the head with a gun?
12 Absolutely. You're going to see the markings on his
13 head. They're absolutely there. How many times was he
14 shot? Twice, because we got two bullets out of him.
15 Those are the things you're going to be able to look at
16 and determine at the end of this. And when you look at
17 all the evidence, that's going to be one of the key
18 roles that you have is to judge the credibility of the
19 witnesses.

20 With that said, I'm going to turn the floor over to
21 Mr. Davis. I ask that you please pay particular
22 attention to everything he says and when he's done, I'll
23 be able to talk to you again. Thank you.

24 MR. DAVIS: Thank you.

25 THE COURT: Hold on one second, Mr. Davis. Let Mr.

State vs. Sha'Quille Washington
Closing Statement by Mr. West
October 15, 2015

West get seated and situated. Thank you.

MR. DAVIS: Thank you, Judge. May it please the Court?

THE COURT: Mr. Davis, I indicated that I wanted to wait so that nothing you say was interrupted by the movement of people in the audience. So if you will wait just a moment until everybody gets situated.

All right. Now, Mr. Davis. Thank you.

MR. DAVIS: Thank you very much.

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MIA PERRON, CVR-CM-M

-725-

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

CLOSING ARGUMENT

MR. DAVIS: Madam Foreperson, and ladies and gentlemen of the jury, I want to first of all thank each and every one of you individually.

When I started this process on Monday, I told you that the jury was pursuing a journey of truth. Now we have come to that -- what I would call somewhat the end of that journey.

I also want to thank each one of you because I think you have adhered to what I requested of you. My request was for you to remain focused and for you to put your personal important items and life aside for a moment because I shared with you that this was an awesome process that we were about to undertake.

I shared with you that I represented this seventeen-year-old junior who was at Hanahan High School, who is in his relative youth.

I shared with you that I wanted your focus not so much to be on me, not to be on the State, but I shared with you that I wanted the focus to come from this fact-finding chair.

And I also shared with you that it should not matter from where hence the truth came from. I told you that the whole process was one of the State putting up its case but at the same time, any truth that could be

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 gleaned from cross-examination, then you needed to have
2 that information and that evidence so when you go and
3 start your awesome responsibility as jurors and judges
4 in this matter, of judges of the facts to determine what
5 actually the facts are, you could make a very competent
6 and conscientious decision, one that you would feel
7 proud of, from henceforth from this day.

8 I thought about this case. And I'll be honest with
9 you, I've been doing this quite a while, but I still get
10 a pit in my stomach every time I find myself in this
11 position. It's not -- it's just not something that you
12 get accustomed to and something you just feel
13 familiarity with, in other words. As I thought about
14 this case, and what you've seen this week and what
15 you've heard, I thought about this -- where all these
16 events started.

17 Let's set the scene. A Place In The Woods. Wow.
18 Seem like something -- a movie out of Hollywood or
19 something. A Streetcar Named Desire. William Thoreau,
20 poet. A Place In The Woods, where you can go to have
21 serenity. A place to get away from it all. A Place In
22 The Woods where a young man would go in anticipation of
23 a celebration of a birthday party and tragically loses
24 his life.

25 I don't want you to think for a moment that I don't

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 share this tremendous loss that the Manigaults have
2 experienced. Life is precious. I have three sons
3 myself. This is my oldest son with me this week, and I
4 thank him for what he has done to help me. I've got two
5 other sons. One of my sons is in the army reserve.
6 That's why I thanked Francis Jenkins, when he testified,
7 because he's in the reserves. I have another son. He
8 is in finance up in Charlotte, North Carolina..

9 So I have a shared connection with the Manigault
10 family. A shared connection is our shared humanity.
11 Shared humanity. I sympathize their loss. I really do
12 grieve their loss. I think it's one of the most
13 horrific things for a parent, for everybody, the loss of
14 child. -

15 This society we live in, guns involving violence in
16 this culture -- it's a tough world out there.

17 Now, Mr. Davis, how do you fit into all this?
18 Well, I fit into all this because I represent Sha'Quille
19 Washington, as some were standing together this whole
20 week, because the State has made an active determination
21 that he's a murderer, he's a murderer, and he started
22 that premise from the first time this trial started.
23 He's a murderer. And so when I solicited your
24 concentration and solicited your attention on Monday, I
25 really wanted you to be focused. I wanted you to be

MIA PERRON, CVR-CM-M

-728-

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 focused. I wanted you to put your interest aside. I
2 wanted you to go with me. I wanted you to go on a
3 journey in reference to let's -- let's see what
4 transpired.

5 Let's see what happened at A Place In The Woods
6 that would forever be changed. What happened on August
7 the 25th, 2013, almost two years ago? I'm telling you,
8 the characters that have been presented before you,
9 there's no way we could create them. It's real. These
10 are real individuals. Unfortunately, sometimes this
11 reflected my age. When the forensic pathology was up
12 from SLED, I referenced Quincy because that was a
13 television show where Quincy was a pathologist, forensic
14 pathologist, and this whole manner that shows the --
15 derives the causes of death and the manner of death.

16 And then I'm taken back to one of my childhood
17 heroes of Superman. And sometimes folks ask me, say,
18 well, why do you have the S on your belt buckle. I can
19 tell some folks it's because my first name is Steve, but
20 if truth be told, it has some reference to my super hero
21 because I'm mindful of his reference, always the truth,
22 justice, and the American way.

23 It is the American way that causes us to be here
24 that we could summon fourteen of you to hearing this
25 case and to help us decide what the final disposition

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 will be in this case. And quite interestingly, my
2 character, Superman, my super hero, he's the one
3 individual I've ever known to be able to change facts.
4 Unfortunately, Lois Lane got killed on the California
5 Freeway and he couldn't get there in time. And so he
6 was visibly upset and he went and extracted himself from
7 the earth and he rewind, reset, the earth on it's axle.
8 and went back to that moment in time when Lois was
9 submerged in a cravity [phonetic] on the California
10 freeway. Unfortunately, none of us have that capacity
11 to go back and change the facts.

12 So let's deal with the facts as it has been
13 presented this week from this chair. The facts start
14 with Francis Larry Jenkins. I told you that in our
15 society today, we are too caught up in this mind set of
16 a heart of war, of blaming, a heart of getting even, a
17 heart of really not reflection instead of a heart of
18 peace. I believe that Larry Francis Jenkins, the little
19 chubby guy, they called him, who sat in this chair -- I
20 want you to remember his testimony -- he said hothead,
21 fight, outside, he don't remember who struck that young
22 man first -- this is his testimony -- but a fight was
23 ensued.

24 Then we have Ms. Coakley, girlfriend, Mr.
25 Manigault, four years. She says the young man said he's

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 about to snap. I'm about to snap. The scene moves on
2 the outside. There's no question that there's darkness
3 on the outside. You have officers who came after the
4 fact and said that they actually used a clipboard that
5 had lighting on. You had officers that said that
6 flashlight were used to find the projectile and to
7 complete the crime scene process. It was darkness.
8 Visibility is an issue on the outside.

9 But I ask you to ask yourself this question. Have
10 you been presented with sufficient facts that would
11 render you not to hesitate or to cause doubt as to
12 whether or not this young man committed murder?

13 See, as I went back through the rendition of the
14 facts, there is never a time where Francis Larry Jenkins
15 makes any connection or any reference to Ms. Coakley,
16 the gun in Mr. Washington's hand, and the Heinekin
17 bottle, and I'm not playing, and her turning away and
18 within seconds her testimony, Ms. Coakley, she heard
19 gunshots. There is no scene connection of Francis
20 Jenkins making any reference to this whole process. In
21 fact, there is no reference for Ms. Coakley making
22 reference to Francis Jenkins and what's going on. It is
23 as if a wall is in place. It is as if a wall is in
24 place, because there's been no bridging in reference to
25 those two scenes at A Place In The Woods. That alone

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1. should cause some hesitation, some doubt, some
2. inclination, to wonder what transpired within this
3. period of time when Ms. Coakley -- you recall her. She
4. was very adamant. She had the Heinekin bottle, about to
5. strike, and she said he turned and in a short distance
6. of time -- I mean, within seconds she heard shots. She
7. said -- she didn't see who did the shooting. She didn't
8. see that. But there's been no bridge.

9. Francis Larry Jenkins: no discussion. No
10. carryover. No carryover.

11. Murder. Murder is, wow, mean, evil, cold-hearted,
12. planned, deprived, no time for reflection. No time for
13. reflection, this is what I intend to do. It's planned.
14. It's an evil mind set. This is what the State is saying
15. in reference to Sha'Quille Washington. This is what the
16. State said in its opening statement. He called him a
17. murderer before the facts were even in.

18. This is his opening statement, he's a murderer,
19. before the facts were in. And now we are learning the
20. process that you also will be confronted with the charge
21. of voluntary manslaughter. Was not even ever mentioned
22. by the State in its opening statement. Matter of fact,
23. there was a lot of other things that were not mentioned
24. by the State in its opening statement. You learn about
25. a fight, you learn about all the instance of what

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 transpired through the testimony of this witness chair.

2 The primary focus of the State has always been this
3 matter this is murder and murder and murder and murder,
4 and that's it. You have a relatively boy at seventeen
5 years of age who's caught up, misguided, looked for
6 positive role models in his life. Wow. Positive role
7 models. Witnesses who came in and were at the scene
8 that night and talked. Not great role models.
9 Seventeen-year-old kid. Not real great role models.

10 And he found himself in a very difficult situation.
11 But is he a murderer? Did he intentionally set out to
12 kill this young man, Mr. Herman Manigault? You're going
13 to make that decision. That's part of the journey to
14 truth that you can summon to help determine.

15 Now, I find it very interesting now you're also
16 confronted with the hand of one is the hand of all.
17 When if we accept what came from this witness stand --
18 the State called Larry Kinloch, who had already put in
19 place a jail statement saying that this young man was
20 the one that shot Mr. Manigault. What was quite
21 interesting, when Larry Kinloch was on the witness stand
22 the State never asked Larry Kinloch, but, Larry, weren't
23 y'all in concert together, Larry; Larry, didn't you knew
24 this was going to happen; didn't you aid and abetted
25 him, Larry. You would think that in reference to the

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 scene, that the wall, that they were separated just like
2 I described.

3 Not one time did he elicit from Larry Kinloch any
4 reference as if they were an accomplice to each other.
5 You would think they were on two different settings. He
6 utilized Larry Kinloch to support his position, which
7 has always been the State's position, that Sha'Quille
8 Washington is guilty of murder and I can prove he's
9 guilty of murder because I am going to use Mr. Larry
10 Kinloch's jailhouse conversation with Patrick Kinloch,
11 which reflects that that little "n", he did it, I had
12 nothing to do with it.

13 Then you heard from Investigator William Freeman
14 who, yes, had a gun. He had a .38 Special in his safe.
15 A .38 Special in his safe. And he said that his mother,
16 Sha'Quille Washington's mother, gave him this gun. And
17 he said, yes, he had it in his safe. And I asked the
18 forensic young lady from SLED the mere fact that the gun
19 has been kept, would that change or affect any
20 conclusion in reference to the matching that this gun is
21 the murder weapon. That's the State's version, murder
22 weapon. She testified that a gun could be absent in a
23 safe for three or four years, or whatever, it don't
24 matter, what matters is they have the projectile and by
25 scraping the inside the chamber they could determine.

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 So the fact of the matter is that they did said
2 that the testing this -- a week before had no bearing.
3 The gun was in the possession of an investigator all
4 this period of time. We know for a fact that this gun
5 is not the gun that caused the death of Herman
6 Manigault. I don't know where the gun is at. I really
7 don't. And you will -- and you don't have that fact,
8 either.

9 This is what we do know. A lot of drinking going
10 on that night. Larry Kinloch apparently had the eyes
11 for Ms. Coakley. Herman was caught in the middle. He's
12 drinking. He was about to snap. Hothead. Took off his
13 shirt. When I was a -- the solicitor is correct. Took
14 off our shirt, that's the commence of a fight. That's
15 called rules of engagement. When you remove clothing,
16 there's a fight to ensue.

17 But what's interesting about the fight is that
18 there is no testimony or evidence whatsoever from
19 Francis Jenkins. I keep remembering Francis Jenkins.
20 It was Francis said he has no recollection or evidence
21 as to who struck first, but he know there was a fight
22 that was ensued.

23 Now, Francis said that, yes, he saw a gun in the
24 hand of an individual, Sha'Quille Washington, he
25 identified. So identification. That the gun was down

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 to the side and he saw some sparks and he heard two or
2 three shots, and then he don't know where Mr. Kinloch
3 went, Larry Kinloch, but that he felt for himself to see
4 if he had been shot. There's no question there are
5 ample evidence from this witness chair that, at the
6 most, there were over five shots fired out there that
7 night. Five. Five shots. But only two projectiles
8 were found. Five shots but two projectiles.

9 And anytime that the experts from SLED testified
10 that bullets are discharged from a weapon, a projectile
11 is somewhere in the vicinity. Now, some would have us
12 believe that, well, it's in the forest somewhere. But
13 if we accept Francis Jenkins' testimony that he recalled
14 vividly three shots fired down from the side, at a
15 minimum they should find at least four to five
16 projectiles. Instead, they found another bullet out
17 there that there's no rationale for. But it was right
18 there in the midst of the crime scene where they find --
19 where they gathered the forensic evidence.

20 And I'm telling you, in reference to Ms. Lockwood,
21 Lockwood -- the State made an issue that Ms. Lockwood
22 was the issue. Ms. Lockwood did what was asked of her,
23 and she presented the questions in reference to what the
24 detective presented to her. There was nothing that
25 prevented the Berkeley County Sheriff's Department in

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 the same manner that they took a video deposition -- I
2 mean, strike that, a deposition -- video-recording of
3 the statement that was granted by Ms. Lockwood, that
4 they had the same procedure. Matter of fact, they took
5 two statements from her.

6 And the point I was involved with with Ms.
7 Lockwood, Ms. Christina said, you know, I just adopted
8 what -- I just adopted what I believe happened. Because
9 if you accept her testimony to any degree of
10 consistency, she said she was in the doorway. And, you
11 know, it's quite interesting how in a flip of facts
12 arrangement, the solicitor in reference to the doorway
13 and the van becomes important when the Williams come in
14 and Tyson Singleton say they saw Mr. Washington running
15 away, then the van become obscure.

16 Now, from the relationship that we accept the
17 testimony of Christina Lockwood, she said she was in the
18 doorway. There's no question that she would have been
19 blocked from view as to what passed by with the
20 shooting. But this is what she did see. She is part
21 of that scene wherein that segment where Ms. Coakley,
22 the Heinekin bottle, the pointing of the weapon, and
23 Ms. Lockwood, Christina Lockwood, actually witnessing
24 this and within seconds hearing the shots.

25 It's going to be each one of y'all's responsibility

State vs. Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 to reach within your own hearts as you go in this jury
2 room. Each one of you. And you're going to be
3 confronted with can you say, sign your name within a
4 reasonable degree, beyond a reasonable degree, that the
5 State has carried its burden; that there's no doubt in
6 your mind that this young man, in fact, committed
7 murder.

8 I ask that you remain focused. I have had this in
9 my hands for some period of time. I'm about to put it
10 in each one of you-all's hands. Y'all can go back there
11 and use your common sense and tell us what the verdict
12 is going to be.

13 All I ask you is that the verdict be in line with
14 truth and justice, that the verdict speaks the truth,
15 that the verdict don't cause you to be contrary to your
16 conscientiousness, that you be every bit mindful of the
17 actuality and the fullness and the breath of what
18 happened that night on August the 25th, 2013. Take
19 yourself to A Place In The Woods where mayhem, fighting,
20 guns, youth, alcohol, adrenalin, pride, rage, jealousy,
21 and hearts not subject to peace but a heart that's
22 caused these parties to cause you and all of us to be
23 assembled here this morning.

24 I ask that you give all of your consideration, to
25 review the evidence slowly and deliberately, to remain

State vs: Sha'Quille Washington
Closing Argument by Mr. Davis
October 15, 2015

1 focused. I am conscious [phonetic] that the decision
2 that you reach will not be murder. I am conscious that
3 it will not be murder. Thank you.

4 THE COURT: Mr. West?

5 MR. WEST: Thank you, Your Honor.
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State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

CLOSING ARGUMENT

MR. WEST: Ladies and gentlemen, I talked a little bit about manslaughter just a minute ago, and one of the things that I wanted to wait until now to talk about is the defense cannot argue, it wasn't me, and then at the same time say, but if it was me, I only did it because I was in the heat of passion. This whole time, this whole trial, we've been talking about fighting, who's the shooter, who had the gun. And now we get here and the defense wants you to believe that it was because he was so mad that he did it, so is now taking identity out of the equation?

Now, think about that when you deliberate, because I'm going to go through some of the other distractions, because that's exactly what they were, that have happened during this trial. What I'm going to ask you to do at the end of this is don't let the distraction be the destruction. Because what Mr. Davis has presented are several distractions: distractions are what we need to focus on.

What we need to focus on is Mr. Sha'Quille Washington's actions that night. So what I'm going to do is while it may seem tedious to go through again, because they [phonetic] have the burden of proof and I would like to present to you a summation of the

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 witnesses and the facts that have been presented.

2 One of the first people you heard from was Francis
3 Larry Jenkins, Herman's cousin. He says that he
4 witnessed the shooting, witnessed the stare-down, sees
5 three shots that night. Now, Mr. Davis, defense
6 counsel, wants to talk about a separation between
7 Arianna Coakley and Taj Lockwood's statements and what
8 Larry Jenkins says.

9 Think about what Larry Jenkins was doing when the
10 shots happened. He was in the middle of a wrestling
11 match with Larry Kinloch. He's not going to see Arianna
12 holding up the bottle. He's not going to see where Taj
13 is. He's fighting for his own life, because Sha'Quille
14 Washington brings his cousin to a fight, his uncle. His
15 uncle, who I'm going to talk a lot about later, because
16 his uncle tells a very interesting story. And we'll get
17 to that in just a little bit.

18 Some other things Herman says -- or, excuse me --
19 Larry Jenkins says. He says he sees three shots. The
20 first one, sparks flew. What does that mean? There was
21 a ricochet off of the ground. Okay? So what we heard
22 from Captain Shuler, there was an extensive search for
23 the missing projectile. Okay?

24 The other thing to notice here is there weren't any
25 shell casings found. Well, that's because it was a

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 revolver and revolvers don't eject the shell casings.
2 So what are we going to find? We're going to find the
3 two bullets that stuck. You know where the two bullets
4 were? Right where Sha'Quille Washington put them: in
5 Herman's back.

6 Herman was face-down when he was shot. That's what
7 Larry Jenkins says. Larry Jenkins describes the
8 shooting as Sha'Quille Washington standing over him,
9 about like this, with the gun to his side, shooting down
10 almost as if he's running away. That's how he described
11 it. What else do we hear from him? Probably less than
12 a yard away.

13 Remember how I talked about corroboration? What
14 did the pathologist say? Probably about thirty-six to
15 forty-two inches was the shot. How did she know it?
16 Because of all of the stippling. That's the distance of
17 the shooting. This was close range. This wasn't
18 Sha'Quille Washington, oh, I'm so crazy right now, let
19 me run away and shoot back because I'm scared. This was
20 Sha'Quille Washington standing over Herman Manigault
21 shooting him in the back.

22 And you know why he was face down in the gravel?
23 Because Sha'Quille Washington struck him in the eye. He
24 struck him in the back of the head. You'll have the
25 pictures with you. State's Number 14. State's Number

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 14 clearly shows what's commonly called a pistol-
2 whipping. The defendant took a pistol and struck Herman
3 in the back of the head. That's what Arianna says.
4 That's what the evidence shows.

5 Okay. So what else does Larry Jenkins provide? He
6 provides an ID. Why is the ID important? Well, ID is
7 important because this whole time the question has been
8 who's the shooter, then. It is not until now that the
9 defense is wondering, well, the heat of passion might
10 have come up. So Larry Jenkins picks out this
11 defendant, Sha'Quille Washington, as the shooter.

12 I also like the fact that there was some
13 corroboration, not only from people from Herman's family
14 but people from Shike's family. If you get into Larry
15 Kinloch's statement, what you need to realize is that he
16 himself said he was tussling with the chubby light-
17 skinned dude and that that's what he was doing when the
18 shots happened. Threw him off of him like a deer with
19 his head in the headlights with his eyes open. That's
20 what Larry Kinloch says. That's what Larry Jenkins
21 says.

22 Hard to change the truth. Hard to make up stories
23 from both sides. Larry Kinloch didn't have Larry
24 Jenkins' statements when he was making that statement to
25 his brother at the jail. The only way those two would

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 ever match is if it's what really happened.

2 The other thing he says is that he saw him run to a
3 vehicle. Larry Kinloch says that, too. Larry Kinloch
4 says he drove him away. Larry Kinloch says he had to
5 take his cousin away from the scene because he was just
6 trying to protect his cousin..

7 Arianna Coakley. Now, I will admit she was a
8 little rattlesnake on that stand. She had some
9 attitude. And do you know why? Sha'Quille Washington
10 killed her boyfriend. She held him as he died.
11 Sha'Quille Washington made Arianna Coakley have to
12 deliver the news, that her boyfriend had died, to her
13 boyfriend's mom. How does that affect a person? She's
14 going to be angry. She's going to be upset. And that's
15 genuine. That's what you saw from the witness stand.

16 She knows Shike. She knew him for eight years, is
17 what she said. No question as to identity. I keep
18 going back to the identity stuff because it was brought
19 up a lot during this trial. But there's no doubt that
20 it was Sha'Quille Washington that pointed a gun in her
21 face just seconds before she heard the shots. Because I
22 ain't playing.

23 How much malice can there be in ones heart if after
24 seconds after threatening a young lady with a gun in her
25 face, he goes and shoots somebody else? That's malice.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 That's an evil heart. That's not a person caught up in
2 the moment. That's a person intent on doing wrong.
3 That's murder. He keeps looking at me. Why does Shike
4 keep looking at Herman throughout the night? He was
5 intent on doing something about it. He was intent that
6 he was going to fix it, fix whatever beef there was.

7 And the defense tries to posit that there's some
8 love triangle going on between Larry Kinloch and Arianna
9 Coakley. Arianna Coakley said that isn't true. She
10 said, he tried to get my number, it really wasn't
11 anything. Larry Kinloch, as much of a liar as he is, he
12 also said that wasn't true. But you know what? There
13 has to be a reason why this happened, so why not throw
14 that on the wall and see if it sticks. That's what's
15 going on here, trying to make an angle about it.

16 She describes the gun vividly. She says it's a
17 silver revolver that was pointed in her face. She
18 remembers it because it was just inches away from her
19 face when Sha'Quille Washington just abruptly put it in
20 her face. You know, like there's been a lot made about
21 the bottle, too. You saw Arianna. She's all of 105
22 pounds soaking wet. Do you really think she was going
23 to do anything to Sha'Quille Washington that would
24 ultimately be the demise of anybody?

25 If Sha'Quille Washington was so scared, was so mad

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 about Arianna holding this bottle, she would be dead,
2 too. But he wasn't intent on killing Arianna. You know
3 who he was intent on killing? Herman Manigault. And
4 that's very obvious, because Herman is the one that
5 died. Not Arianna. Arianna is back here testifying on
6 behalf of him. She's telling the truth. She's telling
7 you what actually happened that night.

8 Again, Dr. Presnell is important. The autopsy
9 results and the autopsy pictures are going to be
10 something you'll have with you. I want you to compare
11 them to the testimony. Okay? I'm not going to hold up
12 the wounds on the back of Herman's head again, but
13 you'll have them. You'll be able to judge whether you
14 believe that he was actually struck in the back of the
15 head as she says. No doubt. That mark didn't get there
16 on its own. And then there's another mark on him on his
17 elbow. She said it looked gravely. Because after he
18 got struck in the back of the head, he fell into a
19 gravel lot where he was ultimately shot in the back.
20 That's the physical evidence that corroborates exactly
21 what Arianna Coakley says.

22 Taj Lockwood, Ms. I-Don't-Remember. That's Taj
23 Lockwood. She was there to help Herman that night. And
24 y'all heard those questions. But when it counts, when
25 justice is on the line, she doesn't remember. But she

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 gave multiple identifications that this defendant was
2 the shooter. She said multiple times not I didn't -- I
3 put things together because I heard them. She said
4 multiple times, in these written statements, that I saw
5 Shike shoot Herman; I saw it.

6 Now, this is the time that's probably appropriate
7 to talk about some evidence. Now, you've heard a lot
8 about statements and all this sort of stuff where we
9 would go up -- walk up to the witness stand and we would
10 show them statements, say, do you remember this, does
11 this refresh your recollection -- just a bunch of legal
12 terminology for things we have to do in court. Not all
13 those statements get to go back with you. Okay? Y'all
14 have to recall what you testified -- what was testified
15 to. And if you need to, we can play some of the
16 testimony back.

17 But there are certain rules we've got to play by
18 and one of those rules is you're not going to have all
19 these statements in the back with you. You'll have some
20 things that were said. You'll have the defendant's
21 statement. You'll have his written statement and you'll
22 have the video. If you want to play it back, you can
23 watch it again.

24 But Taj did give multiple statements. I went
25 through them in extreme detail and asked her if she was

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 able to identify the shooter because of what she saw.
2 And what she saw was the murder of Herman Manigault.
3 The other thing she saw was Larry Kinloch and Larry
4 Jenkins fighting. She's painting the full story here
5 about what actually happened. She's telling the truth
6 in those statements. Whether she conveniently forgets
7 to remember is a different story. But what she says in
8 those statements corroborates the other witnesses,
9 because the truth doesn't change. The truth doesn't
10 change.

11 Darius Alls. We called him. He's the cook, one of
12 the defendant's cousins. Again, a lot of relatives
13 involved in this. This is a lot of people that are in a
14 small community. They don't want to come testify. He
15 was a little uncooperative on the stand, so we had to
16 pull some teeth out of him.

17 But what he says in his statement -- and I think I
18 made it pretty clear -- was that Herman felt that his
19 life was threatened. Why do we pull that out? In
20 anticipation of the defense trying to argue for a
21 voluntary manslaughter. If Herman felt his life was
22 threatened beforehand, where is the so-called
23 suddenness? It's not there. The sudden heat of passion
24 can't happen if Herman felt his life was threatened
25 throughout the night. Think about that. So every

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 witness, as much as they -- or as little as they -- you
2 think they provide, they're a key piece in all of this
3 whole story.

4 Larry Kinloch. One of my favorite witnesses. He's
5 one of my favorite witnesses because he's probably one
6 of the worst individuals that I have ever dealt with as
7 a prosecutor. He is the defendant's uncle and he gave
8 two statements: one to law enforcement, that was
9 clearly a lie; the other he made in true candor to his
10 brother at the jail two days after the incident.

11 Now, I have up here that there's this question mark
12 behind whether he's a criminal mastermind. The guy you
13 saw, do you really think he was thinking two years in
14 advance that he was going to need to, you know, protect
15 himself? Or was he actually telling the real story? Is
16 he this person that's going to have a plan that needs to
17 protect his interest, as well as protecting his cousin
18 to make sure nobody gets hurt? He was trying to protect
19 his nephew. That was very clear in his written
20 statement. Larry was just standing on the stoop smoking
21 a cigarette, saw some commotion -- and these words are
22 going to be important -- commotion or a tussle and
23 didn't recognize anybody, doesn't know anybody, didn't
24 think anything about it in any -- that's in his written
25 statement.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 But his phone call: his phone call is the truth.
2 How do we know it's the truth? Because it matches what
3 the people that actually saw everything are saying. So
4 let's go through that a little bit. Again, this is one
5 of those things where you're not going to be able to
6 have this in the back, but you can have the testimony
7 replayed. So I wanted to go through the call so you can
8 remember some things from the testimony and from the
9 questions that I asked.

10 So Quinton and Mack's name came up a lot: I saw
11 Quinton later. He didn't see anything. He wasn't
12 there. I don't know what the importance of Quinton was
13 because he wasn't there.

14 But this is what Larry Kinloch says, when he's
15 actually telling the truth for once. All I did is damn
16 take my nephew away from the fucking scene. My nephew
17 did that and now I'm protecting him.

18 What does he mean by now I'm protecting him? Well,
19 because he's later going to give a statement that says
20 nothing about Shike being the shooter.

21 Okay. Later he said, yeah, I been protecting my
22 nephew. I ain't put no bullet in nobody. Here was
23 where it got really -- I promise to God that he shoot
24 three fucking times, that n-word shoot three damn times,
25 man. I ain't know how many hit him, but I know he take

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 at least two of the three.

2 Who else said that? Larry Jenkins. What else says
3 that? The physical evidence. Two shots into Herman.
4 He sees it. He sees three shots.

5 Now, ladies and gentlemen, he goes on to talk about
6 other things but, most importantly, he talks about his
7 fight with Larry Jenkins. His fight with Larry Jenkins
8 is important because it eliminates anybody else but
9 Sha'Quille Washington as being the shooter. So what
10 does Larry Jenkins say? Tussling with some dude during
11 -- when I first heard the shots. What does Larry
12 Kinloch say? I ain't did that shit. I fighting with a
13 big fucking light-skinned dude, tussling with this big
14 mother fucker. He got me on the car. I got him on the
15 car. Me and him going back and forth, tap, tap, tap.
16 Shit. Dude let me go like a fucking deer. That
17 fucker's eyes light up after them three fucking shots.
18 And, shit, I pushed him off. He pushed me off.

19 What Larry Jenkins says, in not so Larry Kinloch
20 words.

21 Another person that's interesting out of Larry
22 Kinloch's call was Tyson. Tyson goes back to get the
23 car. Tyson: I don't know if you can believe anything
24 out of his mouth, because nothing that he said matched
25 exactly what was meant to be matching the person right

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 in front of him, Robin Williams' -- I'll get to Tyson
2 later.

3 But, again, Larry Kinloch's phone call is very
4 important because he is a person that is going to
5 protect his nephew, except that he doesn't know that
6 somebody is going to find that call later... Okay? He's
7 not a criminal mastermind. He's finally telling the
8 truth to his brother at the jail.

9 Drequan Lockwood. The reason we called Drequan
10 Lockwood -- he didn't see the shooting, he said he
11 didn't hear the shots, but what he does is he puts
12 especially Taj at the scene. That's important because,
13 you know, when you put Taj on the scene, she doesn't
14 remember anything. You want somebody to corroborate
15 that other than these obviously people tied to Herman.
16 So you have somebody from Taj's side come and say Taj
17 was there. He corroborates the time of the shooting.
18 It was about 3:30. Location. Certain people around.
19 Doesn't say anything about Tyson or Robin Williams or
20 anybody like that, but he corroborates what Taj says
21 and, to an extent, he was there afterwards and he helped
22 Herman.

23 Then we got into some of the law enforcement
24 people. What we had is the initial responders, Deputy
25 Morton, Officer Tim Ham, and Scott Bell. What they do

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 is they establish a crime scene, they do things like put
2 up tape, make sure nobody's going in and out messing
3 with Herman's body or any of the possible evidence on
4 scene. So that's the reason for their testimony.

5 Lieutenant Geno Alteri, he's from crime scene.
6 He's one of those CSI guys. He goes and takes pictures.
7 He takes the pictures that you see from different
8 positions at A Place In The Woods. He's going to show
9 you the lighting out there. He's going to show you that
10 there's streetlights. There's a light right in front of
11 A Place In The Woods on the stoop, this important stoop
12 that happened. There's a light right there. You can
13 see it in the reflection of one of the vans on the
14 window.

15 And that picture, in particular, is going to be
16 important because it shows a vantage point that I
17 believe is very telling. What you heard in regards to
18 State's Number 4, that this is a view from the stoop
19 looking towards Hammond Corner Road where the van is
20 right in front. As you can see clearly, the place where
21 Herman actually died is to the side of the van. And
22 where Christina Lockwood was was in the doorway, right
23 in the middle of the picture. It's a very clear vantage
24 point to see exactly who shot Herman at the time of the
25 shooting.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 So, again, he collected the clothes on scene. He
2 took those pictures. Those pictures you'll have in the
3 back.

4 Kevin Murphy did the cell-phone extraction. I'll
5 get to the cell phone in a little while. But what it
6 does is it helps. It just has a time line of events.
7 The cell phone was taken from the defendant, and it's
8 the defendant's cell phone.

9 Detective Rikki Cortte, this is another one of
10 those witnesses where the State has to present people in
11 a full chain of custody. You heard that stipulation
12 that we read into evidence. Some of the witnesses were
13 not included in that stipulation so we called them to
14 make sure that you know who has touched or seen evidence
15 in this case. And that's what he testified: I was
16 taking those bullets and clothing from the victim from
17 Dr. Presnell at MUSC.

18 And Detective Daniel Wilson: you heard a lot
19 about Daniel Wilson. He did some investigation of the
20 witnesses that Mr. Davis put up. And you saw how nobody
21 wanted to talk to him and they didn't remember what they
22 told Dan. But what we see here is he presented the
23 photo line-up to the witnesses, such as Taj, such as
24 Arianna, such as Larry Jenkins. And those line-ups you
25 will have in the back. He assisted in some interviews,

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 and he took gunshot residue from the victim's hands.
2 Again, I'll talk about the gunshot residue in just a
3 minute. But he collected it as part of that chain.
4 That's why -- one of the things he testified to.

5 Michele Eichenmiller: she's the ballistics expert.
6 She's the reason we know what type of weapon killed
7 Herman Manigault. If they pull the bullets out of the
8 body, she's an expert in telling what kind of gun fires
9 them. And we know it was either a .38 Special or a .357
10 Magnum. Why is that Magnum part important? Because
11 Dr. Presnell said that the amount of stippling on
12 Herman's body would have had to come from a Magnum load.
13 So two people, again, just matching what they say. But
14 the murder weapon was never found. The murder weapon
15 was never found.

16 We had other weapons talked about during this,
17 specifically the revolver Mr. Davis talks about a bunch.
18 I'll get to that when we get to William Freeman's part,
19 because it's very interesting to the State.

20 Whitney Berry, from SLED. She testified about the
21 GSR, the gunshot residue. You notice that law
22 enforcement, even though it was outside the window, even
23 though Sha'Quille Washington says he washed his hands,
24 they still took the gunshot residue. But she testified
25 because of the hand-washing and because of the window,

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 they weren't going to test it because that's SLED's
2 policy. You also heard that the gunshot was found on
3 the victim -- gunshot residue was found on the victim,
4 again, suggesting a close range of fire.

5 Everything is adding up. You've got the doctor
6 saying it was only a few feet away, you've got the
7 stippling, you've got GSR on the victim, you've got
8 Larry Jenkins saying standing over him. Everything is
9 adding up. The evidence goes together.

10 Captain Bobby Shuler. He interviewed the defendant
11 and did most of the investigation. But that interview
12 of the defendant is one of the main pieces of evidence
13 that the State is presenting to you as a jury. And I
14 talked about that in extent in the opening. And I have
15 a special time that I want to talk to you about the
16 defendant's statement to see where that goes.

17 Dr. Erin Presnell, again, the autopsy, I've talked
18 a lot about her in the interim of the witnesses. But,
19 again, a lot of what she testified to corroborates
20 everything that the other witnesses say. So you'll have
21 her pictures in the back. You'll be able to compare
22 them and remember back to what the other witnesses said.
23 I'm not going to belabor the point.

24 Aja Williams. She was the bartender. This is one
25 of the first witnesses that the defense called. She

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 says that Herman thought they were going to kill him.
2 Another person to show you that this wasn't a sudden
3 heat of passion, this was an ongoing thought process by
4 the defendant.

5 Quinton Grant: didn't see nothing. Left before he
6 was there. Offered absolutely nothing to you as a jury
7 for you to consider.

8 Renard Deveaux. He head shots but didn't see
9 anything. Again, another witness that just doesn't
10 provide anything for you as a jury to consider. But
11 what we do know about him is he has a giving false
12 information conviction, so take that into consideration
13 whether you believe what he said at all.

14 Robin Williams was interesting because Robin
15 Williams and Tyson couldn't get their stories straight.
16 They were one after another and they still couldn't
17 match up what they were talking about. One of them says
18 that they were, you know, ten, fifteen feet away from
19 the van. Tyson said, but they were on the other side of
20 the club, they're in the other parking lot, and then it
21 was way past the trees.

22 But Tyson says he rode with Robin. Robin doesn't
23 say anything about being with Tyson. Robin, when I
24 asked her who she was with, she just said two other
25 females. So no mention of Tyson. They can't get their

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 stories straight. She heard two shots. I made this a
2 point, because what she hears is two shots. Well, guess
3 what? Herman got shot twice. You know, those are the
4 important shots. The number of shots in this case has
5 been talked about by a lot of different witnesses, but
6 there's only really two important shots and that's the
7 ones that Shike put in Herman's back. So, again,
8 whether she was with Tyson or not is still up in the
9 air.

10 With Tyson, I don't know what wasn't a lie. He
11 pretty much got up here and tried to cover for his boy.
12 Lives, you know, a hundred yards away from the
13 defendant. Goes back and gets his car after the
14 shooting, according to Larry Kinloch. Tyson doesn't
15 cooperate with Detective Daniel Wilson. Doesn't even
16 remember trying to talk to him. Doesn't remember
17 investigator Kevin McGowan going out there to serve the
18 subpoena. Doesn't remember anything. But he remembers
19 the defendant being hundreds of yards away when the
20 shots happened. But the defendant later in his
21 statement says, no, he was four or five feet away when
22 the shots happened.

23 William Freeman. William Freeman was the
24 investigator that Mr. Davis hired. William Freeman
25 did about as poor of a job as an investigator can do.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 He got two statements, never made a report, didn't
2 follow up on where he got the gun from, doesn't have any
3 idea where this gun's from, doesn't tell anybody at the
4 solicitor's office or the sheriff's office that he has a
5 gun in his safe that may be potential evidence in a
6 murder trial. So he's obviously not doing very much.

7 One thing that was important that was brought out,
8 when Mr. Davis was asking some questions, was that
9 possibly Captain Rick Ollic had been told about this
10 weapon. Well, Captain Shuler says, no, Captain Ollic
11 would have told me if somebody told him. And William
12 Freeman specifically said -- because I asked him -- did
13 you ever talk to Rick Ollic? No, I never told him about
14 this weapon. If you had talked to Rick Ollic about
15 this, would there have been a report? Yes, there would
16 have been a report. But there wasn't, because he never
17 talked to Rick. He held on to it. Why he held on to
18 it, I don't know. Why it comes up Thursday of last
19 week, when the defendant knows that he's on trial for
20 murder on Monday, that's a question y'all have to
21 consider. Held on to the gun for two years. Never
22 talked to anybody.

23 And he got the gun from the defendant's mom. If
24 that suggests you don't know where this gun comes from,
25 I don't know what does. It comes from the defendant's

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 mom. Okay? Don't know what relative it came from. But
2 how many relatives marched up here and tried to testify
3 for the defendant? Could it have been one of them?
4 They didn't say anything about it. Okay?

5 So what credibility does William Freeman have, when
6 he can't even do something as simple as bring a report?
7 I tried to get him to share his notes with you and all
8 he had was, you know, 9:15, went to this place. No
9 report. No full extent of what he did.

10 The other thing that was interesting about William
11 Freeman's finding of this gun was he went on the 11th of
12 September, 2013, to go get the gun, but mom couldn't
13 find it. She looked like she was searching for
14 something, right? She found it four days later and then
15 called Investigator Freeman to miraculously provide
16 something that may be of some evidentiary value that
17 still no one has any idea why it's there. So all these
18 question marks about what's the importance of the
19 pistol? Nothing. So why is it here? Another
20 distraction.

21 Let me tell you this. Mr. Davis talked about
22 football or about his son. I played football with his
23 son Todd. I was a quarterback, and his son was one of
24 my receivers. I remember a game specifically where we
25 were at the end of the game, we were down a little bit,

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 and Mr. Davis's son Todd had to run a hail Mary play.
2 What's a hail Mary? It's a desperate attempt at the end
3 of a game to score. Last seconds. You've got nothing
4 else. Last minute attempt to cause some sort of
5 distraction. This gun is nothing but a hail Mary. It's
6 of no importance whatsoever. It's just a distraction.

7 Sha'Quille Washington. Of all the people that
8 talked, he gave a statement that makes absolutely no
9 sense with what everybody Mr. Davis tried to put up was
10 going to say. So I'm going to go through his statement
11 a little bit so you know some of the important facts.
12 You have the video if you would like to have it
13 replayed.

14 But let's talk about some things. The defendant,
15 at the beginning, one hundred percent says he washed his
16 hands. So that's why there's no GSR. One of the things
17 that I think is very interesting is that the defendant
18 is very vivid in his descriptions of the people
19 involved, what they're wearing. He remembers colors of
20 clothing. He specifically remembers and repeats several
21 times the tattoo on the victim's chest. Why is that
22 important? If this was so dark in this parking lot and
23 lighting was so important, as the defense wants to
24 suggest to you, how does the defendant distinguish this
25 tattoo on the victim's chest?

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 If these people are supposedly not able to make out
2 the defendant's face, how was he so close to the victim
3 that he knows what type of tattoo he has on? Darkness
4 isn't an issue. People saw the defendant and the
5 defendant was there and very, very close to Herman
6 Manigault. He was so close, he was less than a yard
7 when he shot him. Think about those type of things and
8 if lighting was really an issue, or whether it was just
9 another one of these distractions.

10 One of the things the defendant said when he first
11 gives a recantation of the events is that the dude got
12 chopped in the eye and he was holding his face down like
13 he was walking away, and that's when the dude shot him
14 in the back. What Arianna Coakley says he did. Hit him
15 in the eye, chopped him in the eye, he was stumbling
16 away, hit him in the head, and then he shot him in the
17 back.

18 Remember how in opening statements I said he, you
19 know, right up to the murder and then when it involved
20 him, hands off, it wasn't me. Exactly what he's doing
21 then. He's trying to put the blame on somebody else but
22 not himself but, yet, interestingly enough, describes
23 almost exactly what happens except for when he talks
24 about there were only three people involved in the
25 fight. Everybody says there was at least four people.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 If the defendant says there were three people
2 involved in the fight, how can he claim voluntary
3 manslaughter? How can he claim that he wasn't involved
4 in the fight, but suddenly he was in such a heat of
5 passion that he had to shoot Larry -- or Herman
6 Manigault? How does that make sense? It doesn't,
7 because the defense theory doesn't fit what his own
8 client says in his statement.

9 He describes the shooter as five eleven, five ten,
10 dark skin, low haircut, but he doesn't know who he is,
11 he's from the city, he just started coming around here.
12 Now, think about it. He doesn't name his Uncle Larry
13 Kinloch. He doesn't name Larry Kinloch or him being
14 involved in the fight. But what he does describe is
15 this scuffle. I would suggest to you that there is a
16 little bit of similarity between Larry Kinloch's
17 statement given in September, and this version of events
18 given by the defendant. There's some coordination
19 there. This scuffle, where nobody is involved, is all
20 of a sudden a scuffle that he is trying to absent
21 himself from. But the evidence supports that there --
22 he remembers what almost everybody is wearing. He
23 remembers the gun. He talks about other people that saw
24 where he was.

25 Listen to the names. Tyson is one of them. Again,

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 Tyson, a player in this. But Tyson doesn't know how to
2 tell the truth. One key phrase he used to -- I'm just
3 sort of going through this -- you didn't have any
4 problems with the victim last night, did you? No, sir.
5 11:03:39. You didn't have any problems with the victim
6 last night, did you? No, sir.

7 How are you in a sudden heat of passion if you
8 never have a problem with the victim?

9 Then he says what is a -- clearly a direct lie. I
10 ain't got no weapon out here to protect me. But the
11 defendant clearly had a gun, because he used it. He
12 describes the victim's clothing vividly, with that
13 tattoo, as well, over and over again. He describes
14 where he was during the shooting. Where does that
15 match? It matches what Larry Jenkins said, it matches
16 what Arianna Coakley said, that he was four or five feet
17 away, when everything initially happened he was on the
18 stoop.

19 He doesn't say anything about Arianna holding a
20 bottle in his face, but he was on the stoop according to
21 his statement. Again, you have the fact there are only
22 three people fighting. And says he saw the shooter. He
23 saw the shooter, but wasn't ever able to identify him.
24 And do you know when he saw the shooter? When he looked
25 in a mirror when he got home. That's when he saw the

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 shooter.

2 Did you see any fighting or arguing earlier that
3 night, or anything like that? No, sir. No heat of
4 passion, no suddenness, no provocation. Was he
5 provoked? No.

6 He talks about the fight on the big square thing.
7 And, again, I'm not going to go through all of this.
8 You'll have that from your memory and be able to play it
9 later if you would like. That statement is very
10 important, and I told you at the beginning of the trial
11 that it was, because what it does is it clearly takes a
12 picture where, again, you have no consistency with
13 what's being said by any of the defense's theories or
14 witnesses.

15 Now, that was a lot. A lot of people involved.
16 It's a murder case. There's a lot on the line here: We
17 have the State having an enormous burden to prove guilty
18 beyond a reasonable doubt. So I didn't talk to you
19 about this when we talked about the law, but what is
20 reasonable doubt? It's not beyond all doubt. It's not
21 beyond a shadow of a doubt. It's are you firmly
22 convinced. Are you firmly convinced the defendant shot
23 Herman Manigault? If you are firmly convinced that
24 Sha'Quille Washington was, in fact, the shooter and that
25 he put two bullets in Herman's back and that it was done

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 with malice aforethought, then he's guilty. He's guilty
2 of murder.

3 So one of the things that I would like to do is,
4 since there have been so many stories, sort of a -- I
5 would like to go through what really happened when
6 everybody sort of adds together. The truth doesn't
7 change, and consistency is hard to make when there's a
8 bunch of lies going on but if the truth is being told,
9 everything will be consistent.

10 So the real story, now. The real story, beyond a
11 reasonable doubt, is that Herman Manigault, Larry
12 Jenkins, Arianna Coakley, and Taj Lockwood were all
13 about to leave the club. Shike and Larry Kinloch said
14 one last thing or did one last thing to Herman after
15 giving him menacing looks all night. They followed
16 behind Herman and Larry. When Herman saw Shike
17 following him, he decided he was going to take his shirt
18 off. Larry Jenkins saw that Larry Kinloch was about to
19 jump his cousin so he intervened and starting fighting
20 with Larry Kinloch. They were, in fact, tussling and
21 wrestling on the ground. Before Herman could react,
22 Shike hits Herman in the eye with the butt of his gun.
23 Arianna sees what's going on and tries to come to her
24 boyfriend's aid. While Herman is dismantled and
25 disheveled and after he had been hit in the eye and

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 unable to really focus, he's stumbling away. Shike sees
2 this as an advantage in his wicked heart, and he hits
3 him in the back of the head with the butt of his gun
4 with such force that it breaks his skull. Herman falls
5 to the ground. He's on the gravel lot. He scrapes his
6 elbow. Shike stands over him and he shoots and he
7 shoots and he shoots. Two hit Herman in the back. One
8 goes up to his aorta and it kills him, as he was being
9 held by Arianna Coakley and his cousin Larry Jenkins.

10 Herman died that night after being shot in the
11 back. That's how Herman left this world, face down in a
12 gravel lot, because Shike wanted to prove that he was a
13 man. He was seventeen, but he was hellbent on showing
14 the world that because he had a gun, he had all the
15 power in the world, the power for him to decide that
16 Herman was going to die in his girlfriend's eyes and
17 make his girlfriend drive to Herman's mother's house and
18 deliver the bad news, the power to change every life
19 that has been in the courtroom this week, and more. The
20 power to take something that wasn't his to take.

21 Mr. Davis used the Superman quote. I'll use a
22 Spiderman quote. With great power comes great
23 responsibility. And while Shike had the power to take
24 Herman's life because he had a gun, the pen is mightier
25 than the sword.

State vs. Sha'Quille Washington
Closing Argument by Mr. West
October 15, 2015

1 Mr. Foreperson, ladies and gentlemen of the jury,
2 your responsibility is great, and so is your power.
3 Your power is greater than the gun that Shike possessed.
4 Use that power for justice. Use the power of that pen
5 to write on that verdict form the true verdict that
6 Sha'Quille Washington is guilty of murder.

7 THE COURT: Ladies and gentlemen, this would be an
8 appropriate time to take a break -- I'm about to charge
9 you on the law applicable to this case -- or we can
10 continue through.

11 Mr. Foreperson, your choice.

12 THE FOREPERSON: We would like to continue.

13 THE COURT: All right. Thank you.
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State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I remind you that during this trial you and I have had certain duties to perform.

As the trial judge, it is my responsibility to preside over the trial of this case. I have the duty to rule on the admissibility of the evidence that has been offered. You are to consider only the evidence before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. Mr. Foreperson, as I instructed you, you are not to allow any testimony that was stricken from the record to even be discussed in deliberations. You are to consider only the testimony that you heard from the witness stand, the exhibits that have been part of the record in this case, as well as the stipulation of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. It is your duty, ladies and gentlemen, to accept the law and apply the law exactly as I state it to you now. If you have any idea as to what the law is or what the law ought to be, and it does not agree with what I'm about to tell you, you must abandon your own idea, because you are sworn to accept the law and apply the law exactly as I state it to you now.

In every case tried in this court before a jury,

MIA PERRON, CVR-CM-M

-769-

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 the jury becomes the sole and exclusive judges of the facts.
2 A trial judge may never make any comment regarding the facts
3 in this case. You are not to infer from anything that I have
4 said or done throughout the progress of this trial that I have
5 any opinion about the facts in this case. The law does not
6 allow me to have an opinion about the facts in this case.
7 This is a matter solely for you to determine.

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

16 Just as the indictment in this case is not
17 evidence, any terminology or labels used to refer to the
18 individuals involved in this case cannot be considered as
19 evidence. For example, the use of the words defendant and
20 victim are merely labels and may not be considered by you as
21 evidence.

22 Mr. Washington has pled not guilty to this
23 indictment. A person charged with committing a criminal
24 offense in South Carolina is never required to prove himself
25 innocent.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 I charge you it is an important rule of law that a
2 defendant in a criminal trial, no matter what the seriousness
3 of the charge may be, will always be presumed to be innocent
4 of the crime for which the defendant was indicted unless guilt
5 has been proven by evidence satisfying you of that guilt
6 beyond a reasonable doubt..

7 The presumption does not end when you begin your
8 deliberations, but it accompanies the defendant throughout the
9 trial until you reach a verdict of guilt based upon evidence
10 satisfying the standard of guilt beyond a reasonable doubt.

11 The presumption of innocence is not mere legal theory. It is
12 not just a legal phrase. It is a substantial right to which
13 every defendant is entitled unless you the jury are satisfied,
14 from the evidence, of the defendant's guilt beyond a
15 reasonable doubt.

16 The State has the burden of proving Mr. Washington
17 guilty beyond a reasonable doubt. Some of you may have served
18 as jurors before in civil cases where you were told it was
19 only necessary to prove that a fact is more likely true than
20 not true, such as by a greater weight or preponderance of the
21 evidence. Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's guilt. There
23 are very few things in this world that we do know with
24 absolute certainty, and in criminal cases the law does not
25 require the burden of proof that overcomes every possible

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 doubt. If based upon your consideration of the evidence you
2 are firmly convinced that Mr. Washington is guilty of the
3 crime charged, you must find Mr. Washington guilty. If, on
4 the other hand, you think there is a real possibility that
5 Mr. Washington is not guilty, you must give Mr. Washington the
6 benefit of the doubt and find him not guilty.

7 There are two types of evidence that are generally
8 presented throughout a trial: direct evidence and
9 circumstantial evidence. Direct evidence directly proves the
10 existence of a fact and does not require any deduction.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact. Crimes may
13 be proven by circumstantial evidence. The law makes no
14 distinction between the weight or value to be given either
15 direct or circumstantial evidence. However, to the extent the
16 State relies on circumstantial evidence, all of the
17 circumstances must be consistent with each other and, when
18 taken together, point conclusively to the guilt of the
19 defendant beyond a reasonable doubt. If these circumstances
20 merely portray the defendant's behavior as suspicious, the
21 proof has failed. The State has the burden of proving Mr.
22 Washington guilty beyond a reasonable doubt. This burden
23 rests with the State regardless of whether the State relies on
24 direct evidence, circumstantial evidence, or a combination of
25 the two.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 Necessarily, you must determine the credibility of
2 the witnesses who have testified in this case. Credibility
3 simply means believability. It becomes your duty as jurors to
4 analyze the facts and determine which evidence convinces you
5 of its truth. In determining the believability of the
6 witnesses who have testified in this case you may believe one
7 witness over several witnesses, or several witnesses over one
8 witness. You may believe a part of the testimony of one
9 witness and reject the remaining testimony of that same
10 witness.. You may believe the testimony of a witness in its
11 entirety, or reject the testimony of a witness in its
12 entirety. You may consider whether the witness has exhibited
13 to you any motive, interest, bias, or other prejudice in this
14 case, and you may also consider the manner and appearance of
15 the witness while he or she was on the witness stand.

16 A person who has committed prior bad acts or who
17 has a past criminal record is competent to testify during a
18 trial. Prior bad acts or a past record does not affect the
19 ability of that witness to testify. The prior bad acts or
20 past record may only be considered by you, if at all, in
21 determining the witness' believability. Remember, you are the
22 sole judges of the facts in this case and of the believability
23 of any and all of the witnesses.

24 You have heard testimony concerning the penalty a
25 person can serve for a particular crime. In determining the

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 guilt or innocence of the defendant, you cannot consider any
2 possible penalty for any particular crime. The punishment for
3 the crime is a matter for me to determine and should never be
4 considered by you in any way in your arriving at an impartial
5 verdict as to the guilt or innocence of the defendant.

6 There has been evidence presented that witnesses
7 have made prior statements which are not consistent with the
8 witness' testimony given in court here today or this week.
9 You may use this evidence to decide whether to believe the
10 witness. You may also use evidence of the earlier
11 contradictory statements to determine the truth of those
12 statements. It is up to you to decide whether to believe the
13 earlier statements or to believe the testimony given at trial.
14 If a witness is shown to have knowingly testified untruthfully
15 concerning any material matter, you may consider this in
16 determining whether to trust the witness' testimony as to
17 other matters. You may reject all testimony of that witness
18 or give all or part of the testimony the weight you think it
19 deserves. /

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or to conclusions. An
22 exception to this rule exists for witnesses we call expert
23 witnesses. A witness who by some education or experience has
24 become expert in some art, science, profession, or calling,
25 may state an opinion as to relevant and material matter in

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 which the witness claims to be an expert and may also state
2 the reasons for that opinion. You should consider any expert
3 opinion received in evidence in this case and, like any other
4 evidence, give it the weight you think it deserves. If you
5 decide that the opinion of an expert witness is not based on
6 sufficient education and experience, or if you conclude that
7 the reasons given in support of the opinion are not sound, or
8 that the opinion is outweighed by other evidence, you may
9 disregard the opinion entirely. An expert witness' testimony
10 is to be given no greater weight than that of other witnesses
11 simply because the witness is an expert. Further, you are not
12 required to accept an expert's opinion, even though it is not
13 contradicted.

14 A statement alleged to have been made by the
15 defendant has been admitted into evidence in this case. While
16 I have determined that the statement is admissible, I instruct
17 you that you make the ultimate decision of whether or not the
18 defendant made that statement. If the defendant did make the
19 statement, you must determine whether the statement was made
20 by the defendant voluntarily and of his own free will. This
21 means that the statement was not caused by pressure, force,
22 fear, threats, coercion, or intimidation, or by hope or a
23 promise of leniency or reward of any kind. In determining
24 whether the statement was voluntary, you should consider both
25 the characteristics of the defendant and the details of the

MIA PERRON, CVR-CM-M

-775-

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 questioning. Some of the factors that you may consider are
2 the age of the defendant, the defendant's education or lack of
3 education, the mental ability of the defendant, the
4 defendant's IQ or intelligence, the defendant's background and
5 environment, the place and length of detention, the nature of
6 the questioning, the advice or lack thereof to the defendant
7 of his constitutional rights, including but not limited to the
8 right to remain silent, that any statement can be used against
9 him in a court of law, the right to have a lawyer present,
10 that if he could not afford a lawyer, a lawyer would be
11 appointed to represent him without any cost, that he could
12 stop making a statement at any time. You must carefully
13 consider all of the surrounding circumstances before you give
14 any weight to an alleged statement.

15 The State has a burden of proving beyond a
16 reasonable doubt that the alleged statement was voluntary. If
17 you determine it was, you must give the statement any further
18 consideration that you deem proper. You must decide what
19 weight, if any, should be given to the alleged statement. If
20 you determine the alleged statement was not the free and
21 voluntary statement of the defendant, you should not consider
22 the statement at all.

23 In order to establish criminal liability, criminal
24 intent is required. For example, the mental state required to
25 be proven by the State for a particular crime might be

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 purpose, intent, knowledge, recklessness, or criminal
2 negligence. Criminal intent must be proven by the State
3 beyond a reasonable doubt. Criminal intent is always a matter
4 that must be determined by the jury from the circumstances
5 surrounding the situation. There is no way to prove intent to
6 a mathematical certainty because there is no way to tell with
7 exact certainty what the person intended to do. The law says
8 that criminal intent may be inferred from the circumstances
9 shown to have existed. This is how you make a determination
10 of whether or not the element requiring intent was present.
11 It is not necessary to establish intent by direct and positive
12 evidence but intent may be established by inference in the
13 same way as any other fact, by taking into consideration the
14 acts of the parties and all the facts and circumstances of
15 this case. Criminal intent is a mental state. It is a
16 conscious wrongdoing. It is up to you to determine what the
17 defendant intended to do, based upon the circumstances shown
18 to have existed.

19 If a crime is committed by two or more people who
20 were acting together in committing a crime, the act of one is
21 the act of all. A person who joins with another to commit an
22 unlawful act is criminally responsible for everything done by
23 the other person which happens as a natural and probable
24 consequence of the act -- carrying out the common plan and
25 purpose. For example, two people can be guilty of killing

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 another person when only one of the two had a gun, there was
2 only one bullet, and only one of the two fired the shots that
3 caused the death. If two or more people are together, acting
4 together, assisting each other in committing the offense, the
5 act of one is the act of all or, as it is sometimes said, the
6 hand of one is the hand of all.

7 Prior knowledge that a crime is going to be
8 committed, without more, is not sufficient to make a person
9 guilty of that crime. Mere knowledge that another person is
10 going to commit a crime, even if the defendant is present when
11 the crime is committed, is not sufficient to convict the
12 defendant as a principal. Guilt as a principal is shown by
13 actual or constructive presence at the scene as a result of a
14 prior arrangement. Therefore, a finding of a prior arranged
15 plan or scheme is necessary for a finding of guilt as a
16 principal. The State must prove by a reasonable doubt, by
17 competent evidence, the theory of the hand of one is the hand
18 of all. A principal in a crime is one who actually either
19 commits the crime or who is present aiding, abetting, or
20 assisting in committing the crime. When a person does an act
21 in the presence of and with the assistance of another, the act
22 is done by both. Where two or more acting with a common plan
23 or intent are present at the commission of a crime, it does
24 not matter who actually commits the crime. All are guilty.
25 The hand of one is the hand of all.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 Present at the commission of a crime means to be
2 sufficiently near to aid and abet and assist in the commission
3 of the crime. However, mere presence at the scene of a crime
4 is not sufficient to convict one as a principal on the theory
5 of aiding and abetting. Intent is also a necessary element,
6 for there must have been a common design or intent to commit
7 the crime and the crime must have been committed pursuant
8 thereto with the person aiding and abetting by some overt act.

9 Intent means intending the result which actually
10 occurs, not accidentally or involuntarily. Intent may be
11 shown by acts and conduct of the defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent. The State must prove these elements beyond a
14 reasonable doubt.

15 The State has the burden of proving identity beyond
16 a reasonable doubt. You must be satisfied beyond a reasonable
17 doubt of the accuracy of the identification of the defendant
18 before you may convict the defendant. Identification
19 testimony is an expression of belief or impression by a
20 witness. You must determine the accuracy of the
21 identification of the defendant. You must consider the
22 believability of each identification witness in the way as any
23 other witness. You may consider whether the witness had an
24 adequate opportunity to observe the offender at the time of
25 the offense. This will be affected by things like how long or

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 short of time was available, how far or close the witness was,
2 the lighting conditions, and whether the witness had a chance
3 to see or know the person in the past. Once again, I instruct
4 you the burden of proof on the State extends to every element
5 of the crime charged, and this specifically includes the
6 burden of proving beyond a reasonable doubt the identity of
7 the defendant as the person who committed the crime. If after
8 examining the testimony you have a reasonable doubt as to the
9 accuracy of the identification, you must find the defendant
10 not guilty.

11 Mr. Washington is charged with murder. The State
12 must prove beyond a reasonable doubt that Mr. Washington
13 killed another person with malice aforethought. Malice is
14 hatred, ill will, or hostility towards another person. It is
15 the intentional doing of a wrongful act without just cause or
16 excuse and with an intent to inflict injury or under
17 circumstances that the law will infer an evil intent. Malice
18 aforethought does not require that malice exists for any
19 particular time before the act is committed, but malice must
20 exist in the minds of the defendant just before and at the
21 time the act is committed. Therefore, there must be a
22 combination of the previous evil intent and the act. Malice
23 aforethought may be express or inferred. These terms, express
24 or inferred, do not mean different types of malice but merely
25 the manner in which the malice may be shown to exist; that is,

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 either by direct evidence or by an inference from the facts
2 and circumstances that are proven. Malice may be inferred
3 from conduct showing a total disregard for human life.

4 If you find that the State has failed to prove
5 beyond a reasonable doubt that Mr. Washington committed
6 murder, you may consider whether the State has proved beyond a
7 reasonable doubt that Mr. Washington committed voluntary
8 manslaughter. To prove voluntary manslaughter, the State must
9 prove beyond a reasonable doubt that Mr. Washington took the
10 life of another in a sudden heat of passion based upon
11 sufficient legal provocation. Both heat of passion and
12 sufficient legal provocation must be present at the time of
13 the killing to constitute voluntary manslaughter. Sudden heat
14 of passion may, for a time, affect a person's self-control and
15 temporarily disturb a person's reason. The sudden heat of
16 passion must be the type that would make an ordinary person
17 unable to coolly reflect on his actions and would produce an
18 uncontrollable -- and would produce an uncontrollable impulse
19 to do violence. Sufficient legal provocation must be the type
20 that would make a person of ordinary reason and caution become
21 enraged and to lose control. The provocation needed for
22 voluntary manslaughter must come from some act of or related
23 to the victim. Words alone, however vulgar or insulting, are
24 not enough to be a legal provocation. Where death is caused
25 by the use of a deadly weapon, the words must be accompanied

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 by some overt threatening act which could have produced the
2 heat of passion. The exercise of a legal right, no matter how
3 offensive it is to another, is never sufficient legal
4 provocation for voluntary manslaughter. Sufficient legal
5 provocation must include more than mere words or display of a
6 willingness to fight without an overt threatening act. If the
7 heat of passion had cooled or if there was enough time between
8 the provocation, if any, and the killing, for the passion of a
9 reasonable person to cool, the killing would not be voluntary
10 manslaughter. In deciding whether a reasonable person would
11 have had enough time to cool off, you should consider all the
12 circumstances surrounding the situation and the killing. You
13 may consider the nature of the provocation, if any, the
14 defendant's mental and physical state, and the circumstances
15 and relationships between the parties.

16 I instruct you and emphasize the fact that the
17 defendant did not testify is not a factor to be considered by
18 you in any way in your deliberation and in your consideration
19 on the question of the guilt of the defendant. It must not be
20 considered by you in any manner whatsoever. A defendant has
21 the constitutional right to remain silent, and the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are to draw no
24 conclusions whatsoever from the fact that the defendant in
25 this case did not testify. The fact the defendant did not

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 testify should not be discussed in the jury room. The burden
2 of proof, as I have stated to you, is on the State. The
3 defendant is not required to prove his innocence. The burden
4 of proof remains on the State to prove guilt beyond a
5 reasonable doubt.

6 Ladies and gentlemen, I am now going to go over the
7 verdict form with you. Please understand there is absolutely
8 no significance in the way that I read the verdict form. It's
9 simply something has to go on the paper first.

10 In the State of South Carolina, County of Berkeley,
11 versus Sha'Quille Washington, Court of General Sessions, case
12 number 2015-GS-08-1333, we, the jury, find the defendant,
13 Sha'Quille Washington, not guilty or we, the jury, find the
14 defendant, Sha'Quille Washington, guilty, of murder or we, the
15 jury, find the defendant, Sha'Quille Washington, guilty of
16 voluntary manslaughter.

17 Mr Foreperson, you will sign the verdict form,
18 indicating it is the unanimous decision of the jury, meaning
19 all twelve of you must agree. Once you have signed the
20 verdict form indicating that you have reached a unanimous
21 decision, you will knock on the jury room door and the
22 bailiffs will escort you back in. I will check the verdict
23 form to make sure it is appropriate order, so that is not
24 something that you will read out loud in the courtroom.

25 Ladies and gentlemen, this is the last time that I

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 will say this to you. Do not begin your deliberations. Do
2 not discuss this case amongst yourselves. Once we have
3 collected the verdict form, as well as the exhibits that will
4 go back to you, the bailiff will instruct you that you may
5 begin your deliberations.

6 To my two alternates: at this time you have
7 completed your service to this case but if at any point before
8 the deliberations begin the first twelve indicate they cannot
9 complete their deliberations, I will let you know. So until
10 you are instructed otherwise, please follow all of my
11 admonitions. Do not discuss this case with each other or
12 begin deciding any issue in this case.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 11:43 a.m.]

16 THE COURT: Thank you. Please be seated.

17 Any objections, corrections, to the charge as read?
18 From the State?

19 MR. WEST: Nothing from the State, Your Honor.

20 MR. DAVIS: Other than what we had noted earlier
21 about -- other than that, no exception, Your Honor.

22 THE COURT: All right. And you've reviewed the
23 verdict form?

24 MR. DAVIS: We have, Your Honor.

25 MR. WEST: That's correct, Your Honor.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 THE COURT: All right. Thank you.

2 Mr. West, do you want me to make one of your
3 e-mails a Court's Exhibit?

4 MR. WEST: About the voluntariness? Please.

5 [Whereupon, Court's Exhibit Number 3 is marked by
6 the court reporter]

7 [Whereupon, the evidence goes out to the jury at
8 11:55 a.m.]

9 THE COURT: We'll be at ease. We're at ease.

10 [Whereupon, a recess is taken from 11:55 a.m. to
11 5:07 p.m.]

12 [Whereupon, Court's Exhibit Number 4 is marked by
13 the court reporter]

14 [Whereupon, Court's Exhibit Number 5 is marked by
15 the court reporter]

16 [Whereupon, Court's Exhibit Number 6 is marked by
17 the court reporter]

18 [Whereupon, Court's Exhibit Number 7 is marked by
19 the court reporter]

20 THE COURT: Y'all may be seated. I am so sorry.
21 Thank you.

22 Mr. West, Mr. Davis, Mr. Poulos, we had a
23 conversation in chambers that due to the lateness of the
24 hour and what we would need to do would be to adjourn at
25 about 5:00 or 5:15.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 At 4:58, I was given a note that says the jury is
2 deadlocked and so I'm going to bring them in, give them
3 the Allen charge, and then release them for the evening.

4 Any comment, Mr. West?

5 MR. WEST: Could we review the Allen charge, Your
6 Honor?

7 THE COURT: I'm sorry?

8 MR. WEST: Could we review the Allen charge.

9 THE COURT: It's the one --

10 MR. DAVIS: Judge --

11 THE COURT: -- I give all the time, the standard
12 charge.

13 MR. DAVIS: -- it would be my desire that you give
14 the Allen charge in the morning. It would be my
15 position if you give the Allen charge tonight, then this
16 jury should go back and give all deliberations the
17 consideration to the subject matter.

18 I really am contrary to an Allen charge and
19 disbursement. I would prefer we do the Allen charge in
20 the morning and then go from there. But an Allen charge
21 at five after 5:00, and then to allow them to go home,
22 I'm very leery of that approach, Your Honor. But you're
23 the judge. That's where I'm at.

24 THE COURT: Mr. West?

25 MR. WEST: The Court's indulgence, Your Honor.

State vs. Sha'Quille Washington
Charge of The Court
October 15, 2015

1 [Whereupon, Mr. West and Mr. Poulos confer]

2 MR. WEST: Your Honor, we prefer it be read tonight
3 and to reconvene in the morning.

4 THE COURT: Do you want me to read the charge
5 tonight?

6 MR. WEST: That's correct.

7 THE COURT: Ar. I'm going to read the charge,
8 Mr. Davis. Note your exception.

9 I ask that everybody that is in the courtroom
10 remain in the courtroom until I release you. Thank you.

11 [Whereupon, the jury enters the courtroom at
12 5:09 p.m.]

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State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

ALLEN CHARGE

THE COURT: Thank you. Please be seated.

Mr. Foreman, members of the jury, you have indicated via note that you have exhausted all conversational options and are hopelessly at an impasse and that you do not foresee reaching an unanimous decision.

Ladies and gentlemen, we were going to go until approximately this time, anyway, to break. But I received your note and because I received your note, I must give you what is called an Allen charge.

You have stated that you have been unable to agree on a verdict in this case. As I instructed you earlier, the verdict must be unanimous, meaning all twelve of you must agree on your verdict.

When a matter is in dispute, it isn't always easy for even two people to agree, so when the twelve of you must agree, it becomes even more difficult. In most cases, absolute certainty cannot be reached or expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this, you should consult with each other, express your own views, and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with open minds.

Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1 verdict you agree to must be your own verdict, the result of
2 your own convictions, and you should not give up your firmly-
3 held beliefs simply to be in agreement with your fellow
4 jurors.

5 The majority should consider the minority's
6 opinions, and the minority should consider the majority's
7 position. You should carefully consider and respect the
8 opinions of each other and reevaluate your position for
9 reasonableness, correctness, and impartiality. You must lay
10 aside all outside matters and reexamine the questions before
11 you, based upon the law and the evidence in this case.

12 If you do not agree with a verdict in this case, I
13 must declare a mistrial. In that case it does not mean that
14 anybody wins. It simply means that at some future time, I
15 will try this case with some other jury sitting where you sit
16 now. The same participants will come in and the lawyers will
17 ask basically the same questions and give basically the same
18 answers and we'll go through this process again.

19 You were selected in the same manner and from the
20 same source as any future jury will be. There is no reason
21 for me to suppose that there will be twelve more impartial,
22 intelligent, conscientious, and competent jurors than sit
23 before me here today, or that more or clearer evidence will be
24 provided on one side or the other.

25 I am asking -- we are going to break for the

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1 evening. I am asking when we return back, and you will return
2 back at the same time as you have been, at 9:30 in the
3 morning, that you can arrive with a verdict within a
4 reasonable time.

5 Ladies and gentlemen, since we are breaking for the
6 evening hour, you must remember all of my admonitions. You
7 must stop your deliberations. You must not consider any issue
8 in this case until all twelve of you are back together again.
9 You must not discuss this case with anyone. You must not
10 read, watch, listen to, any news accounts regarding this case,
11 should there be any. Ladies and gentlemen, you must not go by
12 the scene where any of the events are alleged to have taken
13 place, and you must not do any independent investigation. The
14 evidence has been collected while you were in here. Your
15 notepads were taken up and they will be locked. They will be
16 given back to you when all twelve of you return in the
17 morning.

18 Ladies and gentlemen, please follow all of my
19 admonitions.

20 Please rise for the jury. Thank you.

21 [Whereupon, the jury exits the courtroom at
22 5:14 p.m.]

23 THE COURT: Thank you. Be seated. You may be
24 seated, Mr. Davis.

25 Mr. West -- hold on one second. I'm hearing from

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1 Mr. West. Is there anything further?

2 MR. WEST: Nothing further from the State, Your
3 Honor.

4 THE COURT: Any objection, correction, addition to
5 the charge that I gave as the Allen charge?

6 MR. WEST: No, Your Honor.

7 THE COURT: Is there any objection to the jury
8 returning back at 9:30?

9 MR. WEST: 9:30 is acceptable with the State, Your
10 Honor.

11 THE COURT: Mr. Davis, any objection, correction,
12 addition to the charge as read to the jury?

13 MR. DAVIS: Judge, I have no exceptions to your
14 Allen charge. I think the law dictates that that was
15 proper.

16 I have exceptions to the fact that this jury is
17 going to be disbursed and then commence deliberation in
18 the morning. I object to that aspect because I believe
19 the whole integrity of these twelve people should be in
20 line that they stay together until a decision has been
21 reached.

22 THE COURT: Mr. Davis, do you have any case law
23 that requires such?

24 MR. DAVIS: All I have, Judge, is thirty-three
25 years of practicing law at this point and having

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1 personal knowledge of being engaged in a similar
2 situation where we have stayed until the wee, wee hours
3 in the morning.

4 THE COURT: And so you are -- you are requesting
5 that what happened? That we send them back and they
6 continue deliberating?

7 MR. DAVIS: Before you read the Allen charge, Your
8 Honor, I told you that I preferred that the Allen charge
9 be read in the morning and then they would commence
10 deliberation.

11 THE COURT: So you have no objection to them
12 leaving?

13 MR. DAVIS: That's correct. That's correct.

14 THE COURT: So the objection that you have at this
15 point is that they received the Allen charge?

16 MR. DAVIS: Which I shared before you read it, that
17 if you were going to read the Allen charge, I think it
18 should be a continuing process.

19 The State said that they prefer it be read and then
20 the disbursement, so there's no objection from the
21 State.

22 THE COURT: The way I read the case law is that
23 once a jury has indicated to me that they are unable to
24 reach a verdict, I cannot tell them to continue their
25 deliberations without giving them the Allen charge.

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1. Because it is after 5:00 p.m., and due to the nature of
2. the situation that has presented itself, I feel it is
3. best for us to break for the evening. In order for us
4. to break for the evening, they had to be given the Allen
5. charge and so that is the procedure that we have used.

6. You indicated there is no objection to the charge
7. as read; is that correct?

8. MR. DAVIS: No. I just -- the whole process.

9. THE COURT: Well, Mr. Davis, you --

10. MR. DAVIS: The Allen charge --

11. THE COURT: -- said two different things to me.

12. MR. DAVIS: The Allen charge could have been read
13. in the morning.

14. THE COURT: Just so I understand, Mr. Davis, what
15. is it about the reading of the Allen charge that makes a
16. difference? You said that you didn't have a problem
17. with them going home.

18. MR. DAVIS: Because, Judge, this is what you have
19. given them: you have given instructions as a group now
20. to ponder individually for the next twelve hours or more
21. -- or twenty-four hours. That -- to me, that's
22. tantamount to an awesome change of situation. We
23. grouply, as a group, received the instructions of how we
24. should be and how we should adhere to our own individual
25. moral conscientiousness but yet after that, we are

State vs. Sha'Quille Washington
Allen Charge by The Court
October 15, 2015

1 allowed to disburse away and ponder not as a group
2 anymore, but individually, and then to regroup in the
3 morning and come back together and discuss it..

4 I just think it creates a horrific instances for a
5 jury that has -- or will be subject to the kind of
6 deliberation that is unprecedented, is what I'm trying
7 to say.

8 THE COURT: Ladies and gentlemen, if you are
9 members of the victim's family, you may leave the
10 courtroom at this time.

11 I am asking that the members of the defendant's
12 family and friends remain in the courtroom until the
13 friends and family of the victim -- friends and family
14 members of the victim's family have been escorted from
15 the courtroom.

16 All right. Counsel, if you will be back at 9:15.

17 The bailiff -- you have secured all the evidence.
18 You know not to return it until all twelve jurors are
19 back in the jury room. Correct?

20 MR. DAVIS: Thank you, Judge.

21 THE COURT: We're not done yet, Mr. Davis. I know
22 you -- I know you've got a lot on your plate and you're
23 tired. We're all tired. So just wait. I just am
24 following the procedure.

25 MR. DAVIS: Okay.

~~-614-~~

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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	801
VERDICT	803
SENTENCING	806
CERTIFICATE OF COURT REPORTER	815

INDEX TO EXHIBITS

MARKED/ADMITTED

Court's Exhibit Number 8
[Note From The Jury]

802 /

State vs. Sha'Quille Washington
Proceedings
October 16, 2015

PROCEEDINGS

THE COURT: Counsel, I'm just going to bring in the jurors before they begin and just make sure that they followed my instructions.

MR. WEST: I understand, Your Honor. Thank you.

THE COURT: Let's bring the jury in.

[Whereupon, the jury enters the courtroom at 9:31 a.m.]

THE COURT: Thank you. Please be seated.

Ladies and gentlemen, I just wanted to make sure. I'm going to remind you of all of my instructions and make sure that each one of you complied with the Court's instructions over the evening hour.

If you did comply with my instructions over the evening hour, please raise your right hand.

[Whereupon, jurors comply]

THE COURT: Thank you. All twelve jurors have complied with the Court's instruction.

I gave you what was called the Allen charge last evening.

Mr. Foreperson, please take your jury members and go and continue your deliberations.

Please rise for the jury.

[Whereupon, the jury exits the courtroom at 9:33 a.m.]

MIA PERRON, CVR-CM-M

-801-

State vs. Sha'Quille Washington
Proceedings
October 16, 2015

1 THE COURT: Thank you. Please be seated.

2 All right. We will be at ease.

3 MR. DAVIS: Thank you.

4 THE COURT: Thank you.

5 MR. WEST: Thank you, Your Honor.

6 [Whereupon, the evidence goes out to the jury at
7 9:34 a.m.]

8 [Whereupon, a recess is taken from 9:36 a.m. to
9 2:41 p.m.]

10 [Whereupon, Court's Exhibit Number 8 is marked by
11 the court reporter]

12 THE COURT: Is the State ready?

13 MR. WEST: Yes, Your Honor.

14 THE COURT: Defense ready?

15 MR. DAVIS: We're ready, Your Honor.

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

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State vs. Sha'Quille Washington
Verdict
October 16, 2015

VERDICT

THE COURT: Thank you. Please be seated.

Mr. Foreman, I understand the jury has reached a verdict. If you will hand it to my bailiff. I need to make sure the form is in order.

[Whereupon, the Court reviews documents].

THE COURT: Mr. Davis?

MR. DAVIS: Are you ready?

THE COURT: We are going to announce the verdict. Please stand with your client.

THE CLERK OF COURT: The State of South Carolina versus Sha'Quille Washington, indictment number 2015-GS-08-01333, we, the jury, find the defendant, Sha'Quille Washington, guilty of voluntary manslaughter. Signed by the foreperson.

Ladies and gentlemen of the jury, if this is your verdict, please signify by raising your right hand at this time.

Thank you.

THE COURT: Anything further required of the jury? From the defendant?

MR. DAVIS: Nothing further, Your Honor.

THE COURT: From the State?

MR. WEST: We'll address everything at the appropriate time, Your Honor.

State vs. Sha'Quille Washington
Verdict
October 16, 2015

1 THE COURT: I just need from the jury. Nothing
2 from the jury?

3 MR. WEST: Nothing from the jury, Your Honor.

4 THE COURT: Ladies and gentlemen, this completes
5 your service to this case. If you will please return
6 back to your jury room, I'll be there in just a few
7 moments to thank you for your service to Berkeley
8 County.

9 Please rise for the jury.

10 [Whereupon, the jury exits the courtroom at
11 2:45 p.m.]

12 THE COURT: Thank you. Be seated.

13 Outside the presence of the jury, anything further
14 before I release the jury? Mr. Davis?

15 MR. DAVIS: Nothing further, Your Honor.

16 THE COURT: Are you prepared for sentencing?

17 MR. DAVIS: Yes, I am, Your Honor.

18 MR. WEST: Mr. Poulos is retrieving the sentencing
19 sheet, Your Honor.

20 THE COURT: Anything before -- any other matters
21 regarding the jury before I release them?

22 MR. WEST: No, Your Honor.

23 THE COURT: All right. Thank you.

24 We'll be at ease. He has to get the sentencing
25 sheet. I'm going to release the jury.

State vs. Sha'Quille Washington
Verdict
October 16, 2015

1 MR. DAVIS: About five minutes, Your Honor.

2 THE COURT: Excuse me?

3 MR. DAVIS: Give me an opportunity to assemble the
4 people who want to speak on this young man's behalf.

5 THE COURT: All right. I may not hear from
6 everyone. Thank you.

7 MR. DAVIS: At least the mother.

8 THE COURT: I will hear from mom. Thank you.

9 [Whereupon, a recess is taken from 2:47 p.m. to
10 3:07 p.m.]

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State vs. Sha'Quille Washington
Sentencing
October 16, 2015

SENTENCING

THE COURT: All right. Anything from the State?

MR. WEST: Thank you, Your Honor.

THE COURT: Hold on one second. Some of the jurors want to come in.

[Off the record momentarily]

MR. WEST: Thank you, Your Honor. May it please the Court.

As you know, you've heard the facts of the case. This is a case where Herman Manigault was shot in the back. He was killed at a nightclub by the defendant, Sha'Quille Washington. In this respect, Your Honor, the State is asking for the maximum thirty-year sentence. We believe the thirty-year sentence is certainly appropriate in this case because of the loss of a life in this case.

We are dealing with a defendant who may have been seventeen at the time of the offense but his actions suggest that he at least wanted to be much more mature than Mr. Davis may, at certain times, suggests that he is.

He had a phone that was littered with evidence of drug dealing, multiple possessions of firearms, not just the firearm that was used to kill Herman Manigault. There was gang activity indicated on this defendant's

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 phone. So this defendant certainly chose a lifestyle
2 that led him to the outcome in this case. He was
3 seventeen at a nightclub when this innocent victim was
4 killed.

5 What we have here is a situation where the jury has
6 reached a verdict for voluntary manslaughter. And the
7 State understands the jury's reaching of that verdict.
8 We would respectfully ask for the thirty-year maximum.

9 And we would ask for the Court's allowance of
10 certain family members to address Your Honor.

11 THE COURT: Mr. West, whoever wishes to approach.

12 MR. WEST: State your full name, and spell your
13 last name for the record.

14 MR. WALTER JENKINS: My name is Reverend Walter
15 Jenkins. J-E-N-K-I-N-S.

16 I wanted to come and stand on behalf of the
17 Manigault-Jenkins family. And I wanted to say to the
18 jury, as well as to --

19 THE COURT: Please address your comments to the
20 Court. I know you --

21 MR. WALTER JENKINS: To the Court?

22 THE COURT: Yes. Thank you.

23 MR. WALTER JENKINS: Okay. Yes, ma'am.

24 Well, to the Court, that we thank God for
25 expediting this case in such a way that the outcome was

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 what it is.

2 We know that both sides of the family will be hurt
3 from this, not just the Manigault-Jenkins but also the
4 Washington family. We have conveyed that to them, as
5 well, to the mother -- I have spoken to her, as well --
6 and to the family.

7 And I want to say that we know that thirty years
8 compared to someone that died, his is eternal, but the
9 other is just temporary. So we just ask now that
10 whatever the Court has mandated, that it pursue that.

11 And we just ask for those that are going through
12 this, that the Good Lord will have mercy on them. And
13 we thank God for all of you. Thank you.

14 THE COURT: Mr. West, anyone else?

15 MR. WEST: Anybody else in the family wish to
16 address the Court?

17 Your Honor, the only other thing that I would like
18 to add is that there's never been a shred of remorse
19 indicated by this defendant in this case, and we feel
20 that that, in addition to the other things that the
21 State has mentioned, is warranting of the thirty-year
22 sentence.

23 THE COURT: Mr. Davis?

24 MR. DAVIS: May it please the Court, Your Honor.

25 I want to thank the Manigault family, and I want to

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 thank this jury. I was a prosecutor for ten years and
2 of course in that ten years of seeing countless families
3 affected by violence, unnecessary violence.

4 But despite why we are here, I don't want you, Your
5 Honor, just to adopt the State's version that this --
6 the fact that this kid finds himself convicted of
7 voluntary manslaughter, allegation about carrying guns
8 in the past, allegation of a drug use, that it's okay
9 for this Court to sentence him in any manner it sees
10 fit, which specifically is the maximum.

11 THE COURT: Mr. Davis, I don't just sentence him in
12 any manner that I see fit. I sentence him in the manner
13 prescribed by law. Thank you.

14 MR. DAVIS: And prescribed by law is anywhere from
15 a minimum of two years to a maximum of thirty years.

16 Having said that, I want to thank the Manigault
17 family because, yes, I can appreciate this day. In my
18 own personal family, my sister's oldest and only son,
19 seventeen years of age, engaged in drug activity. New
20 Haven, Connecticut. Shot into a car. A young man's
21 life was severed at seventeen. So I don't want for a
22 minute for anybody in this courtroom to think that this
23 crime and violence haven't impacted my family and
24 families all across this nation. At seventeen. At
25 seventeen.

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 And I want you to understand that every day that
2 this young man serves in jail, that the Washington
3 family, the mother, will be serving those time at the
4 same token at the same time. Every hour and every
5 minute of whatever sentence you impose is going to be
6 impacted by this young man.

7 There is enough empirical data he's still a child,
8 that a male brain don't even mature until its twenty-
9 five. That's what the experts said. Between twenty-
10 five years of age until they get judgment. That makes a
11 difference in reference to them to make adequate
12 judgment.

13 No matter what you do here today, Judge, nothing is
14 going to bring back or impact or change what occurred on
15 August the 25th, 2013. It's no question that was a
16 horrific act that happened. But he's still somebody's
17 child, and he's still somebody's nephew, he's still
18 someone's brother. And as I alluded to in opening
19 statement, he still is a human being. He's a human
20 being. And he's still --

21 Yes, I beg to differ with our esteemed prosecutor
22 about remorse. I spent countless days with this young
23 man over at the Berkeley County Detention Center. He's
24 been locked up about eight, nine months. He have some
25 severe medical issue of hemorrhoids and some medical

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 issues over at the jail.

2 I'm so mindful that as time progress, no matter
3 what occurs here today, Judge, is not going to stop at
4 this point in time. This young man or this child is
5 still going to be evolving. He's still going to be
6 evolving. So to suggest at this moment that he reflects
7 no remorse, I just don't understand it.

8 I'm asking this Court to impose a sentence less
9 than thirty years. I'm asking this Court to impose a
10 sentence less than thirty years. I expect the State to
11 say thirty years. The State wanted murder. That's why
12 I thank this jury. I ask for mercy.

13 I ask for some forgiveness in the hearts of
14 individuals. Nine people can be murdered in a church
15 and people ask for forgiveness. Wow. Who are we? Nine
16 folks can be murdered in a church, who are we not to ask
17 for forgiveness? This is not going to stop the
18 violence. The allegations that I had a gun locked up in
19 a safe for two years: that was a great place for that
20 gun. We need more guns locked up in safes.

21 Kenneth Grant?

22 THE COURT: Sir, if you would stand at the podium.
23 State your full name for the record, and please spell
24 your last name.

25 MR. GRANT: Kenneth Grant. G-R-A-N-T.

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 First of all, Your Honor, I just wanted to thank --
2 to Mr. Jenkins and the Manigault family, I'm very sorry
3 for your loss.. From the bottom of my heart, we're
4 really sorry for y'all's loss.

5 THE COURT: Mr. Grant, if you would address your
6 comment to the Court, please. Thank you.

7 MR. GRANT: And I was in this family for a long
8 time and I know Sha'Quille from a little baby, a little
9 tiny baby. And the family accept what the jury
10 accepted. But, you know, I just ask mercy for
11 Sha'Quille. And in the midst of all this, there is a
12 young baby involved, a young child. He is a young, one-
13 year-old child. That child is going to suffer, too.
14 So, Judge, I ask for mercy that child.

15 THE COURT: Thank you, Mr. Grant.

16 MR. DAVIS: Judge, I do want you to factor in the
17 fact that this young man may have been led astray or
18 misguided in reference to a fellow who had a long
19 criminal record. I'm talking about Mr. Larry Kinloch.
20 Wow. That's it, Your Honor.

21 THE COURT: Is there anyone else for the family?

22 MR. DAVIS: The mother is unable to speak now.
23 It's just too much.

24 THE COURT: Mr. Washington, please stand. Do you
25 wish to address the Court?

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 MR. WASHINGTON: Yes, ma'am.

2 THE COURT: Mr. Washington, I need to advise you of
3 certain things.

4 Mr. Davis, did you advise Mr. Washington of his
5 right to appeal?

6 MR. DAVIS: I have, Your Honor.

7 THE COURT: Mr. Washington, you have the right to
8 appeal this sentence that I am about to impose, but you
9 or your attorney must do so within ten days. Do you
10 understand?

11 MR. WASHINGTON: Yes, ma'am.

12 THE COURT: This is classified as a violent and a
13 most serious offense. Do you understand what that
14 means?

15 MR. WASHINGTON: Yes, ma'am.

16 THE COURT: Mr. Washington, I am happy to hear from
17 you before I impose sentence. I caution defendants,
18 because sometimes their attorneys do tell them not to
19 speak. I will not hold the fact that you do not address
20 the Court, before I sentence you, against you but
21 anything you say will be part of the record. Do you
22 understand?

23 MR. WASHINGTON: Yes, ma'am.

24 THE COURT: I'm happy to hear from you in any way
25 that you wish to address the Court.

State vs. Sha'Quille Washington
Sentencing
October 16, 2015

1 MR. WASHINGTON: I wanted to apologize to the
2 Jenkins and Manigault family.

3 THE COURT: Is there anything else that you wish to
4 tell me?

5 MR. WASHINGTON: No, ma'am.

6 THE COURT: Anything else, Mr. Davis?

7 MR. DAVIS: Nothing further, Your Honor.

8 THE COURT: Anything else, Mr. West? Anything from
9 the State?

10 MR. WEST: Nothing further from the State, Your
11 Honor.

12 THE COURT: Mr. Washington, I have listened to the
13 facts as presented by both the State and your very
14 prepared counsel, Mr. Davis. I have observed you
15 throughout the trial. And I have listened to what I
16 perceive the facts to be, as spoken by the jury in their
17 decision to find you guilty of voluntary manslaughter.

18 Based upon what I have heard as the facts and the
19 sentence -- or the charge that you were found guilty of,
20 it's the order of the Court on 2015-GS-08-1333 that you
21 be committed to the State Department of Corrections for
22 a term of thirty years. I will give you credit for time
23 served.

24 Good luck to you, sir.

25 [JURY TRIAL CONCLUDES AT 3:24 P.M.]

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

#2013-08038764

1 of 3
SW

I, Sha'quille Washington, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det. Wilson. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 17 years of age, and live at 1009 South King Drive Huger SC 29450.

I Sha'quille Washington arrived at the club around 1:50 2:00. When I got there hangout a lil bit talk to a few ladies. I was only there for a bout 30 to 40 minutes. Then the club was closing I walked outside and started speaking to a female name Tyleasha. Then I heard commotion. Three dudes were fighting. One wore a long black shirt blue jeans and black and white adidas with a low haircut considering him as the suspect. The victim wore a all white t shirt ^{SW} with Kok. shorts and boat shoes known as sneakers. The victim friend who was helping him fight the suspect wore a red shirt with a black and red bulls shepherd. The security somewhat tried to break up the fight but they really didn't put effort. But the victim walked off and the suspect fired a shot at him. Everybody starting to run to their cars were in running when the police towards my house. I got to my house and told my granny what happen and we sat on the porch and listen as the helicopter and police came to the club. So I went to bed in my house. So this morning my grandmother came in my room and

I have read each page of this statement consisting of 3 ^{SW} page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 223 N. Live Oak Dr. Moncks this 25 day of Aug 20 13.

WITNESS:

ADPSha'quille Washington

Signature of person giving voluntary statement

WITNESS:

[Signature]

told me that people saying you are by the shooting.
 So right then: and there I got on the phone and
 called all to let them know and told them what
 I saw. ^{sw} I did that to clear my name up because I don't
 want to be accused of anything. ^{sw}
 upon being asked additional ^{sw} questions by
 detectives see page three.

END OF STATEMENT

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF
 MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY
 STATEMENT

WITNESS:

WITNESS:

SIGNATURE:

(10 23 13) RULE 5 - 93

— STATEMENT CONTINUATION —

#2013 08038764

PAGE

3^{SW} OF 3

CASE #

The suspect had a revolver in considering him as the suspect because He fired a shot. then as I ran to home I heard two more shots. the victim also had a tattoo of a ak-47 on his chest. the revolver was silver with a black handle. ^{SW} I know the victim had a ak-47 on his chest because he took off his shirt to fight. I was about 5 to 4 feet away when the shots were fired then after the fight was over the victim walked away then the suspect followed and fired a shot but at that time I was no longer as close as I was when they were fighting I was about 10 to 12 feet now I was wearing a white shirt and blue short with grey Jordans on.

End of Statement

SW

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT

WITNESS:

WITNESS:

SIGNATURE: Ma'quille Washington



AIT Laboratories

A HIGHER STANDARD OF SERVICE

647

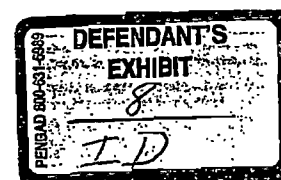
213-8803864

2265 Executive Drive, Indianapolis, IN 46241
Telephone: (800)875-3894 / Fax: (317)243-2789
Toxicology: (317)381-5678

Laboratory Case Number: 2383169	Subject's Name: MANIGAULT, HERMAN
Client Account: 17581 / berc01 Physician: Report To: Berkeley County Coroner's Off ATTN: William Salisbury 300-B California Ave. Moncks Corner, SC 29461 FX: 843-719-4570	Agency Case #: FA13-450 Date of Death: 08/25/2013 Test Reason: Other Investigator: D. HARTWELL Date Received: 08/28/2013 Date Reported: 09/06/2013

Laboratory Specimen No: 40369569	Date Collected: 08/25/2013
Container(s): 01:RTT Blood, PERIPHERAL	Test(s): 70510 Comprehensive Drug Panel

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
AMPHETAMINES	Negative				
BARBITURATES	Negative				
BENZODIAZEPINES	Negative				
CANNABINOIDS	Negative				
COCAINE/METABOLITES	Negative				
FENTANYL	Negative				
METHADONE/METABOLITE	Negative				
OPIATES	Negative				
OXYCODONE/METABOLITE	Negative				
PHENCYCLIDINE	Negative				
PROPOXYPHENE/METABOLITE	Negative				
ALCOHOL					
Methanol	Negative				
Ethanol	POSITIVE				
Ethanol, Quant		0.235	% (w/v)	Not Established	
Acetone	Negative				
Isopropanol	Negative				
ANALGESICS	Negative				
ANESTHETICS	Negative				
ANTIBIOTICS	Negative				
ANTICONSULSANTS	Negative				
ANTIDEPRESSANTS	Negative				
ANTI-HISTAMINES	Negative				



MANIGAULT, HERMAN
Laboratory Case #: 2383169

Printed Date/Time: 09/06/2013, 08:01

Page: 1 of 4



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2013-08038764

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Laboratory Specimen No: 40369569

Continued..

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
ANTIPSYCHOTICS	Negative				
CARDIOVASCULAR AGENTS	Negative				
ENDOCRINE AGENTS	Negative				
GASTROENTEROLOGY AGENTS	Negative				
NARCOTICS	Negative				
NEUROLOGY AGENTS	Negative				
SEDATIVES/HYPNOTICS	Negative				
STIMULANTS	POSITIVE				
Caffeine	POSITIVE				
UROLOGY AGENTS	Negative				

Specimens will be kept for at least one year from the date of initial report.



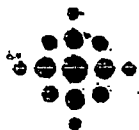
NIGAU, HERMAN

Laboratory Case #: 2383189

Printed Date/Time: 09/06/2013, 08:01

Page: 2 of 4

-636- (10/23/13) RULE 5.3-21'6



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2013-08038764

2255 Executive Drive, Indianapolis, IN 46241
Telephone: (800)875-3894 / Fax: (317)243-2789
Toxicology: (317)381-5678

Laboratory Specimen No: 40369570
Container(s): 01:UR Urine, Random

Date Collected: 08/25/2013
Test(s): 70080 Drugs of Abuse Panel

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
ALCOHOL	POSITIVE				
Ethanol	POSITIVE				
Ethanol, Quant		0.256	% (w/v)		
AMPHETAMINES	Negative				
BARBITURATES	Negative				
BENZODIAZEPINES	Negative				
BUPRENORPHINE/METABOLITE	Negative				
CANNABINOIDS	Negative				
CARISOPRODOL/METABOLITE	Negative				
COCAINE/METABOLITES	Negative				
FENTANYL	Negative				
METHADONE/METABOLITE	Negative				
OPIATES	Negative				
OXYCODONE/METABOLITE	Negative				
PHENCYCLIDINE	Negative				
PROPOXYPHENE/METABOLITE	Negative				
TRAMADOL/METABOLITE	Negative				

Significance?

NIGAU, HERMAN

Laboratory Case #: 2383169

Printed Date/Time: 09/06/2013, 08:01

Page: 3 of 4

-637-

(10/23 13) FILE 5-10-17

2013-08038764

**Department of Pathology and Lab Medicine**

165 Ashley Avenue, Suite 309
MSC 908
Charleston, SC 29425-9080

Req.: xAutopsy, For Coroner
Add.: xAutopsy, For Coroner
Loc: ABER
Client: ABER-Berkeley County Coroner

Patient: MANIGAULT, HERMAN
Med Rec: MANHER082513
DOB: [REDACTED] Age: 20
Sex: M Race: Black

Autopsy Final Report

Date and Time of Autopsy: 8/25/2013 11:30

Accession Number: **FA13-450**

Hospital/County: ABER-Berkeley County Coroner
Service: Laboratory
Submitting Physician: xAutopsy, For Coroner
Attending Pathologist: Presnell, S. Erin M.D. (1-4391)
Date/Time of Death: 8/25/2013 05:26
Autopsy Reason: Requested by Coroner
Authorized By: Darnell Hartwell, Deputy Coroner
Autopsy Restrictions: None

Pathologist Assistant: Eowyn Corcoran

Diagnosis

- Close range, penetrating gunshot wound to back:
 - aortic and hepatic perforation, disruption of left lateral vertebral bodies T12-L1, hemoperitoneum, hemothoraces, left renal hilar hemorrhage, left periaortic soft tissue hemorrhage, left pulmonary contusion
- Penetrating gunshot wound to left buttock/hip
- Posterior scalp laceration with underlying chipped bone
- Facial abrasions and lacerations
- Elbow abrasions
- Pleural adhesions
- Blood ethanol 0.235%

Cause of Death

Aortic and hepatic perforation
due to

Close range, penetrating gunshot wound to back

Contributory: Gunshot wound to left buttock/hip

Manner of Death

Homicide

Case History

Shot by someone

Clinical Summary

According to the coroner, the decedent was a 20-year-old man involved in an altercation at a club when someone shot him using a handgun around 5 a.m. on August 25, 2013. 911 was called and EMS transported him to the hospital where, despite resuscitative efforts, he was pronounced dead at 5:26 a.m. that same morning. The decedent was allegedly not wearing a shirt.

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Fax: 843-792-4896

Patient: MANIGAULT, HERMAN

Med Rec: MANHER082513

Location: ABER

-638-

10 23/13: RULE 5 3-739

MANIGAULT, HERMAN

2013-0808764 FA13-450

Gross Description

EXTERNAL EXAMINATION

The body is that of a well-developed, well-nourished, adult black male, who weighs approximately 166 pounds, is 69.5 inches in length, and appears compatible with the stated age of 20 years. The body is identified by the coroner. A hospital band with the decedent name and MR# 001902201 is around the right wrist and a tag with the decedent's name is around the right great toe. The body is clad in a pair of tan shorts with a black belt and a pair of blue boxer brief Hanes underwear. The body is slightly warm to the touch. Rigor is partially fixed (3/4) in all extremities and jaw. Minimal livor extends over the posterior surfaces of the body. The scalp hair is curly black and up to 0.3 inch in length over the crown. The irides are brown; the pupils are bilaterally equal. The corneae are slightly clouded. Excluding a left scleral purpura, the sclerae and conjunctivae are unremarkable. The nose and ears are not unusual; darker pigmentation is across the nasal bridge. The earlobes are remotely pierced. The lips and gums are intact. The teeth are in good condition. The deceased has sparse beard and mustache hair. The neck is without masses, and the larynx is in the midline. The thorax is symmetrical with an anteroposterior/lateral ratio of about 1:2. The abdomen is flat. The penis is unremarkable; the testes are bilaterally descended within the scrotum. Excluding the findings described under 'Evidence of Injury,' the anus and back are unremarkable. The upper and lower extremities are well-developed and symmetrical, without absence of digits. Identifying marks and scars consist of a tattoo of a gun and the words 'Death Before Dishonor' on the upper right chest; tattoo of the state of South Carolina shape and S.C. on the upper left chest; tattoo of the words 'In loving memory of Josie Jenkins long gone but never forgotten' 1921 - 2004; a triangular pigmented macule on the anteromedial left forearm and on the anterior left thigh; and scars up to 1.7 inch each on the knees and right lower leg. Hypopigmented macules are on the shoulders and chest. Evidence of emergency resuscitation and / or medical therapy includes an endotracheal tube secured with tape entering the oral cavity and extending into the trachea; two punctures with underlying soft tissue hemorrhage on the left lateral neck; a decompression catheter in the left chest; three punctures in the left antecubital fossa; and an intraosseous line in the right lower leg.

EVIDENCE OF INJURY

HEAD AND NECK: A left scleral purpura is present. Two lacerations up to 0.7 inch each are over the lateral left supraorbital ridge and inferior to the left eye. Associated lateral left periorbital abrasions are up to 1.1 inch each. A 0.6 in length rectangular laceration on the posterior left lateral scalp measures up to 0.4 inch in width at its vertical extensions on edge; a marginal abrasion is present. Underlying scalp hemorrhage and chipped occipital bone are noted.

THORAX AND ABDOMEN: A punctate abrasion is on the right lateral abdomen. A 0.44 x 0.38 inch entrance gunshot wound designated A is to the left mid back, 21.5 inches from the top of the head and 3 inches to the left of midline. A 0.01 inch circumferential abrasion border is present. Dense stippling is around the entrance, extending 7 inches horizontally and 4 inches vertically. Stray stipple marks cross the midline of the back and extend onto the left flank. The bullet pathway is through the skin and subcutaneous tissue, back musculature, posterior 12th left intercostal space and left lateral aspect of vertebral bodies T12 - L1; left psoas muscle; abdominal aorta; inferior left to superior central (right) liver; diaphragm, and to the chest plate at the anterior 5th left intercostal space where the bullet is recovered. Additional resultant injuries include 1 liter hemoperitoneum; 1200 cc right hemothorax; 200 cc left hemothorax; left renal hilar hemorrhage; left periaortic soft tissue hemorrhage; periaortic soft tissue hemorrhage; and contusion of the lower lobe of the left lung. The recovered bullet, designated A, is a mushroomed (6 petals) copper-colored jacketed gray metal projectile with an overall length of 0.4 inch and a base diameter of ~ 0.35 inch. The approximate trajectory of the bullet pathway through the body is 45 degrees forward, 45 degrees up, and to the right.

PELVIS/EXTREMITIES: A 1.6 inch aggregate of irregular abrasions is on the right elbow. Two faint abrasions are on the medial left elbow. A 0.45 x 0.38 inch entrance gunshot wound designated 'B' is to the lateral left buttock, 35 inches from the top of the head and 5.5 inches to the left of midline. A 0.01 inch abrasion border is from 9 - 3 o'clock. No soot or stippling is visible. The bullet pathway is through the skin and subcutaneous tissue, left gluteal muscles, and into the left pelvic bone at the ischium, where the bullet, designated 'B,' is recovered. Bullet B is a mushroomed (6 petals) copper-colored jacket with a length of 0.3 inch and a base diameter of ~ 0.35 inch and a separated gray metal core with a length of 0.3 inch and a base diameter of 0.32 inch. An additional 0.2 x 0.1 x 0.01 inch gray metal fragment is recovered along the bullet pathway. The approximate trajectory of the bullet pathway through the body is 40 degrees forward, 40 degrees up, and to the right.

RADIOGRAPHS: AP and lateral x-rays of the head, chest, abdomen, and pelvis reveal two radiopaque bullets, recovered at autopsy.

CLOTHING: A circular defect is at the posterior left lateral boxer brief underwear and shorts, corresponding to gunshot wound B. A rim of dark deposit consistent with bullet wipe is around the circular defect on the shorts.

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Patient: MANIGAULT, HERMAN

Med Rec: MANHER082513

Location: ABER

MANIGAULT, HERMAN

2013-08038764

FA13-450

EVIDENCE TRANSFER: The following items are transferred to Detective R. Cortte, who attended the autopsy, with the Berkeley County Sheriff's Office: tan shorts; black belt; blue boxer briefs; two condoms in wrappers; right fingernail scrapings; left fingernail scrapings; pulled scalp hair; bullet A; bullet B; blood spot on filter paper; and CD with digital images from autopsy.

INTERNAL EXAMINATION

BODY CAVITIES: Right pleural adhesions are present. Otherwise, excluding the findings described under 'Evidence of Injury,' no adhesions or abnormal collections of fluid are in any of the body cavities. All body organs are present in normal anatomical positions.

HEAD (CENTRAL NERVOUS SYSTEM): The brain weighs 1500 grams. The dura mater and falx cerebri are intact. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels, are intact and free of abnormality. Sections through the cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The basal ganglia, thalami, and hippocampi are unremarkable. The cerebral ventricles are normal caliber. Sections through the brainstem and cerebellum are unremarkable.

NECK: Excluding soft tissue hemorrhage associated with resuscitative efforts (i.e. vascular access attempts), examination of the soft tissues of the neck, including strap muscles, thyroid gland, and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. The lingual mucosa is intact; the underlying firm red-brown musculature is devoid of hemorrhage.

CARDIOVASCULAR SYSTEM: The heart weighs 350 grams. The pericardial and epicardial surfaces are smooth, glistening and unremarkable; the pericardial sac is free of significant fluid or adhesions. The coronary arteries arise normally, follow the usual distribution and are patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves bear the usual size-position relationships and are unremarkable. The myocardium is dark red-brown, firm, and unremarkable; the atrial and ventricular septa are intact. The left ventricular thickness = 1.5 cm, right ventricular thickness = 0.3 cm, and the interventricular septum = 1.3 cm. The aorta and its major branches arise normally, follow the usual course and are patent, free of significant atherosclerosis. The venae cavae and their major tributaries return to the heart in the usual distribution and are free of thrombi.

RESPIRATORY SYSTEM: The right and left lungs weigh 270 and 260 grams, respectively. The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable. The pleural surfaces are smooth, glistening and unremarkable. Lobar divisions are of the usual configuration. The pulmonary parenchyma is dark red-purple, exuding slight to moderate amounts of blood and frothy fluid. The pulmonary arteries are normally developed, patent, and without thrombus or embolus.

LIVER AND BILIARY SYSTEM: The liver weighs 1380 grams. Excluding disruption along the bullet pathway, the hepatic capsule is smooth, glistening and intact, covering red-brown parenchyma. The gallbladder contains 10 ml of red-brown, slightly mucoid bile; the mucosa is unremarkable. The extrahepatic biliary tree is patent, without evidence of calculi.

ALIMENTARY TRACT: The esophagus is lined by gray-white, smooth mucosa. The gastric mucosa is arranged in the usual rugal folds, and the lumen contains scant mucus. The small and large bowel are unremarkable. The appendix is present. The pancreas has a normal gray-white, lobulated appearance, and the ducts appear clear.

GENITOURINARY TRACT: The right and left kidneys weigh 120 and 150 grams, respectively. The renal capsules are smooth and thin, semi-transparent, and strip with ease from the underlying, smooth, pale tan, firm, cortical surfaces. The cortices are delineated from the medullary pyramids, which are red-purple to tan and unremarkable. The calyces, pelves, and ureters are unremarkable. The relationships at the trigone are unremarkable. The urinary bladder contains 100 ml of slightly cloudy, pink-yellow urine; the mucosa is gray-tan and smooth. The prostate gland is unremarkable.

RETICULOENDOTHELIAL SYSTEM: The spleen weighs 60 grams and has a smooth, intact capsule covering red-purple, moderately firm parenchyma; the lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The bone marrow is red-purple and homogeneous, without evidence of focal abnormality.

ENDOCRINE SYSTEM: The pituitary, thyroid, and adrenal glands are unremarkable.

MUSCULOSKELETAL SYSTEM: Excluding the findings described under 'Evidence of Injury,' the bony framework, supporting musculature, and soft tissues are not unusual.

SEP:mtr
08/25/13
09/06/13

Department of Pathology and Laboratory Medicine

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Patient: MANIGAULT, HERMAN

Med Rec: MANHER082513

Location: ABER

Case Summary

A complete autopsy was performed on the body of Herman Manigault at the Medical University of South Carolina Autopsy Suite on August 25, 2013. The postmortem examination began at 11:30 a.m. The prosecutor was Dr. S. Erin Presnell. The autopsy technician was Mr. Raymond Edwards. The autopsy was authorized by the Berkeley County Deputy Coroner, Mr. D. Hartwell.

Significant findings at autopsy included a close range, penetrating gunshot wound to the back with resultant aortic and hepatic perforation; disruption of the left lateral aspect of vertebral bodies T12-L1; hemoperitoneum, hemothoraces, left renal hilar hemorrhage, left periaortic hemorrhage, periaortic soft tissue hemorrhage, and left pulmonary contusion; penetrating gunshot wound to the left buttock/hip; posterior scalp laceration with underlying chipped bone; facial abrasions and lacerations; elbow abrasions; and right pleural adhesions.

A urine screen for common drugs of abuse was negative. Toxicologic analysis of peripheral blood revealed the presence of caffeine. Blood and urine ethanol concentrations were 0.235% and 0.256%, respectively.

In light of the historical information and the gross and microscopic autopsy findings, it is the opinion of the pathologist that the decedent died as the result of aortic and hepatic perforation due to a close range, penetrating gunshot wound to the back. A penetrating gunshot wound to the left buttock/hip is considered contributory. Furthermore, the manner of death is best deemed homicide.

Certification Statement

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have rendered the above diagnosis(es).

Presnell, S. Erin M.D. (1-4391)

(Electronically signed by)

Verified: 09/06/2013 11:02

MR/8/27/2013

Department of Pathology and Laboratory Medicine

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Patient: MANIGAULT, HERMAN

Med Rec: MANHER082513

Location: ABER

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State File Number
13030257

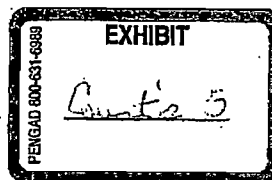
1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last) Herman Manigault III		2. SEX Male	3. SOCIAL SECURITY [REDACTED]
4a. AGE-Last Birthday (Years) 20	4b. UNDER 1 YEAR Months 20	4c. UNDER 1 DAY Hours 20	5. DATE OF BIRTH (MM/DD/YYYY) [REDACTED]
6. BIRTHPLACE (City and State or Foreign Country) Charleston, SC		7. CITY OR TOWN Mount Pleasant	
7a. RESIDENCE-STATE South Carolina		7b. COUNTY Berkeley	
7c. STREET AND NUMBER 122 Josie Lane		7d. APT. NO. [REDACTED]	7e. ZIP CODE 29492
7f. INSIDE CITY LIMITS? ☐ Yes ☒ No		7g. INSIDE CITY LIMITS? ☐ Yes ☒ No	
8. EVER IN U.S. ARMED FORCES? ☐ Yes ☒ No		9. MARITAL STATUS AT TIME OF DEATH ☐ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☒ Never Married ☐ Unknown	
10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage) Janet E Jenkins		11. FATHER'S NAME (First, Middle, Last) Herman Manigault Jr	
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last) Janet E Jenkins		13a. INFORMANT'S NAME Janet E Jenkins	
13b. RELATIONSHIP TO DECEDENT Mother		13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) 122 Josie Lane Mount Pleasant, South Carolina 29492	
14. PLACE OF DEATH (Check only one; see instructions) ☐ If death occurred in hospital: ☐ Inpatient ☐ Emergency Room/Outpatient ☐ Died on Arrival ☐ If death occurred somewhere other than a hospital: ☐ Nursing home/Long term care facility ☐ Decedent's home ☒ Hospice facility 3500 Highway 17N			
15. FACILITY NAME (If not institution, give street and number) 3500 North 17 Highway		16. CITY OR TOWN, STATE AND ZIP CODE Mount Pleasant, South Carolina 29492	
17. COUNTY OF DEATH Charleston		18. METHOD OF DISPOSITION ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify):	
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place) Long Point Baptist Church		20. LOCATION-CITY, TOWN AND STATE Mount Pleasant, South Carolina	
21. NAME AND ADDRESS OF FUNERAL FACILITY The Palmetto Mortuary		22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT Benjamin Z. Singleton (Electronically Verified)	
23. EMBALMER (Name) Benjamin Singleton		23a. EMBALMER LICENSE NUMBER 2367	23b. EMBALMER LICENSE NUMBER 2367
23c. LICENSE NUMBER (Of Facility) 715		24. DATE PRONOUNCED DEAD (MM/DD/YYYY) August 25, 2013	
25. TIME PRONOUNCED DEAD 05:26 AM		26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable) [REDACTED]	
27. LICENSE NUMBER [REDACTED]		28. DATE SIGNED (mm/dd/yyyy) [REDACTED]	
29. ACTUAL OR PRESUMED DATE OF DEATH (Specify Month) August 25, 2013		30. ACTUAL OR PRESUMED TIME OF DEATH 05:26 AM	
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☒ Yes ☐ No		32. PART I. Enter the chain of events - disease, injuries, or complications - that directly caused the death. DO NOT enter terminal events cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary. Aortic and hepatic perforation due to close range, penetrating gunshot wound to back	
32. PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I. Gunshot wound to left buttock/hip		33. WAS AN AUTOPSY PERFORMED? ☒ Yes ☐ No	
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☒ Yes ☐ No		35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☒ No ☐ Unknown	
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year		37. MANNER OF DEATH ☐ Natural ☒ Homicide ☐ Accident ☐ Pending Investigation ☐ Suicide ☐ Could not be determined	
38. TIME OF INJURY (Specify Month) August 25, 2013		39. TIME OF INJURY 04:05 AM	
40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area) Parking lot of club		41. INJURY AT WORK? ☐ Yes ☒ No	
42. LOCATION OF INJURY: State South Carolina		43. CITY OR TOWN Huger	
44. COUNTY Berkeley		45. ZIP CODE 29450	
46. STREET AND NUMBER 1020 Hamlin Corner Road		47. APARTMENT NUMBER [REDACTED]	
48. DESCRIBE HOW INJURY OCCURRED: Shot by someone		49. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify):	
50. CERTIFIER (Check only one) ☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated. ☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. ☒ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. Signature of certifier: Darnell D. Hartwell (Electronically Certified)			
51. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32) Darnell D. Hartwell, 300 B California Ave Moncks Corner South Carolina 29461		52. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER [REDACTED]	
53. TITLE OF CERTIFIER Deputy Coroner		54. LICENSE NUMBER [REDACTED]	
55. DATE CERTIFIED (MM/DD/YYYY) 9/11/2013		56. FOR REGISTRAR ONLY- DATE FILED (MM/DD/YYYY) 9/11/2013	
57. DECEDENT'S EDUCATION- Check the box that best describes the highest degree or level of school completed at the time of death. ☐ 8th grade or less ☒ 9th-12th grade; no diploma ☐ High school graduate or GED completed ☐ Some college credit, but no degree ☐ Associate degree (e.g., AA, AS) ☐ Bachelor's degree (e.g., BA, BS, BS) ☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA) ☐ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)		58. DECEDENT OF HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina. ☒ No, not Spanish/Hispanic/Latino/Latina ☐ Yes, Mexican, Mexican American, Chicano/Chicana ☐ Yes, Puerto Rican ☐ Yes, Cuban ☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify):	
59. DECEDENT'S RACE (Check one or more races to indicate what the decedent considered himself or herself to be) ☐ White ☐ Black or African American ☐ American Indian or Alaska Native (Name of the enrolled or principal tribe) ☐ Asian Indian ☐ Chinese ☐ Filipino ☐ Japanese ☐ Korean ☐ Vietnamese ☐ Other Asian (Specify) ☐ Native Hawaiian ☐ Guamanian or Chamorro ☐ Samoan ☐ Other Pacific Islander (Specify) ☐ Other (Specify):		60. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED") Food Service and Lawn Care	
61. KIND OF BUSINESS/INDUSTRY [REDACTED]		62. KIND OF BUSINESS/INDUSTRY [REDACTED]	

Amendment Code
Amendment Number
Date
User ID
BRTF NO.
718376
DHEC 870
Rev. 2004

Could we the law clarified again
about reasonable Doubt, Hand of One
is Hand of all and Voluntary Manslaughter

Yavon H. Hill

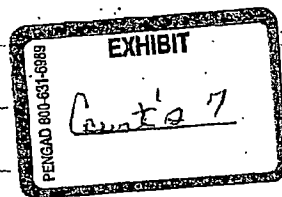
OCT 15, 2015
2:13 PM



We have exhausted all
conversational options and are
hopelessly at an impasse. I do not
foresee us reaching a unanimous
decision.

1/10/2015 1h. 16h

OCT 15, 2015
4:58 pm



In the definition of voluntary manslaughter,
the specification that requires legal
provocation

"can we use "hand of one is the
hand of all" to support legal
provocation for parties acting in
concert with victim

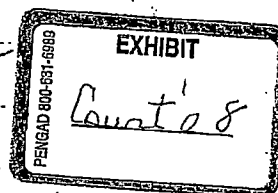
"would parties acting in concert
with the victim constitute
sufficient legal provocation
towards actions against victim

Yawnin M, Lill

Oct 16, 2015
1240

You have been given
all instructions on the
law in my charge to
you. Please continue
your deliberations.

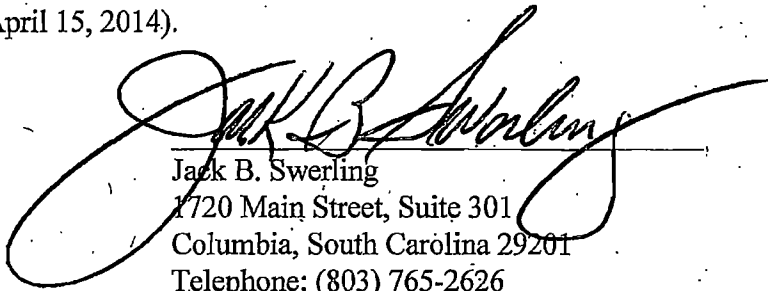
HH



CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, 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.

Counsel further certifies that this record on appeal complies with the Order of the Supreme Court of South Carolina entitled *Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d 421 (April 15, 2014).



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ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

SC Court of Appeals

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002688

The State,

Respondent,

v.

Sha'Quille Washington,

Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Argument	2
Conclusion	17

TABLE OF AUTHORITIES

Cases:

<i>Allen v. United States</i> , 164 U.S. 492 (1896)	15, 16
<i>Barber v. State</i> , 393 S.C. 232, 712 S.E.2d 436 (2011)	13
<i>Harvey v. Strickland</i> , 350 S.C. 303, 566 S.E.2d 529 (2002)	16
<i>State v. Bryant</i> , 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010)	12
<i>State v. Caldwell</i> , 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008)	9, 10
<i>State v. Carmack</i> , 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010)	10
<i>State v. Condrey</i> , 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002)	13
<i>State v. Copeland</i> , 278 S.C. 572, 300 S.E.2d 63 (1982)	5
<i>State v. Dennis</i> , 337 S.C. 275, 523 S.E.2d 173 (1999)	6
<i>State v. Fossick</i> , 333 S.C. 66, 508 S.E.2d 32 (1998)	5
<i>State v. Fulton</i> , 333 S.C. 359, 509 S.E.2d 819 (Ct. App. 1998)	9, 10
<i>State v. Garner</i> , 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2010)	4
<i>State v. Hendricks</i> , 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014)	6
<i>State v. Huckabee</i> , 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010)	10
<i>State v. LaCoste</i> , 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001)	4, 6
<i>State v. Ladner</i> , 373 S.C. 103, 644 S.E.2d 684 (2007)	6
<i>State v. Marin</i> , 415 S.C. 475, 783 S.E.2d 808 (2016)	11
<i>State v. Parvin</i> , 413 S.C. 497, 777 S.E.2d 1 (Ct. App. 2015)	6
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007)	4
<i>In re Richard D.</i> , 388 S.C. 95, 693 S.E.2d 447 (Ct. App. 2010)	5
<i>State v. Saltz</i> , 346 S.C. 114, 551 S.E.2d 240 (2001)	10

<i>State v. Simmons</i> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)	9, 10, 11
<i>State v. Smith</i> , 391 S.C. 408, 706 S.E.2d 12 (2011)	11, 12
<i>State v. Stahlnecker</i> , 386 S.C. 609, 690 S.E.2d 565 (2010):.....	4, 5, 6
<i>State v. Sullivan</i> , 277 S.C. 35, 282 S.E.2d 838 (1981)	10
<i>State v. Tillman</i> , 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991)	16
<i>State v. Tisdale</i> , 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000)	11
<i>State v. Ward</i> , 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007)	13
<i>Watson ex rel. Watson v. Chapman</i> , 343 S.C. 471, 540 S.E.2d 484 (Ct. App. 2000)	8
<i>Wilds v. State</i> , 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014)	14
<i>Wilds v. State</i> , 414 S.C. 341, 778 S.E.2d 112 (2015)	14

Rules of Court:

Rule 401, South Carolina Rules of Evidence.....	7
Rule 402, South Carolina Rules of Evidence.....	7
Rule 403, South Carolina Rules of Evidence.....	8
Rule 404, South Carolina Rules of Evidence.....	8
Rule 615, South Carolina Rules of Evidence.....	9
Rule 801(d)(1)(A), South Carolina Rules of Evidence.....	4, 5
Rule 803, South Carolina Rules of Evidence.....	5
Rule 803(1), South Carolina Rules of Evidence	5, 6
Rule 803(2), South Carolina Rules of Evidence	5

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in refusing to admit the testimony of a defense witness that Larry Kinloch told him he committed the shooting?
2. Did the trial court err in refusing to admit a toxicology report and testimony of the forensic pathologist concerning the report's findings as to the deceased's blood alcohol level?
3. Did the trial court err in excluding the testimony of a defense witness who had been present in the courtroom briefly, in violation of the court's sequestration order?
4. Did the trial court err in refusing the defense's request for a jury charge on self-defense?
5. Did the trial court err in granting the state's request for a jury charge on accomplice liability?
6. Did the trial court err in giving an *Allen* charge at the close of a day's deliberations, then excusing the jury for the night?

STATEMENT OF THE CASE

Appellant, Sha'Quille Washington, was indicted by the grand jury of Berkeley County on a charge of murder, in connection with the shooting death of Herman Manigault. R. pp. 1-2. He was tried before a jury on October 12-16, 2015, with Judge Kristi L. Harrington presiding. The jury returned a verdict of guilty of the lesser-included offense of voluntary manslaughter. R. p. 620. Judge Harrington sentenced appellant to 30 years' imprisonment. R. pp. 3, 631. Judge Harrington subsequently denied appellant's motion to reconsider the sentence. R. p. 4.

ARGUMENT

This case arose from an altercation that occurred in the early morning hours of August 26, 2013, outside a Berkeley County club called A Place in the Woods. Many people had gathered at the club for a party on the night of August 25. Alcohol was being served, and most everyone there had been drinking. Appellant, who was then 17 years of age, and his uncle, Larry Kinloch, were both at the club that night. R. pp. 82, 157-59. The deceased, Herman ("Trey") Manigault, also went to the club that night with his girlfriend, Arianna Coakley; his cousin, Larry Jenkins; and another acquaintance, Christina ("Taj") Lockwood. R. pp. 39, 80. After they had been there for some time, a fight broke out in the parking lot of the club. Ultimately, gunshots were fired, and Manigault was killed.

There were many conflicts and inconsistencies in the accounts of the various witnesses that testified. Who provoked the fight and who possessed or fired a weapon were matters in dispute. Coakley, Manigault's girlfriend, and Jenkins, Manigault's cousin, gave testimony that attempted to establish appellant provoked the altercation and shot Manigault.¹ R. pp. 44-45, 84-85. But Coakley did not see appellant shoot anyone. R. pp. 105, 110. Moreover, Jenkins did not observe the first shots, instead claiming he saw appellant shooting after Manigault was already on the ground. R. pp. 44-45. Other witnesses contradicted the testimony of Coakley and Jenkins and affirmatively stated they were observing appellant when the first shots were fired. R. pp. 470, 476, 483-84. One of those witnesses testified appellant did not have a gun. R. p. 470. She and another

¹ Another witness, Christina Lockwood, had identified appellant as the shooter in a statement, but she testified she did not see the actual fight and did not see the shooting. R. pp. 221, 251. Lockwood denied seeing appellant point a gun. R. p. 230. She testified she put information in her statement based on what others had said. R. pp. 230, 251.

witness, watching appellant when the shooting occurred, both testified he was not in proximity to where the shots were fired, and they both observed him running away after the shooting started. R. pp. 476, 483-84.

Although some witnesses attempted to establish that appellant or Larry Kinloch provoked or started the altercation, many witnesses gave testimony tending to show Manigault was the instigator. Earlier, Manigault had told the cook something was bothering him. R. pp. 123-24. While inside the club, Manigault had repeatedly told his girlfriend appellant was “looking at” him, and Manigault had said he was “going to snap,” was “about to snap.” R. pp. 83, 100-01, 109-10. When he and others went outside immediately before the altercation occurred, Jenkins testified Manigault took off his shirt, which Jenkins acknowledged indicated there was going to be a fight. R. p. 56. A disinterested witness, who was not there for the party but only to pick up a food order, confirmed that Manigault² took off his shirt like he was about to engage in a fight. R. pp. 459-60. Others confirmed Manigault’s shirt was off. R. pp. 243, 388. Coakley testified that a week earlier Kinloch had approached her, tried to talk with her, and asked for her number, but she denied that Kinloch’s attempt to “hit on” her had caused the stare-down that night with Manigault, her boyfriend of four years. R. pp. 82, 98-99, 109.

Other specific aspects of the evidence are discussed in greater detail in connection with the issues argued below.

² The witness, Renard Deveau, did not identify Manigault by name, but by his clothing. He specified it was the person in the brown shorts that took off his shirt. R. p. 460. Manigault was wearing shorts that were described as khaki, tan, or brown. R. pp. 118, 279, 459-60. Appellant was wearing blue and multi-colored swim-trunk-like shorts. R. pp. 117-18, 341. Kinloch was wearing jeans. R. p. 118.

I. THE TRIAL COURT ERRED IN REFUSING TO ADMIT THE TESTIMONY OF A DEFENSE WITNESS THAT LARRY KINLOCH TOLD THE WITNESS HE COMMITTED THE SHOOTING.

Larry Kinloch was called as a prosecution witness. He testified he was at the club that night and drunk. R. pp. 185, 188. He denied involvement in the fight and claimed he was outside smoking when he heard a gunshot. R. p. 164. He denied having a weapon. R. pp. 187-88. He denied that he had seen Quentin Kenneth Grant and Darlene Washington after the shooting that night, and he denied telling them he did the shooting. R. pp. 175-76. The defense called Grant as a witness and sought to elicit his testimony that Kinloch told him he did the shooting. The state objected on hearsay grounds, and the trial court sustained the objection and struck the witness's testimony. R. pp. 436-38, 448. The court's ruling was reversible error.

Evidentiary rulings are governed by an abuse of discretion standard. *See State v. Stahlnecker*, 386 S.C. 609, 617, 690 S.E.2d 565, 569 (2010); *State v. LaCoste*, 347 S.C. 153, 160, 553 S.E.2d 464, 468 (Ct. App. 2001). An abuse of discretion occurs when the trial court's ruling is controlled by an error of law or a factual conclusion that is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); *State v. Garner*, 389 S.C. 61, 65, 697 S.E.2d 615, 617 (Ct. App. 2010). The court's ruling on the state's hearsay objection was governed by multiple errors of law.

The South Carolina Rules of Evidence define what is and is not hearsay, for purposes of the admissibility or inadmissibility of out-of-court statements. A statement is not hearsay if the declarant testifies at trial and is subject to cross-examination concerning the statement and the statement is inconsistent with the declarant's testimony. Rule 801(d)(1)(A), SCRE. Evidence of a prior inconsistent statement is admissible not

merely as impeachment evidence but as substantive evidence. *See State v. Copeland*, 278 S.C. 572, 581-82, 300 S.E.2d 63, 68-69 (1982); *In re Richard D.*, 388 S.C. 95, 99-100, 693 S.E.2d 447, 449-50 (Ct. App. 2010). In this case, Kinloch testified in the state's case-in-chief, was cross-examined by the defense, and specifically denied having told Grant he did the shooting. The testimony of Grant that Kinloch told him he did the shooting is a prior inconsistent statement that is squarely within the definition of non-hearsay contained in Rule 801(d)(1)(A). *Cf. State v. Fossick*, 333 S.C. 66, 68-70, 508 S.E.2d 32, 33 (1998) (finding trial court erred in excluding testimony of person who heard witness's statement "I killed that bitch . . .," after witness testified and on cross-examination denied having made the statement). The court abused its discretion in refusing to admit Grant's testimony that Kinloch said he did the shooting.

Even if the court had been correct in finding the statement was hearsay, it erred in its conclusion that the statement was not within any hearsay exception. Hearsay is admissible if it falls within one of the specific exceptions recognized by Rule 803 of the evidence rules. Like prior inconsistent statements, a statement that is admissible under a Rule 803 exception may be used substantively, to prove the truth of the matter asserted. *See Stahlnecker*, 386 S.C. at 622-23, 690 S.E.2d at 572-73. The statement of Kinloch to Grant is admissible under two Rule 803 exceptions, present sense impression and excited utterance. *See* Rule 803(1), (2), SCRE. Grant testified he was with Kinloch, his best friend, minutes after the shooting, and Kinloch said he did it. R. pp. 438, 446. Kinloch's statement was an excited utterance — a statement relating to a startling event made while the declarant was under the stress or excitement caused by the event. *See* Rule 803(2), SCRE. It satisfied the three requirements for admissibility under this

exception: (1) it related to a startling event, the shooting; (2) Kinloch made it to a friend minutes after the shooting, while Kinloch was under the stress of excitement; and (3) the stress of excitement was caused by the startling event, the shooting. *See Stahlnecker*, 386 S.C. at 623, 690 S.E.2d at 573; *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007); *State v. Hendricks*, 408 S.C. 525, 532, 759 S.E.2d 434, 437-38 (Ct. App. 2014). The startling event of shooting someone would suspend a person's reflective thinking such that fabrication was unlikely, in accordance with the rationale underpinning the excited utterance exception. *See Ladner* 373 S.C. at 116, 644 S.E.2d at 691; *LaCoste*, 347 S.C. at 160, 553 S.E.2d at 468; *State v. Dennis*, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999). Indeed, where Kinloch's statement was inculpatory, any likelihood he fabricated the statement is non-existent.

Kinloch's statement was also a present sense impression – a statement describing or explaining an event made immediately after the event. *See* Rule 803(1), SCRE. It met the three requirements for admissibility under this exception: (1) it described or explained an event, the shooting; (2) it was contemporaneous with the shooting, occurring immediately thereafter; and (3) Kinloch personally perceived the event, the shooting. *See State v. Parvin*, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015); *Hendricks*, 408 S.C. at 533, 759 S.E.2d at 438. Evaluating the totality of the circumstances, the statement of Kinloch to Grant fell within both of these exceptions.

The error in refusing to allow this testimony was extremely prejudicial. This prosecution was premised on very weak evidence. No witness testified as to who fired the initial shots. One witness claimed he saw appellant shooting, but that was only after the initial shots had been fired and Manigault was on the ground. R. pp. 44-45. His

claim was disputed by two witnesses who were observing appellant at the time the first shots were fired and testified he did not have a gun, was not where the shots were fired, and ran after the shooting started. R. pp. 470, 476, 483-84. One witness testified Manigault told her Kinloch was going to shoot him. R. pp. 423, 430. In light of this evidence and the many conflicts and contradictions in the various accounts of the night's events, had the jury been allowed to consider the statement of Kinloch that he did the shooting, the outcome of the deliberations likely would have been different. The court's error in excluding this evidence was prejudicial, and appellant is entitled to a new trial.

II. THE TRIAL COURT ERRED IN REFUSING TO ADMIT A TOXICOLOGY REPORT AND TESTIMONY OF THE FORENSIC PATHOLOGIST CONCERNING THE REPORT'S FINDINGS AS TO THE DECEASED'S BLOOD ALCOHOL LEVEL.

Dr. Erin Presnell, a forensic pathologist, conducted Manigault's autopsy. R. pp. 377, 381. The defense sought to introduce her testimony and a toxicology report that revealed Manigault's blood alcohol content. The state objected, and the court sustained the objection. R. pp. 452-53. The defense proffered her testimony concerning the report and the report itself, which stated Manigault had a blood alcohol level of .235. R. pp. 454-56, 635, 638. This evidence was relevant and admissible.

Relevant evidence is generally admissible. *See* Rule 402, SCRE. "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See* Rule 401, SCRE. In this case, the blood alcohol content of Manigault was probative of the issue whether he was the person who provoked the altercation that occurred outside the club. As previously noted, Manigault had complained during the night that something was bothering him and that he was "about to

snap.” R. pp. 83, 100-01, 109-10, 123-24. Witnesses testified that, upon going outside, Manigault removed his shirt, in preparation for an altercation. R. pp. 56, 459-60. Although there was testimony that he had been drinking, that testimony did not establish how much alcohol he had consumed. The level of his intoxication was relevant to whether his judgment was impaired and whether, due to his condition, he provoked and instigated this fight. His condition at the time of the events was a component of the complete picture of what occurred. Independent evidence, based on scientific testing, revealed with certainty his blood alcohol content. This evidence was relevant and its probative value outweighed any prejudicial effect that its admission would have had. *See* Rule 403, SCRE; *cf. Watson ex rel. Watson v. Chapman*, 343 S.C. 471, 477, 540 S.E.2d 484, 487 (Ct. App. 2000) (physician’s alcohol dependency was relevant to his decision-making process, and its probative value outweighed any prejudicial effect).

The stated basis for the state’s objection was Rule 404, one of the rules in the relevancy section of the evidence rules. That rule is inapplicable to the issue of the admissibility of evidence of Manigault’s blood alcohol level. Rule 404 addresses the admissibility of character evidence and evidence of other crimes, wrongs, or acts. Manigault’s intoxication was not a matter of character. Nor was it a crime, wrong, or bad act. Rule 404 simply had no applicability to the question of the admissibility of the blood alcohol level. The court’s exclusion of this evidence was controlled by an error of law and constituted an abuse of discretion.

The court’s erroneous ruling was prejudicial. A person with the high blood alcohol content documented by the toxicology report and the accompanying impairment in judgment resulting from such extreme intoxication would have a decreased sensitivity

to pain, lowered inhibitions, a tendency toward overreaction to a perceived affront, and even aggressive or violent behavior. Coupled with the testimony establishing Manigault was bothered, about to snap, and took his shirt off in order to fight, the additional evidence of his extreme intoxication likely would have influenced the jury's deliberations as to the issue of who instigated the fight and likely would have altered the outcome. Exclusion of the toxicology evidence as to his blood alcohol level of .235 was reversible error.

III. THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF A DEFENSE WITNESS WHO HAD BEEN PRESENT IN THE COURTROOM BRIEFLY, IN VIOLATION OF THE SEQUESTRATION ORDER.

Kevin Watson, a defense witness, was called to testify on the third day of trial. R. p. 405. The state objected on the basis that the witness had been present in the courtroom during a previous witness's testimony, in violation of the sequestration order issued earlier in the trial. R. p. 407. Watson stated he had come to court for the first time that day, and he entered the courtroom when he was told his name was called. R. p. 407. He acknowledged he had been in the courtroom that day, when Detective Shuler was on the stand, and had "seen a thing on the screen" but, besides that, did not hear any testimony. R. pp. 409-10. The court prohibited the witness from testifying. R. p. 411. This ruling was error.

A party is not entitled to sequestration of witnesses as a matter of right. *State v. Simmons*, 384 S.C. 145, 173, 682 S.E.2d 19, 33 (Ct. App. 2009); *State v. Caldwell*, 378 S.C. 268, 278, 662 S.E.2d 474, 480 (Ct. App. 2008); *State v. Fulton*, 333 S.C. 359, 375, 509 S.E.2d 819, 827 (Ct. App. 1998); *see* Rule 615, SCRE (court *may* order witnesses excluded so they cannot hear testimony of other witnesses). Indeed, the mere opportunity

for witnesses to compare testimony is insufficient to compel sequestration. *State v. Sullivan*, 277 S.C. 35, 46, 282 S.E.2d 838, 844 (1981); *State v. Carmack*, 388 S.C. 190, 197, 694 S.E.2d 224, 227 (Ct. App. 2010); *Caldwell*, 378 S.C. at 279, 662 S.E.2d at 480. Where a sequestration order has been issued, violation does not automatically result in disqualification of the witness to testify. In fact, our appellate courts have frequently approved allowing testimony from witnesses who had been sequestered but were in the courtroom during the testimony of one or more other witnesses. See, e.g., *State v. Saltz*, 346 S.C. 114, 126, 551 S.E.2d 240, 247 (2001); *State v. Huckabee*, 388 S.C. 232, 241-43, 694 S.E.2d 781, 785-86 (Ct. App. 2010); *Simmons*, 384 S.C. at 173-74, 682 S.E.2d at 33-34; *Fulton*, 333 S.C. at 375, 509 S.E.2d at 827.

Where there has been a violation of a sequestration order, the court may discipline the witness; however, the question of excluding the witness's testimony depends upon the particular circumstances and is within the court's discretion. *Huckabee*, 388 S.C. at 241, 694 S.E.2d at 785. Here, based on the circumstances surrounding the particular sequestration violation, the court abused its discretion in prohibiting the witness from testifying.

The violation of the sequestration order was minor. The witness was present during the playing of a video, when Detective Shuler was on the stand, but had heard no testimony. The infraction occurred on the third day of trial. The witness was not present during the first two days of trial, having come forward as a witness the same day he was called to testify. Because he was not present for the earlier days of trial, he had not been made aware of the sequestration order, and he had entered the courtroom when he was informed his name had been called. The minor violation of the sequestration order was

unknowing and unintentional, and certainly not flagrant. Under these circumstances, the court abused its discretion in excluding the witness. *Cf. Simmons*, 384 S.C. at 173-74, 682 S.E.2d at 33-34 (trial court did not abuse discretion in allowing testimony of officer who had heard testimony of other witnesses *in camera* and who violated sequestration order by entering courtroom during defendant's testimony because he was "'sent for' to testify"; evidence did not establish he entered courtroom knowingly and intentionally in effort to violate order); *State v. Tisdale*, 338 S.C. 607, 615-18, 527 S.E.2d 389, 394-95 (Ct. App. 2000) (trial court did not abuse its discretion in denying mistrial based on violation of sequestration order, where the violation was not flagrant or intentional).

The court's erroneous exclusion of the witness's testimony was prejudicial. In a proffer, the witness testified he was outside when tussling was going on, saw the fighting, and did not see either Kinloch or appellant with a weapon. R. p. 414. In this case, the witnesses' accounts were extremely contradictory. Coakley and Jenkins claimed appellant had a gun, but others who observed him when the shots were fired disputed he had a weapon. Where there was such a sharp conflict in the testimony, it was prejudicial to the defense for the court to prohibit the testimony of this witness who would have corroborated the witnesses who testified appellant did not have a weapon.

IV. THE TRIAL COURT ERRED IN REFUSING THE DEFENSE'S REQUEST FOR A JURY CHARGE ON SELF-DEFENSE.

The court denied a defense request for a jury charge on self-defense. R. pp. 534-35. There was evidence in the record to support a charge on self-defense, and the court's refusal to give such a charge warrants a new trial.

The law to be charged is determined by the evidence presented at trial. *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016); *State v. Smith*, 391 S.C. 408, 412,

706 S.E.2d 12, 14 (2011); *State v. Bryant*, 391 S.C. 225, 469, 705 S.E.2d 465, 233 (Ct. App. 2010). If there is any evidence in the record to support a requested charge, the court must give it. *Smith*, 391 S.C. at 412, 706 S.E.2d at 14. The court commits reversible error when it fails to give a requested charge on an issue raised by the evidence presented at trial. *Smith*, 391 S.C. at 412, 706 S.E.2d at 14.

As noted above, testimony was presented that tended to establish Manigault was the one provoking the altercation. He had indicated to others that he was bothered by something and “about to snap.” R. pp. 83, 100-01, 109-10, 123-24. His girlfriend of four years acknowledged that Kinloch had “hit on” her a week earlier. R. pp. 82, 98, 108. When Manigault went outside, immediately before the altercation began, he took off his shirt, in preparation for a fight. R. pp. 56, 459-60.

Coakley claimed that, after the people had moved outside, appellant had a gun. However, by her account, he drew the gun to *defend himself* after *she* raised a beer bottle to strike *him*. R. p. 104. Although she claimed he had struck Manigault first, this claim was contradicted by a witness who stated appellant was not near the fight and by appellant’s own statement. R. pp. 480, 632-34.

Based on the evidence that Manigault was bothered and about to snap, then went outside and took his shirt off to fight, the record supports an inference that the altercation was provoked by Manigault, not appellant. Moreover, the state’s own witness, Coakley, admitted she was attempting to strike appellant and he pulled a gun to defend himself. These facts in the record were sufficient to support a charge of self-defense, and the court committed error in refusing a self-defense charge.

This error was prejudicial. As previously noted, the evidence of what occurred that night was not at all clear. The accounts of the various witnesses were rife with contradictions and conflicts. The jurors clearly had difficulty reaching a verdict, as shown by their communication with the court that they were “hopelessly at an impasse.” *See* R. p. 644. The question of appellant’s guilt or innocence was not certain, and a genuine likelihood exists that giving a jury charge on self-defense would have altered the outcome. The court’s refusal of a self-defense charge is reversible error.

V. THE TRIAL COURT ERRED IN GRANTING THE STATE’S REQUEST FOR A JURY CHARGE ON ACCOMPLICE LIABILITY.

The state requested a charge on accomplice liability, to which the defense objected because the record was devoid of any evidence to support such a charge. R. pp. 528-29, 532-34. The court committed reversible error in giving the accomplice liability charge.

Under the theory of accomplice liability stated as “the hand of one is the hand of all,” one who joins with another to accomplish an illegal purpose is liable criminally for the actions of his confederate incidental to the execution of the common design and purpose. *See Barber v. State*, 393 S.C. 232, 236-37, 712 S.E.2d 436, 439 (2011); *State v. Ward*, 374 S.C. 606, 614, 649 S.E.2d 145, 149 (Ct. App. 2007); *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002).

To determine if an accomplice liability charge should have been given in this case, the question is whether there was any evidence that another co-conspirator was the shooter and that appellant was acting with him when the crime took place. *See Barber*, 393 S.C. at 237, 712 S.E.2d at 439. In this case, there was *no evidence* that a co-conspirator was the shooter. The defense had attempted to introduce such evidence, but

the court had refused to admit Grant's testimony concerning Kinloch's statement that he did the shooting, and the court had instructed the jury to disregard that testimony. R. pp. 436-37, 448. With that testimony excluded, there was no evidence in the record to support an accomplice liability charge, and the court's charging the jury on that theory of criminal liability was reversible error.

In *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014), the Court of Appeals addressed the precise issue presented here.³ The trial court gave an accomplice liability charge, over defense counsel's objection. *Wilds*, 407 S.C. at 437, 756 S.E.2d at 389. The trial record established there was *no evidence* that anyone other than the defendant was the shooter. *See Wilds*, 407 S.C. at 439, 756 S.E.2d at 390. The Court of Appeals found the trial court erred in giving the charge and the error was prejudicial. *See Wilds*, 407 S.C. at 439, 756 S.E.2d at 390-91. The Supreme Court upheld that determination, initially granting a writ of *certiorari*, but ultimately dismissing the writ as improvidently granted. *See Wilds v. State*, 414 S.C. 341, 778 S.E.2d 112 (2015).

Here, as in *Wilds*, it was error to give an accomplice liability charge in the absence of any evidence that someone else was the shooter. As in *Wilds*, the error was prejudicial. Giving such a charge upon the evidence in this record was confusing to the jury. In fact, the jury requested that the court clarify the law of "hand of one is hand of all." *See* R. pp. 604, 643. Moreover, the jury's confusion is clearly reflected in a later note to the court, in which it confused the "hand of one is the hand of all" doctrine to pertain to "acting in concert with the victim." *See* R. pp. 604, 645. The court did not

³ Procedurally, the issue was decided in the context of a post-conviction relief claim of ineffective assistance of appellate counsel for failing to challenge in *Wilds*'s direct appeal the giving of a charge on accomplice liability. *See Wilds*, 407 S.C. at 437, 756 S.E.2d at 389.

correct this confusion, instead simply informing the jury, "You have been given all instructions on the law in my charge to you. Please continue your deliberations." *See* R. pp. 604, 645. The confusion that resulted from giving an accomplice liability charge, which was unsupported by the evidence, likely contributed to the guilty verdict. The court should grant a new trial because of this prejudicial error.

VI. THE TRIAL COURT ERRED IN GIVING AN *ALLEN* CHARGE AT THE CLOSE OF A DAY'S DELIBERATIONS, THEN EXCUSING THE JURY FOR THE NIGHT.

Late in the afternoon of the fourth day of trial, the jury reported to the court that it was deadlocked. The court informed the attorneys she intended to bring the jury in, give an *Allen*⁴ charge, and release the jurors for the evening. R. p. 605. The defense objected to this procedure, arguing that the jury should be sent home and the *Allen* charge not given until the jury returned the next morning, but if the charge was to be given that afternoon, the jury should then resume deliberations. R. p. 605. Over the defense objection, the court gave the *Allen* charge and sent the jury home for the night. R. pp. 606-09. After the jury left, the defense renewed its objection, not to the charge given, but to the court's procedure of giving the charge and not having the jurors stay together and continue their deliberations. R. p. 610. The court explained her ruling, stating that under the law she had to give the *Allen* charge before breaking for the evening. R. p. 612. This ruling was erroneous.

Contrary to the court's ruling, the law does not require that, before the jury could be sent home for the evening, the court had to give an *Allen* charge. Rather, if the court is going to break for the day after the jury is deadlocked, the practice in that situation is to

⁴ *See Allen v. United States*, 164 U.S. 492 (1896).

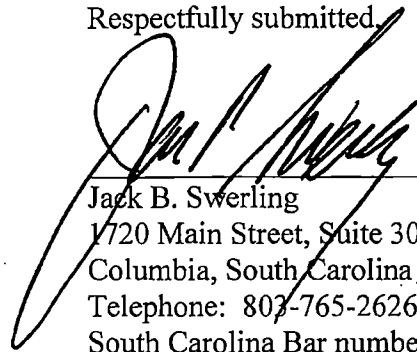
send the jury home with instructions to return the next day, and to give the *Allen* charge the next day immediately before the jury resumes deliberations. *Cf. Harvey v. Strickland*, 350 S.C. 303, 307-08, 566 S.E.2d 529, 532 (2002) (on medical malpractice and medical battery claims, jury reported it could not agree; jury was excused for the day but brought back the next morning for further deliberations after an *Allen* charge); *State v. Tillman*, 304 S.C. 512, 521, 405 S.E.2d 607, 612 (Ct. App. 1991) (at about 9:30 p.m., after almost four hours of deliberations, jury reported it was hung; trial judge excused jury for the night and gave *Allen* charge the next morning, after which jury resumed deliberations). The court's ruling, controlled by an error of law, was an abuse of discretion.

The procedure adopted by the court also was prejudicial. The procedure undermined the very purpose of an *Allen* charge, which by its terms directs the jurors to continue to deliberate and to specifically consult with each other, express their views, listen to the other jurors, and discuss their differences with open minds. R. p. 607. However, rather than sending the jurors back to carefully consider and respect the opinions of the others and reevaluate their own positions in accordance with the court's instructions, R. p. 608, the court sent them home. The effect of the court's procedure was to separate the jurors, a group that is required to deliberate and reach consensus, and instead send them home to contemplate the case individually, thereby altering the manner in which juries conduct their deliberations. This procedure was prejudicial, and this Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand his case for a new trial.

Respectfully submitted,



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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002668

The State,

Respondent,

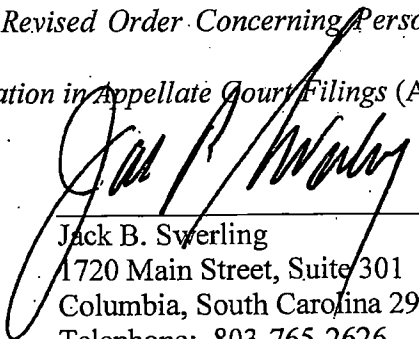
v.

Sha'Quille Mi'Leak Jamal Washington,

Appellant.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Kristi L. Harrington, Circuit Court Judge

Appellate Case No: 2015-002668

THE STATE,

Respondent,

vs.

SHA'QUILLE WASHINGTON,

Appellant.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	3
STATEMENT OF THE FACTS	3
ARGUMENTS	
I. The trial court did not err in finding hearsay testimony inadmissible under the exception for present sense impression and counsel failed to argue for admission under any other exception. Further, the evidence did not meet the requirements for admission of evidence of third party guilt. Finally, any error is harmless beyond a reasonable doubt..	10
II. The trial court did not err in declining to admit a toxicology report where the toxicology report was not relevant and any probative value was outweighed by its prejudicial effect. Any error was harmless in light of its minimal evidentiary value and the lack of evidence that Victim was actually the aggressor.	19
III. The trial court did not err in excluding a defense witness's testimony where the witness violated the sequestration order due to defense counsel's conscious disregard of the order, and the excluded testimony was merely cumulative to testimony from other defense witnesses.....	23
IV. The trial court did not err in declining to instruct the jury on self-defense. Appellant brought on the difficulty. No evidence was presented that Appellant was in danger of death or serious bodily injury or could reasonably harbor such a belief. No evidence was presented that Appellant could not retreat or otherwise avoid the use of lethal force. Any conceivable error was harmless beyond a reasonable doubt.....	27
V. The trial court did not err in instructing the jury on accomplice liability and Appellant was not prejudiced by the instruction.	31

VI. The trial court did not abuse its discretion by giving an <u>Allen</u> charge at the close of a day's deliberations instead of the following morning	38
CONCLUSION	42

TABLE OF AUTHORITIES

Cases:

<u>Allen v. United States</u> , 164 U.S. 492 (1896)	38
<u>Arizona v. Fulminante</u> , 499 U.S. 279 (1991).....	30
<u>Barber v. State</u> , 393 S.C. 232, 712 S.E.2d 436 (2011)	31, 35, 36, 37
<u>Buff v. S.C. Dep't of Transp.</u> , 342 S.C. 416, 537 S.E.2d 279 (2000)	38
<u>Chapman v. California</u> , 386 U.S. 18 (1967)	41
<u>Harvey v. Strickland</u> , 350 S.C. 303, 566 S.E.2d 529 (2002)	39, 40
<u>Humbert v. State</u> , 345 S.C. 332, 548 S.E.2d 862 (2001)	11
<u>Hunter v. Staples</u> , 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999)	11
<u>Jenkins v. United States</u> , 380 U.S. 445 (1965)	39
<u>Lowenfield v. Phelps</u> , 484 U.S. 231 (1988).....	39
<u>Mays v. Mays</u> , 267 S.C. 490, 229 S.E.2d 725 (1976).....	11
<u>State v. Adams</u> , 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)	20
<u>State v. Barton</u> , 325 S.C. 522, 481 S.E.2d 439 (Ct. App. 1997).....	38
<u>State v. Bell</u> , 302 S.C. 18, 393 S.E.2d 364 (1990).....	17, 21, 25-26
<u>State v. Brown</u> , 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001).....	26
<u>State v. Bryant</u> , 336 S.C. 340, 520 S.E.2d 319 (1999).....	28
<u>State v. Cooper</u> , 334 S.C. 540, 514 S.E.2d 584 (1999).....	14, 15, 17
<u>State v. Day</u> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	28
<u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005).....	11

<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	20
<u>State v. Graham</u> , 260 S.C. 449, 196 S.E.2d 495 (1973)	29
<u>State v. Gregory</u> , 198 S.C. 98, 16 S.E.2d 532 (1941)	15, 16
<u>State v. Hamilton</u> , 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001)	20
<u>State v. Hendricks</u> , 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014)	14
<u>State v. Huckabee</u> , 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010)	24
<u>State v. King</u> , 367 S.C. 131, 623 S.E.2d 865 (Ct. App. 2005)	19
<u>State v. Lockamy</u> , 369 S.C. 378, 631 S.E.2d 555 (Ct. App. 2006)	27
<u>State v. Lynn</u> , 277 S.C. 222, 284 S.E.2d 786 (1981)	39
<u>State v. Mitchell</u> , 286 S.C. 572, 573, 336 S.E.2d 150 (1985)	17, 41
<u>State v. Mitchell</u> , 330 S.C. 189, 498 S.E.2d 642 (1998)	10
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997)	11
<u>State v. Oxner</u> , 391 S.C. 132, 705 S.E.2d 51 (2011)	26
<u>State v. Queen</u> , 264 S.C. 515, 216 S.E.2d 182 (1975)	39
<u>State v. Reeves</u> , 301 S.C. 191, 391 S.E.2d 241 (1990)	17
<u>State v. Rivera</u> , 402 S.C. 225, 741 S.E.2d 694 (2013)	30
<u>State v. Roper</u> , 274 S.C. 14, 260 S.E.2d 705 (1979)	11, 39
<u>State v. Russell</u> , 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001)	19
<u>State v. Saltz</u> , 346 S.C. 114, 551 S.E.2d 240 (2001)	11
<u>State v. Shuler</u> , 353 S.C. 176, 577 S.E.2d 438 (2003)	20
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)	24

<u>State v. Sinclair</u> , 275 S.C. 608, 274 S.E.2d 411 (1981).....	38
<u>State v. Slater</u> , 373 S.C. 66, 644 S.E.2d 50 (2007).....	28
<u>State v. Stephens</u> , 398 S.C. 314, 839 S.E.2d 68 (Ct. App. 2012).....	20
<u>State v. Sullivan</u> , 345 S.C. 169, 547 S.E.2d 183 (2001).....	28
<u>State v. Swafford</u> , 375 S.C. 637, 654 S.E.2d 297 (Ct. App. 2007).....	16, 17
<u>State v. Thomason</u> , 355 S.C. 278, 584 S.E.2d 143 (Ct. App. 2003).....	11, 14
<u>State v. Thompson</u> , 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003)	17, 21
<u>State v. Tillman</u> , 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991).....	40, 41
<u>State v. Tisdale</u> , 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000).....	24, 25
<u>State v. White</u> , 410 S.C. 56, 762 S.E.2d 726 (Ct. App. 2014).....	41
<u>State v. Wigington</u> , 375 S.C. 25, 649 S.E.2d 185 (Ct. App. 2007)	27, 28
<u>State v. Williams</u> , 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005).....	27
<u>State v. Wise</u> , 359 S.C. 14, 596 S.E.2d 475 (2004).....	19
<u>Tucker v. Catoe</u> , 346 S.C. 483, 552 S.E.2d 712 (2001).....	38
<u>United States v. Burgos</u> , 55 F.3d 933 (4th Cir.1995).....	36
<u>United States v. Green</u> , 556 F.3d 151 (3d Cir. 2009)	13
<u>United States v. Leggett</u> , 326 F.2d 613 (4th Cir.1964).....	24
<u>United States v. Manfre</u> , 368 F.3d 832 (8th Cir. 2004)	13
<u>Wilds v. State</u> , 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014).....	36, 37
<u>Wilson v. Childs</u> , 315 S.C. 431, 434 S.E.2d 286 (Ct. App. 1993).....	13

Rules:

Rule 403, SCORE.....	20
Rule 404, SCORE.....	20
Rule 615, SCORE.....	24
Rule 803(1), SCORE	13, 14
Rule 804(b)(3), SCORE.....	15

STATEMENT OF ISSUES ON APPEAL**I.**

The trial court did not err in finding hearsay testimony inadmissible under the exception for present sense impression and counsel failed to argue for admission under any other exception. Further, the evidence did not meet the requirements for admission of evidence of third party guilt. Finally, any error is harmless beyond a reasonable doubt.

II.

The trial court did not err in declining to admit a toxicology report where the toxicology report was not relevant and any probative value was outweighed by its prejudicial effect. Any error was harmless in light of its minimal evidentiary value and the lack of evidence that Victim was actually the aggressor.

III.

The trial court did not err in excluding a defense witness's testimony where the witness violated the sequestration order due to defense counsel's conscious disregard of the order, and the excluded testimony was merely cumulative to testimony from other defense witnesses.

IV.

The trial court did not err in declining to instruct the jury on self-defense. Appellant brought on the difficulty. No evidence was presented that Appellant was in danger of death or serious bodily injury or could reasonably harbor such a belief. No evidence was presented that Appellant could not retreat or otherwise avoid the use of lethal force. Any conceivable error was harmless beyond a reasonable doubt.

V.

The trial court did not err in instructing the jury on accomplice liability and Appellant was not prejudiced by the instruction.

VI.

The trial court did not abuse its discretion by giving an Allen charge at the close of a day's deliberations instead of the following morning.

STATEMENT OF THE CASE

Appellant Sha'Quille Washington was indicted for murder. The jury convicted Washington of voluntary manslaughter following trial before the Honorable Kristi L. Harrington on October 12-16, 2015. Judge Harrington sentenced Washington to thirty years imprisonment.

STATEMENT OF FACTS

Larry Jenkins, Victim's first cousin, testified he went with Victim, Arianna Coakley, and Christina "Taj" Lockwood, to a remote club in Berkeley County called A Place in the Woods on August 25, 2013. They were guests at a birthday party for a musician, Slim Bubba. R. pp. 39-40. Washington bumped into Jenkins and Washington proceeded to stare Jenkins down. Jenkins testified Washington, "Just kind of like just stared us down for a little bit. So that's the first time I saw him." R. p. 41, lines 4-11.

Jenkins testified that as the party was winding down, Jenkins and Victim went outside the club. Then Victim took his shirt off. He was immediately hit from behind. Jenkins testified more than two people were involved in the ensuing skirmish after Victim was hit. Jenkins fought with a second person who he did not know while Victim was likewise in a fight. Jenkins was unable to describe the person he was fighting. However, Jenkins saw Washington during the fight. Jenkins heard two gun shots. He testified the person he was locked in combat with did not have a gun. R. pp. 42-44; p. 75. Jenkins testified neither he nor Victim brought a gun to the club. R. p. 75.

Jenkins saw Victim on the ground and saw Washington with a silver revolver fire a shot into the ground – Jenkins saw the sparks. Washington fired three shots while Victim lay on the ground. R. pp. 44-46. Washington ran away towards a car. At one point, Jenkins ran looking for him, but

Washington was already gone. R. p. 47.

Jenkins, Coakley, Lockwood, and an unidentified light-skinned man held Victim while waiting for law enforcement to arrive. Jenkins held a hat over one of Victim's wounds. Victim's eye was bruised. It took law enforcement about thirty minutes to arrive. Jenkins confirmed the club was in a remote area. Jenkins testified he was 100% certain of his identification of Washington as the gunman. The defense stipulated that Jenkins picked Washington out of a photographic lineup. R. pp. 47-51. Jenkins verified on redirect examination that he was a hundred percent certain Washington was the person who shot Victim. R. p. 77. During cross-examination, Jenkins testified he did not see Victim drinking, but he clarified he was not saying Victim was not drinking, just that he did not see it. R. p. 73, p. 74, lines 11-13.

Arianna Coakley testified she dated Victim on and off since she was fourteen years old. Coakley knew Washington because her cousin and Washington had problems in the past. She knew Washington for eight years. Coakley, Lockwood, Jenkins, and Victim went to A Place in the Woods, arriving between 2:30 and 3:00 a.m. Washington was at the club with Larry Kinloch. She knew Kinloch because he approached her the week before asking for her phone number. However, she never told Victim about Kinloch. R. pp. 80-83; p. 109, lines 6-16; p. 119, line 25 – p. 120, line 4.

While at the club, Victim told Coakley that Washington kept looking at him. R. p. 83. This rattled Victim, he told Coakley he was about to snap. R. pp. 100-01. She verified Victim was drinking that night. R. p. 103.

Victim went outside the club, Washington and Kinloch followed him. R. p. 83. Sensing trouble, Coakley followed them outside to the stoop. Washington said something to Victim, but

Coakley did not hear what. Victim asked Washington “what’s up.” Then Washington started hitting Victim with his left hand. Meanwhile, Coakley grabbed a beer bottle. Washington turned around and pointed a gun at Coakley, and told her, “I ain’t playng.” Coakley dropped the bottle and put her hands up. Coakley backed up to the door before Washington “jumped down and ran around.” Coakley then heard four gunshots. R. pp. 83-84; p. 88, line 22 – p. 89, line 3; p. 90, lines 12-18. Coakley further clarified that when Washington was hitting Victim, Victim “started sliding down to go away, and he continued to hit [Victim].” R. p. 85, lines 17-19. Coakley testified she saw Washington hit Victim twice. R. p. 85, lines 23-25. She explained one hit was to the eye and the other was in the back of the head as Victim spun around to get away. R. p. 85, lines 25 – p. 86, line 4. Kinloch hit Jenkins right after Washington hit Victim. Coakley explained when Washington jumped off the stoop, he ran around to the other side of a van, out of her view. Coakley did not see the shooting because the van was in her way. R. p. 86, lines 9-11; p. 90, lines 12-18. Coakley verified Washington threw the first punch. R. p. 88. Coakley testified she never saw Victim take off his shirt. R. p. 103. She described the gun Washington pointed at her as a silver revolver. R. p. 84. Victim did not have a gun. R. p. 86, lines 5-6.

Coakley stayed with Victim until law enforcement arrived. She held and comforted him. She picked Washington out of the police lineup. R. pp. 90-94.

Darius Alls, a cook at the club, is Washington’s cousin. R. p. 123. Alls testified Victim told him somebody was bothering him. Victim never said who. R. pp. 123-24. Victim told Alls he felt his life was in danger. R. p. 129. Alls told Victim to sit at the bar and someone would walk him out to the car later. R. p. 124. Alls testified he did not see or hear gunfire that night. R. p. 125. He

testified he was unable to say whether Victim was under the influence that night because he was under the influence himself. R. p. 132.

Drequan Lockwood waited with the others for EMS to arrive after Victim was shot. He did not see the shooting. He testified Victim's eye was injured. He went with Coakley to tell Victim's mother what happened. R. pp. 152-53.

Larry Kinloch, Washington's uncle, described himself as having "somewhat" of a relationship with Washington. He admitted being at the club with Washington. Kinloch testified he was not part of the fight that took place. Kinloch was then impeached with a phone call he made to his brother. He told his brother about being in a fight and blamed the shooting on Washington. R. pp. 168-70; pp. 173-74; p. 177, lines 8-13.

Christina "Raj" Lockwood admitted she did not want to testify. She went with Victim, Jenkins, and Coakley to A Place in the Woods. Lockwood knew Washington. He was at the club with Kinloch. She confirmed Coakley carried a Heineken bottle out of the club, but testified she failed to make it outside. She was impeached with her statement to law enforcement, State's Exhibit No. 56. In the statement, Lockwood told law enforcement that Washington shot Victim, that Victim said Washington kept looking at him, that Washington said he was going to get Victim, and that Washington kept talking about shooting somebody. R. pp. 215-31. Lockwood testified she never saw Victim remove his shirt, but that it was off. R. p. 243.

Captain Bobby Shuler interviewed Washington. Washington told Captain Shuler he did not have a gun. He also told Captain Shuler **that Victim did not have a gun** and neither did Larry Jenkins. R. pp. 337-38. Washington was able to describe the gun at the scene. R. p. 338, lines 11-

12. When Captain Shuler arrested Washington, he seized Washington's cell phone. R. p. 346.

Dr. Erin Presnell, a forensic pathologist, examined Victim. She found Victim suffered blunt force trauma to the back of his head. Victim also suffered two bullet wounds, one to the left back and the other to the left buttock. Both wounds were entrance wounds, there was no exit wound. She recovered two projectiles from Victim's body. R. p. 336, p. 377, p. 383, p. 384-85. Dr. Presnell explained both bullet wounds indicated an upward trajectory. Dense stippling in the back indicated Victim was shot at close range. R. pp. 386-90. The blunt force trauma to the back of the head was substantial – Victim's skull bone was chipped. R. pp. 390-91.

Aja Williams, a bartender at A Place in the Woods, testified he served alcohol to Victim. R. pp. 417-18. The trial court sustained the State's objection to an attempt to put in the Victim's autopsy report. R. p. 419. When Williams observed Victim, Victim was not heavily intoxicated. Kinloch was following Victim everywhere. Williams later clarified both Kinloch and Washington were following Victim. R. pp. 420-23. According to Williams, Victim told him "**Larry** going to shoot me, they going to kill me." R. p. 423; p. 425; p. 431 (emphasis added).

Williams did not see the shooting, but Williams helped apply pressure to Victim's injuries while waiting for EMS. He testified Victim was still wearing his shirt. R. p. 424.

Washington's defense was that he did not commit the shooting and was merely present. The defense put Kenneth Grant on the stand to claim that Kinloch admitted to shooting Victim, but the objection was sustained. Despite the trial court's ruling, defense counsel tried two more times to elicit this testimony. R. pp. 436-38, p. 448.

Renard Davis testified for the defense she was walking through the parking lot when she saw

an individual standing directly opposite of Larry Kinloch and she “heard them fussing.” The individual removed his shirt as if ready to engage in a fight. As she went inside the club, she heard gunshots. R. pp. 459-60. She testified she did not see Washington outside. R. p. 462.

Robin Williams testified she was walking out of the club and saw a “young lady holding a glass bottle in Sha’Quille’s face. And maybe like five seconds later, shots fired, three, and then that was it.” R. p. 466, line 23 – p. 467, line 2. Williams claimed to see Washington running away on the second shot and she heard four shots. R. p. 467, lines 3-19. Williams clarified she never saw Washington with a gun. R. p. 470, lines 8-23. On redirect, she agreed Washington was not in the vicinity when the remaining shots were fired. R. p. 476, lines 16-22. Williams did not know whether Kinloch was outside the club at the time of the shooting. R. p. 477, lines 2-7. On recross-examination, Williams seemed to suggest Washington was not anywhere near the fight. R. p. 480, lines 1-8, lines 20-23. She agreed Washington could not have been threatened, she agreed there was no self-defense. R. p. 480, line 23 – p. 481, line 5.

Tyson Singleton, Washington’s neighbor, testified he saw Washington running down the road before the first shot was fired. Singleton heard three shots total. R. pp. 483-85. He did not see Victim at the time of the shooting and did not know Victim. R. p. 492. He did not see Larry Kinloch outside, and he never saw the gun. He did not see the shooter. R. p. 495.

Washington did not testify at trial, but his statement to law enforcement was admitted into evidence and has been designated for appeal. See State’s Exhibit 47. In the statement, Washington claimed he saw a scuffle between the victim, who he did not identify, and the unidentified shooter, who he referred to as the “suspect.” Washington claimed to be a mere observer. Victim took off his

shirt as if to fight and then a fight ensued, which was “somewhat” broken up by security. Then “the victim walked off and the suspect fired a shot at him.” Recounting the moment of the shooting once more in his statement, Washington reports “after the fight was over the victim walked away then the suspect followed and fired a shot” State’s Exhibit 47.

At the conclusion of trial, Washington was found guilty of voluntary manslaughter. During sentencing, Washington apologized to Victim’s family and also Jenkins’ family. R. p. 631, lines 1-2.

ARGUMENT

I.

The trial court did not err in finding hearsay testimony inadmissible under the exception for present sense impression and counsel failed to argue for admission under any other exception. Further, the evidence did not meet the requirements for admission of evidence of third party guilt. Finally, any error is harmless beyond a reasonable doubt.

Washington contends the trial court erred in not allowing Quentin Kenneth Grant to testify that Larry Kinloch told them that Kinloch shot Victim. Washington contends Grant's testimony to this effect should have been allowed as (1) a prior inconsistent statement; (2) present sense impression; or (3) excited utterance. The testimony did not meet any of these exceptions. Of the three exceptions, Washington only raised present sense impression as an exception, so argument on the other two exceptions is not preserved. Further, the testimony did not meet the test for admitting third party guilt evidence.¹ Additionally, any error was harmless beyond a reasonable doubt.

First, Washington's contention the testimony should be allowed as a prior inconsistent statement is not preserved for review. Washington attempted to elicit this testimony during Grant's direct examination and redirect examination. Each time the hearsay objection was sustained. The first time, Washington failed to provide grounds for admission. The second time, Washington only argued present sense impression without further argument or explanation.

Accordingly, Washington failed to preserve for review the contention that the statement was admissible as a prior inconsistent statement. State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642,

¹ The abuse of discretion standard applies: "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of

645 (1998) (holding that where counsel acquiesces in judge's limitation of his cross-examination of his cross-examination and makes no further objection, appellate review of the issue is procedurally barred). The argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”).

Further, even if counsel argued prior inconsistent statement as a ground for admission, he failed to lay sufficient foundation with Kinloch, the alleged declarant. A witness may be impeached with prior statements inconsistent with or contradictory to the witness's trial testimony. Mays v. Mays, 267 S.C. 490, 229 S.E.2d 725 (1976). “To have an inconsistent statement, there must be a statement with which to compare it.” Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261, 265 (Ct. App. 1999). Before a prior inconsistent statement may be admitted, the witness alleged to make the statement must be advised on cross-examination “of the substance of the prior statement and the time when, the place where and the person to whom it was made.” State v. Roper, 274 S.C. 14, 19, 260 S.E.2d 705, 707 (1979).

In the present case, Washington argues the following from his cross-examination of Kinloch constituted the requisite foundation:

discretion.” State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

Q: Well, let's go through this slow.
You have shared with, for instance, Quinton Grant, that you did the shooting, haven't you?

A: No, sir.

Q: Okay. In fact, the night when the shooting took place, you ran and Quinton assisted you away from the shooting? Sir?

A: No, sir.

Q: Well, I'll put it – ask you another question.
After the shooting that night, did you see Quinton Kenneth Grant?

A: No, sir.

R. p. 175, line 11 – p. 176, line 6.

In the instant case, counsel did not question Kinloch about the time or place the alleged conversation took place. Therefore, an insufficient foundation was laid for admitting the purported inconsistent statement.

Further, the testimony did not meet the requirements for the present sense impression exception. Under Rule 803(1), SCRE, testimony is admissible under present sense impression if it is a “statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.” The testimony does not meet the standards for present sense impression because the purported statement did not occur while Kinloch was perceiving the event or immediately thereafter. According to Grant, he did not see Kinloch until twenty or twenty-five minutes after the shooting. On direct, Grant said he went back to the club. R. p. 438, lines 13-21. On cross-examination, Grant contradicted himself saying he never went back to the club. Instead, he said he saw Kinloch at Kinloch's house. R. p. 444, lines 7-13. The trial court

did not abuse its discretion because the conversation did not occur while the declarant was perceiving the event nor immediately after. Instead, the alleged conversation took place at least twenty minutes later at Kinloch's house. The bare assertion that Kinloch said he did it, without any testimony of the surrounding circumstances, fails to suggest the purported statement was more than mere reflection. "The idea of immediacy lies at the heart of the exception; thus, the time requirement underlying the exception is strict because it is the factor that assures trustworthiness." United States v. Green, 556 F.3d 151, 156 (3d Cir. 2009). Accordingly, the trial court did not abuse its discretion in sustaining the State's objection. Wilson v. Childs, 315 S.C. 431, 439, 434 S.E.2d 286, 291-92 (Ct. App. 1993) (finding in medical malpractice case, no error in excluding decedent's statement about conversation with doctor shortly before decedent's death when the trial court reasoned it was inadmissible "because the decedent had made this statement in reflection of past events."); see also United States v. Manfre, 368 F.3d 832 (8th Cir. 2004) ("Here, too much time had passed between when Mr. Rush spoke with Mr. Manfre and when he spoke with Mr. Stozier to call the transaction a present-sense impression. At the very least, there was an intervening walk or drive between the time of the discussion with Mr. Manfre and the time when Mr. Rush spoke with Mr. Stozier. The present-sense-impression exception to the hearsay rule is rightfully limited to statements made while the declarant perceives an event or immediately thereafter, and we decline to expand it to cover a declarant's relatively recent memories.").

Finally, Washington argues Kinloch's purported out of court statement was admissible as an excited utterance. However, no foundation was laid that Kinloch made the statement "while the declarant was under the stress of excitement caused by the event or condition." Rule 803(2), SCRE.

In State v. Hendricks, 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014), this Court found a 911 call from a rape victim's mother failed to meet the foundation requirements of Rule 803(2), SCRE. The mother related to the dispatcher that her daughter was raped and related details her daughter disclosed to her. Accordingly, this Court reviewed the admissibility of the 911 call as double hearsay. This Court found while the daughter's disclosure met the standard for excited utterance, the mother's out of court statement did not meet this exception. This Court noted the mother likely felt "an intense emotional reaction" upon hearing her daughter was raped: "However, the State has not shown the nature of her reaction was such that it generated the spontaneity that gives an excited utterance its inherent reliability." Id. at 533, 759 S.E.2d at 438. This Court further noted, "Moreover, the State did not show [the mother] was still under the required stress of excitement when she actually made her statement." Id. This Court additionally noted the mother had time to reflect on the disclosure before she called 911. Id. at 534, 759 S.E.2d at 438-39.

Likewise, in the instant case, Washington failed to lay any foundation showing Kinloch's reaction was such that it generated spontaneity or that Kinloch was still under the required stress of excitement when Kinloch made the purported statement twenty or twenty-five minutes after the shooting. Accordingly, the alleged out of court statement was not admissible as an excited utterance. Further, the argument was not raised to the trial court as a basis for admission, and therefore the claim of error is not preserved. Thomason, supra.

The elephant in the room not addressed by Washington is State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). In Cooper, the defendant, on trial for murder, proffered testimony from Solomon Nelson, who claimed he overheard Shirley Gilmore telling someone that Gilmore, defendant's

girlfriend, and another woman killed the murder victim. The defendant intended to first call Gilmore, expecting her to deny making the statement, and then admit Nelson's testimony as an inconsistent statement. The trial court found such testimony improper. On appeal, the Supreme court agreed, finding Rule 804(b)(3), SCRE applicable, which determines when a statement against interest is admissible. Under Rule 804(b)(3), such a statement is admissible only when the declarant is unavailable as a witness, and Gilmore was available. *Id.* at 548, 514 S.E.2d at 588. The Supreme Court in turn addressed the defendant's assertion he could admit the testimony as a prior inconsistent statement. The Supreme Court noted the strict limits on the admissibility of third-party guilt. The Supreme Court found the third party evidence inadmissible because "there was no credible evidence linking Gilmore to Victim's murder." *Id.* at 549, 514 S.E.2d at 589.

Likewise, no evidence links Kinloch as the shooter beyond Grant's bare assertion. No witness saw Kinloch with a weapon, much less saw Kinloch firing a weapon. While one witness testified Victim predicted Kinloch was going to shoot him, the same witness noted Victim alternatively said "they" were going to shoot him, implicating Washington.

In *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941), the Supreme Court set the standard for the admissibility of third-party guilt evidence, stating:

[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; **evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible....** But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and

outside the crime itself, cannot be separately proved for such a purpose.

Id. at 104-105, 16 S.E.2d at 534-35 (emphasis added).

In State v. Swafford, 375 S.C. 637, 654 S.E.2d 297 (Ct. App. 2007), this Court upheld the trial court's exclusion of third party guilt evidence without reaching the issue of whether hearsay testimony in support of the third party guilt evidence was admissible. In that case, the victim died in a car accident, her van was found on the side of the road. Police determined Swafford's truck was involved in the accident and found the vehicle. Swafford was a short distance away from the truck, smelled of alcohol, and told them he was alone in the truck.

A neighbor testified that looking out his window, he saw a truck spinning out of control. He drove to the accident scene and on the way, he picked up his neighbor, Gillespie. Carol Johnson testified in camera that an hour before the accident, she saw Swafford in the passenger seat of Swafford's truck, and a person meeting Gillespie's description was driving. In addition, Brian Bobo testified in camera that Gillespie told him he was driving Swafford's truck and was involved in a bad accident. Investigator Rob Nealy testified in camera Greg Townsend told him a third person told Townsend that Gillespie admitted driving the truck at the time of the accident. Gillespie denied involvement when he testified in camera, although he admitted riding with the neighbor to the scene of the accident. Id. at 639-40, 654 S.E.2d at 298-99.

This Court noted Johnson's testimony, that she saw Swafford in the passenger seat an hour before the accident, failed to prove that Swafford was not driving at the time of the accident or that Gillespie was driving at the scene of the accident. Further, this Court found no error in excluding

Bobo's testimony remarking, "Bobo could produce no support for his bare assertion that he telephoned Gillespie the night of the accident." Id. at 642, 654 S.E2d at 300.

In the instant case, no evidence was presented at trial indicating Kinloch fired or even possessed a firearm. The only evidence presented was either Washington killed Victim or that an unknown individual, for instance, Washington's "suspect," killed Victim. Regardless of whether the testimony was admissible under a hearsay exception, as in Cooper, the testimony did not meet the admissibility requirements as evidence of third party guilt.

Accordingly, the testimony did not meet the present sense impression exception, or any other exception to the extent any of those other exceptions were preserved for review, and further, the testimony was not admissible as evidence of third party guilt.

Further, Washington was not prejudiced by the alleged error and any error is harmless beyond a reasonable doubt. Exclusion of evidence is reversible only where error and prejudice are shown. State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990). The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). Even if admissible as evidence of third party guilt, Grant's testimony lacks any detail of Kinloch's demeanor or the circumstances surrounding the purported admission. Moreover, other defense witnesses testified they saw Washington flee while shots were still being fired. The jury clearly rejected claims that Washington was not the shooter despite testimony from these other defense witnesses. The testimony simply would not have affected the result of trial. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is

harmless where it could not reasonably have changed the outcome of the trial); State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (finding error harmless when it could not reasonably have affected the result of the trial).

II.

The trial court did not err in declining to admit a toxicology report where the toxicology report was not relevant and any probative value was outweighed by its prejudicial effect. Any error was harmless in light of its minimal evidentiary value and the lack of evidence that Victim was actually the aggressor.

Washington attempted to admit evidence from a toxicology report of Victim from the time of the autopsy. Washington argues on appeal that it was error for the trial court to not admit testimony about the report. However, counsel never put on record the basis for admitting the report. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (The exact name of the legal doctrine employed does not need to be used to preserve an argument, but it must be clear that the argument has been presented on that ground). Further, the trial court's exclusion of this evidence was not an abuse of its discretion, as the report carried little to no probative value. Finally, any error is harmless in light of evidence of overwhelming guilt and the report's extremely limited utility.

The trial court explained its ruling as follows:

My understanding is you wish to inquire of Dr. Presnell what the blood-alcohol level is. I have sustained the State's objection . . . as to the actual amount. There has been abundant testimony as to the fact that there was drinking or not drinking by the victim, and so I have excluded this testimony, but you may continue.

R. p. 453, lines 10-17.

The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "An error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct.

App. 2005).

“While defendants are entitled to a fair opportunity to present a defense, that right does not encompass the right to present any evidence, regardless of its admissibility under the rules of evidence.” State v. Hamilton, 344 S.C. 344, 359, 543 S.E.2d 586, 594 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the instant case, the prosecutor objected based on Rule 404, SCRE. However, the trial court’s ruling reflects that she sustained the objection based on Rule 403, SCRE. Under Rule 403, SCRE: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

“The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion.” State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus a trial court’s decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” Hamilton, 344 S.C. at 358, 543 S.E.2d at 598.

“A trial judge’s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” State v. Stephens, 398 S.C. 314, 320, 839 S.E.2d 68, 71 (Ct. App. 2012).

The uncontroverted evidence showed Victim was drinking that night. Although Jenkins testified he did not see Victim drinking, he did not claim Victim was not actually drinking. On the other hand, several other witnesses testified Victim was drinking. Therefore, the report was cumulative to testimony that Victim was drinking.

Further, Washington claims the evidence should have been admitted because Victim's intoxication made it more likely he provoked difficulties. However, as discussed more fully in the State's response to Issue IV, neither the State nor Washington presented any evidence supporting self-defense. The only evidence was Washington brought on the difficulty by striking the first blow. No evidence was presented that Victim was armed and took any action further than taking off his shirt. Victim taking off his shirt merely shows a willingness to fight and therefore supports mutual combat at best. Accordingly, Victim's intoxication was not relevant and the danger of unfair prejudice outweighed the limited probative value of the evidence.

Assuming, as Washington insists, the report proved Victim was more likely to provoke a confrontation due to his intoxication, the jury returned a voluntary manslaughter verdict, so the exclusion of the evidence did not prevent the jury from finding legal provocation and acquitting Washington of murder.

The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). Exclusion of evidence is reversible only where error and prejudice are shown. State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990). Forensic evidence showed Victim was shot twice in the back and suffered blunt force trauma in the back of the head. The only evidence presented was

Washington was the aggressor or someone else did the shooting. The toxicology report simply was unlikely to affect the result of trial due to the complete failure of evidence showing Victim was actually the aggressor.

III.

The trial court did not err in excluding a defense witness's testimony where the witness violated the sequestration order due to defense counsel's conscious disregard of the order, and the excluded testimony was merely cumulative to testimony from other defense witnesses.

Washington argues the trial court abused its discretion by enforcing the sequestration order and excluding Kevin Watson's testimony. The trial court did not abuse its discretion as Washington's counsel knowingly allowed the sequestration order to be violated and the witness was able to view Washington's videotaped statement. Additionally, Washington was not prejudiced since the testimony was cumulative to testimony from other defense witnesses.

After Kevin Watson was called to the stand, one of the officers present in court advised the prosecutor they recalled seeing Watson in court during trial. During the trial court's inquiry, Watson admits he was present while Captain Shuler was on the stand. Watson did not hear Captain Shuler testify but he was present while Washington's video-taped statement was played. R. pp. 405-10.

The trial court ruled to exclude the testimony. After the ruling, defense counsel explained Watson was not originally on the witness list, so Watson was not in a position to receive the sequestration instruction. The trial court noted counsel was aware of the instruction. Counsel responded, "He did not come to me until today and share with me that he was going to testify, so I thought it was no need for me to consider him to be sequestered." R. p. 412, lines 4-7. Therefore, counsel admitted disregarding the sequestration order when he was approached by Watson to testify.

The trial court allowed counsel to proffer Watson's testimony. Watson testified in camera that he was present at A Place in the Woods and saw "some fighting" and left. He testified he saw

neither Kinloch nor Washington with a weapon. R. p. 414, lines 3-11.

A circuit court may order the sequestration of any witness by order or by motion of a party. Rule 615, SCRE. The decision to sequester a witness is within the sound discretion of the circuit court. State v. Simmons, 384 S.C. 145, 173, 682 S.E.2d 19, 33-34 (Ct. App. 2009). The purpose of the exclusion rule is to prevent the possibility that one witness will shape his testimony to match another witness's testimony. State v. Huckabee, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010). If a witness violates the order, he may be disciplined by the court. Id. The question of whether to exclude testimony by the offending witness depends upon the particular circumstances and "lies within the sound discretion of the trial court." Id. (quoting United States v. Leggett, 326 F.2d 613, 613-14 (4th Cir.1964)).

Washington relies on Simmons and State v. Tisdale, 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000). However, in both Simmons and Tisdale this Court merely held the trial court did not abuse its discretion in allowing the witnesses in violation of the sequestration order to testify. In Simmons, this Court held the trial court did not abuse its discretion in allowing the chief investigating officer to testify when any testimony he did hear would not have influenced his testimony. Simmons, 384 S.C. at 173, 682 S.E.2d at 34. Additionally, the chief investigating officer's testimony was critical to the state's case. Id.

In Tisdale, this Court held the trial court did not abuse its discretion in refusing to grant a mistrial based on a witness's violation of a sequestration order. The witness was present for opening argument, which refreshed his recollection of the clothing Tisdale wore the day he purchased a vehicle seen by the bank Tisdale robbed. The witness testified about the clothing. The trial court

concluded it would not grant a mistrial, finding the violation of the order was neither flagrant nor intentional. Tisdale, 338 S.C. at 616-18, 527 S.E.2d at 394-95. Simmons and Tisdale merely illustrate the wide discretion afforded to the trial judge to determine what, if any, remedy is required for a violation of a sequestration order.

In the present case, defense counsel knew about the sequestration order, but decided it was unnecessary for his witness to follow the order. Counsel's conscious decision to disregard the sequestration order for this witness is apparent through his own words ("I thought it was no need for him to be sequestered.") As a result, Watson saw Washington's video-taped interview and was in a position to conform his testimony to Washington's statement. Accordingly, the trial court did not abuse her discretion in prohibiting the witness from testifying given the potential prejudice to the State and counsel's conscious disregard of the order.

In a proffer, Watson testified that he "saw some fighting, and [he] basically left." R. p. 414, line 5. Note Watson did not testify that he heard shots fired or saw the gunman. Instead, he merely testified that he did not see Washington with a weapon. R. p. 414, lines 6-11. Importantly, this testimony fails to establish Washington did not actually possess a weapon.

Moreover, this testimony is cumulative to testimony from other defense witnesses. For instance, Robin Williams claimed to see Washington running away on the second shot and she heard four shots. R. p. 467, lines 3-19. Williams clarified she never saw Washington with a gun. R. p. 470, lines 8-23. Further, Tyson Singleton testified he saw Washington running down the road before the first shot was fired. R. pp. 661-63.

Exclusion of evidence is reversible only where error and prejudice are shown. State v. Bell,

302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990). Watson's testimony, at best, was merely cumulative to Williams and Singleton's testimony. See State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001) (finding, in a speeding prosecution, that even if magistrate should have allowed the video of the roadway into evidence, it was cumulative to testimony concerning the roadway and a diagram of the road that was used at trial) *overruled on other grounds by State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011). Since the substance of the testimony Washington sought to elicit from Watson was presented to the jury through other witnesses, Washington was not prejudiced by the purported error.

IV.

The trial court did not err in declining to instruct the jury on self-defense. Appellant brought on the difficulty. No evidence was presented that Appellant was in danger of death or serious bodily injury or could reasonably harbor such a belief. No evidence was presented that Appellant could not retreat or otherwise avoid the use of lethal force. Any conceivable error was harmless beyond a reasonable doubt.

Washington claims the trial court erred in declining to instruct the jury on self-defense. The only evidence presented was Washington, rather than Victim, was the aggressor. No evidence was presented that Washington was under threat or a reasonable belief of threat to his life or to serious bodily injury. No evidence was presented that he could not have avoided any danger by means other than use of lethal force. Any error is harmless beyond a reasonable doubt in light of the evidence that Victim was shot in the back twice and suffered severe blunt force trauma to the back of the head.

“A jury charge on self-defense is not required unless it is supported by the evidence.” State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007). “An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.” State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005) (citation and internal quotation marks omitted). The trial court’s refusal to provide a requested jury instruction must be erroneous and prejudicial to warrant reversing a conviction. State v. Lockamy, 369 S.C. 378, 631 S.E.2d 555 (Ct. App. 2006).

In order for a defendant to be entitled to a jury instruction on self-defense, evidence of the following four elements must be presented:

- (1) The defendant must be without fault in bringing on the difficulty;
- (2) the defendant must have been in actual imminent danger of losing

his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was in actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000).

First, the evidence shows Washington brought about the difficulty. The evidence indicates Washington stared down Victim when Victim entered the club. R. p. 41. Further, the uncontroverted evidence is that Washington and Kinloch followed Victim out of the bar. Anticipating problems, Victim's girlfriend, Coakely, followed after them.

Coakely testified she grabbed a bottle and intended to hit Washington over the head with it only **after** Washington struck Victim twice. Accordingly, Coakely's testimony only indicates that she attempted to defend Victim from a fight started by Washington. Clearly, Washington brought on the difficulty which disqualifies entitlement from an instruction on self-defense. State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999) (quoting an ALR article for the proposition that "one who provokes or initiates an assault cannot escape criminal liability by invoking self-defense"); Wigington, 375 S.C. at 32, 649 S.E.2d at 188 (quoting Bryant). Further, Washington was already armed when he began his fight with Victim. State v. Sullivan, 345 S.C. 169, 547 S.E.2d 183 (2001) (noting that one must have a reasonable belief of imminent danger before arming himself in self-defense); see also State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (finding trial court did not err in declining to instruct jury on self-defense because Slater approached an altercation already underway with a

loaded weapon by his side, “[s]uch activity could be reasonably calculated to bring the difficulty that arose in this case.”). His willingness to engage in a fight disqualifies Washington’s puzzling claims of self-defense. State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973) (“To constitute mutual combat there must exist a mutual intent and willingness to fight.”). To the extent the evidence indicates mutual combat rather than Washington simply being the aggressor, mutual combat defeats a claim of self-defense. Id.

Further lacking is any evidence indicating Washington fired his weapon under imminent fear of losing his life or suffering serious bodily injury. Assuming Washington, already engaged in mutual combat, was entitled to arm himself in self-defense against Coakely and her bottle, there is no evidence he should have been in fear of imminent harm **from Victim** who was unarmed. Coakely testified she retreated, and both Washington and Victim were out of her eyesight when Victim was gunned down. Further, evidence Victim took his shirt off may indicate a willingness to fight; however, no evidence indicated Victim was armed. Instead, taking his shirt off indicates no more than willingness for a weaponless struggle. Quite simply, there is no evidence Washington was under threat of death or serious bodily harm from Victim, and clearly the danger from Coakely passed when Coakely dropped the bottle and retreated. Accordingly, no evidence was presented that Washington was in fear for his life or serious bodily harm, and the evidence presented fails to show that it would be reasonable for Washington to believe so. The evidence fails to show that Washington met either the second or third elements of self-defense.

Finally, no evidence was presented that Washington did not have other means of avoiding the danger. He avoided any danger from Coakely. Victim was unarmed and no evidence indicates

Victim was an assailant. The only evidence indicates what happened next is that either Washington or an unidentified person chased Victim down and shot Victim in the back as Victim lay on the ground. The only evidence is this was an assassination. There was no evidence Washington was unable to retreat or otherwise avoid the danger.

In the instant case, no evidence was presented establishing self-defense. Instead the evidence shows Washington pursued and willingly entered an altercation with Victim while armed and while Victim was unarmed. Further, Victim taking off his shirt in anticipation of a weaponless fight did not create a reasonable fear for Washington for his safety from loss of life or for bodily harm. Simply put, an unarmed person taking their shirt off does not give another person the right to lawfully shoot that person. Accordingly, the trial court did not err in declining to instruct the jury on self-defense.

Further, any conceivable error was harmless. The uncontroverted physical evidence shows this is not a self-defense case. Victim was shot in the back twice. He also suffered blunt force trauma to the back of the head, resulting in a chipped skull. Washington's statement to the police and Coakley's trial testimony confirm the same thing: Victim was chased down and murdered. Any error in declining to instruct the jury on self-defense was harmless beyond a reasonable doubt. State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (noting the harmless error doctrine preserves the central purpose of a criminal trial, which is to decide the factual question of a defendant's guilt or innocence) (citing Arizona v. Fulminante, 499 U.S. 279, 306-08 (1991)).

V.

The trial court did not err in instructing the jury on accomplice liability and Appellant was not prejudiced by the instruction.

Washington's counsel objected to an instruction on accomplice liability, claiming no evidence was presented that Kinloch, rather than Washington, shot Victim. Counsel admitted, however, that the defense "tried to make some suggestions or inference" that Kinloch was the shooter. R. p. 532, lines 20-21.

The trial court did not err in providing the instruction. Under Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011), an instruction on accomplice liability is warranted where the evidence is equivocal as to the identity of the shooter. In that case, Barber had several co-defendants and only Barber was identified as the shooter. However the Supreme Court ultimately found the instruction was warranted. Id. In the instant case, as counsel admitted, he expended much energy suggesting Kinloch was the shooter, and his assertions coupled with evidence supports the trial court's determination that an instruction was warranted.

The defense called Aja Williams, a bartender at A Place in the Woods, as a witness. Williams testified Kinloch followed Victim around the bar that night. R. p. 421, lines 1-10. Williams testified the last thing Victim said to him was "Larry going to shoot me, they going to kill me." R. p. 423, lines 8-11. Just so the jury could hear it again, defense counsel clarified by asking, "Said Larry's going to shoot him." And Williams confirmed this comment. R. p. 423, lines 8-13. On redirect, Williams agreed that he met with the solicitors and told them Victim said "Larry is going to shoot me." R. p. 430, lines 13-25. Defense counsel confirmed that Victim said Larry two more times. R. p. 430, lines 24-25; p. 431, lines 8-9. The trial court noted this testimony during

argument on the propriety of an accomplice liability instruction. R. p. 533, lines 9-11.

While cross-examining Kinloch, defense counsel referenced Kinloch's phone call to his brother who was in prison. He suggested Kinloch called knowing the conversation would be recorded so that blame could be placed on Washington for the shooting. This culminated with counsel's question, "[Y]ou had already laid the groundwork to protect yourself because you then had already conversated, talked to Patrick, who was in jail for murder, to clear yourself and put it squarely on the shoulders of your nephew; isn't that true?" R. p. 177, lines 8-12. Kinloch disagreed. R. p. 177, line 13.

Counsel further examined Kinloch as follows:

Q: You understand that it's pretty good to get on the phone and clear your name pretty good in reference to anything that happened at Slim Bubba's birthday party?

A: No, sir.

Q: And who better place to put that as on the jail. Have you ever spent any time in Berkeley detention jail?

A: No, sir.

Q: Now, you know for a fact that every conversation in Berkeley County Detention center is recorded, because you've been there; isn't that true?

A: I've been in jail.

Q: Yeah. And you know that is about the stupidest thing in the world, to get on the phone and talk about incrimination. You smart, you even use the word incrimination; isn't that true?

A: [No response]

Q: Well, that's what the telephone conversation said. You used the

word incriminating, did you not?
Sir?

A: Yes, sir.

Q: Now, that's so smart that when you're doing self-serving statement, you smart enough, though, to incriminate someone else?

A: No, sir.

Q: Sacrifice your nephew? . . .

R. p. 180, line 14 – p. 181, line 14.

Later, defense counsel asked, "So you were drunk that night to the point that when you ran and saw Darlene [phonetic] Washington and you told and said, I did the shooting, you don't recall saying that?" R. p. 185, line 25 – p. 186, line 3. He also asked, "You don't recall saying, I had a .357 Magnum . . . in your possession?" R. p. 186, lines 4-6.

Counsel asked, "Sir, isn't it fair to say from the very onset of this tragic situation that you have always been described as the person who did the shooting in this case?" adding, "In the streets, that is. Isn't that true?" R. p. 186, lines 13-18.

Counsel concluded cross-examination as follows:

Q: Do you owe an apology to your nephew, sir?

A: Sir?

Q: Do you owe an apology to your nephew, Sha'Quille Washington?

A: For what?

Q: You know the answer.

R. p. 189, lines 11-16. Counsel also later asked Christina Lockwood if she saw Kinloch in

possession of a weapon. R. p. 258, lines 19-21.

Additionally, even though the objection to Grant's testimony claiming Kinloch told Grant that he shot Victim was sustained and struck, Washington's counsel persisted in attempting to elicit this testimony despite the trial court's ruling. The testimony first arose as follows:

Q: You returned to the club?

A: Yes. Yes. Larry Kinloch told – said he did it.

Q: Larry said he did it?

A: He said he did it.

Prosecution: Objection, Your Honor.

A: He told me he did it.

R. p. 436, line 25 – p. 437, line 5. The trial court sustained the objection and told the jury to strike the "last statement." R. p. 437, lines 11-19. Despite the trial court's explicit ruling, defense counsel tried to elicit the statement again, examining his witness as follows:

Q: . . . How soon after the shooting did you see . . . Larry Kinloch?

A: Probably about I would say twenty, twenty-five minutes later.

Q: Within that twenty-five minute frame of time?

A: Yes.

Q: Okay. And that's when you heard what he said?

A: Yes.

Q: That, in fact, he had did it?

A: Yes.

R. p. 438, lines 10-21. The trial court sustained the objection and again struck the comment. R. p. 438, lines 22-25.

Counsel again attempted on redirect to elicit the hearsay statement:

Q: He asked you why are you here today. Why are you here?

A: I'm here today to say that Larry –

R. p. 448, lines 3-5. The prosecution objected and the objection was sustained. R. p. 448, lines 6-10.

Additionally, Washington called Renard Davis as a witness, who testified that an individual who removed his shirt was “fussing” with Kinloch. R. pp. 459-60. Further, while cross-examining Coakley, defense counsel tried to suggest the conflict was between Victim and Kinloch because Kinloch approached Coakley and “hit” on her the week before. R. pp. 98-99.

The Supreme Court addressed when an instruction for accomplice liability was appropriate in Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011), and ultimately concluded a charge on the hand of one is the hand of all is appropriate where the evidence is equivocal as to which of several persons acting in concert physically committed the crime. The Supreme Court held, “Like a lesser-included offense, an alternate theory of liability may only be charged **when the evidence is equivocal on some integral fact** and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.” Id. at 236, 712 S.E.2d at 439 (emphasis added). In Barber, this Court framed the question as follows: “To support an accomplice liability charge in this case, the question is whether there is any evidence that another co-conspirator was the shooter and Barber was acting with him when the robbery took place.” Id. at 237, 712 S.E.2d at 439. In Barber, the robbers wore masks and some question existed as to which robbers were armed with which

weapons, including the murder weapon. However, the testifying co-defendants insisted Barber shot the victims and none of the other codefendants were positively identified as the shooter. The Supreme Court found the accomplice liability instruction was appropriate because “the sum of the evidence presented at trial, both by the State and defense, **was equivocal** as to who was the shooter.” *Id.* at 236, 712 S.E.2d at 439 (emphasis added).

In the instant case, Washington asserted Kinloch was the shooter: his counsel accused Kinloch of being the shooter while Kinloch was being cross-examined. The bartender claimed Victim told him Kinloch was going to shoot him. Further, even after the trial court struck Williams’ testimony claiming Kinloch admitted shooting Victim, Washington managed to elicit the same claim that Kinloch said he shot Victim two more times, even though the trial court struck it. Washington should not profit by this malfeasance where he intentionally elicited the same testimony the trial court already admonished the jury to disregard.

Washington relies on Wilds v. State, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014) to argue the instruction was not warranted and was prejudicial. Wilds is distinguishable. In Wilds, Wilds was tried for armed robbery and murder. Both of his co-defendants testified to their participation in the robbery and testified Wilds was the triggerman in the robbery. During deliberations, the jury sent a note to the trial court asking, “[I]f we say [Wilds is] guilty of murder, are we saying he of the three [alone] actually pulled the trigger?” Over Wilds’ objection, the trial court instructed the jury on accomplice liability. Subsequently, the PCR court found Wilds’ appellate counsel ineffective for not challenging the instruction on appeal. *Id.* at 435-37, 756 S.E.2d at 388-89.

This Court affirmed the PCR court, noting the jury may have doubted the codefendant’s

testimony, but finding accomplice liability “may not be charged merely on the theory the jury may believe some of the evidence and disbelieve other evidence.” Id. at 439, 756 S.E.2d at 390. This Court found Wilds was prejudiced because the jury instruction was given in response to the jury’s question, enabling it to unanimously find a verdict. Id. at 439, 756 S.E.2d at 391.

This case differs from Wilds because no evidence supported the instruction in Wilds. On the other hand, in the instant case, Washington presented testimony from Davis suggesting the confrontation was between Victim and Kinloch. Additionally, Williams testified Victim thought Kinloch was going to kill him. Finally, defense counsel’s conduct in continuing to attempt to elicit testimony from Grant despite the trial court’s ruling justifies providing the instruction. The evidence and defense counsel’s assertion support the instruction sufficient to create equivocal evidence as to the shooter sufficient to justify the instruction pursuant to Barber.

Additionally, Washington was not prejudiced by the instruction. In Wilds, the jury was given the accomplice liability instruction in direct response to their question, unduly emphasizing accomplice liability. In the instant case, since the instruction was provided with the standard instructions, the concept was not unduly emphasized. Accordingly, Washington was not prejudiced, particularly in light of the abundant evidence of guilt.

VI.

The trial court did not abuse its discretion by giving an Allen charge at the close of a day's deliberations instead of the following morning.

Washington claims the trial court's decision to provide a correct Allen instruction to the jury before the jury was dismissed in the evening "altered the manner in which juries conduct their deliberations," arguing the trial court should have waited until the next morning to give the instruction. The trial court did not abuse its discretion, and it is highly speculative at best that the timing of the Allen instruction affected the result.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) (citing State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981)). In the instant case, the trial judge did not abuse its discretion in giving the charge at 5:30 p.m., before sending the jurors home for the evening. An Allen charge is given by a court when the jury has reached an impasse in its deliberations and is unable to reach a consensus. United States v. Burgos, 55 F.3d 933, 935-36 (4th Cir.1995); Allen v. United States, 164 U.S. 492 (1896). The decision to give such a charge is within the discretion of the trial or sentencing court. Id. at 935. "[T]he trial judge who is in the best position to observe the jury's demeanor should have some flexibility in guiding a case to its final resolution while protecting the parties' rights to a fair, impartial, and conscientious verdict." Buff v. S.C. Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000). The test for determining whether a given charge is unconstitutionally coercive is fact intensive. Tucker v. Catoe, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001). Whether an Allen charge is unconstitutionally coercive must be judged "in its context and under all the

circumstances.” Lowenfield v. Phelps, 484 U.S. 231 (1988). The same fact intensive inquiry applies to the determination of the manner in which the charge is given. See State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979). In assessing the prejudicial impact of jury instructions, the test is whether the particular language employed, in the context and under the circumstances of the case, coerced the jurors into reaching a guilty verdict. Jenkins v. United States, 380 U.S. 445, 446 (1965). Note jurors are presumed to follow the trial court’s instructions. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). In the absence of coercion, the trial court is merely discharging the trial court’s duty to the public and litigants by urging the jury to reach a verdict. State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981).

In the instant case, Washington’s counsel did not challenge the language of the Allen instruction. R. p. 610, lines 13-15. Instead, he challenged the timing of the Allen instruction, based on a personal preference rather than any legal authority that it was better to provide the instruction the following morning and not before the jury was dismissed in the evening.²

Washington first relies on Harvey v. Strickland, 350 S.C. 303, 566 S.E.2d 529 (2002), a medical malpractice case where the Court did not even consider that issue.³ Washington’s reliance on this case underscores the lack of authority to support his trial counsel’s musings because the Supreme Court did not address whether or not the Allen charge – or its timing – was coercive or prejudicial. 350 S.C. at 308. Id. In Strickland, the jury deliberated for four hours before sending a

² See R. p. 605, lines 19-23 (“I would prefer that we do the Allen charge in the morning . . . But you’re the judge.”).

³ The Issues on Appeal in Strickland were limited to the following: (1) whether the trial court erred in granting a directed verdict on Harvey’s claims; (2) whether the trial court erred in denying Harvey’s motion to amend his complaint; and (3) whether the trial court improperly excluded testimony of a

note out that indicated they could not agree. Id. The trial court excused the jury for the day and brought the jury back the next day for further deliberations after an Allen charge. Id.⁴ However, the Supreme Court did not suggest providing the instruction in the morning instead of immediately upon discharging the jury that evening was preferable, much less required. Id. Accordingly, Strickland fails to provide any support for the proposition that the trial court in the instant case failed to follow proper procedure or otherwise abused its broad discretion.

Washington also relies on State v. Tillman to support its argument that the trial judge is **bound** to provide the Allen charge in the morning after the jury returns for further deliberations. 304 S.C. 512, 521, 405 S.E.2d 607, 612 (Ct. App. 1991). In Tillman, the trial judge excused the jury at 9:30 p.m. and provided the jury the Allen instruction the next morning. However, the language of this Court's opinion does not require the trial judge "to send the jury home with instructions to return the next day and give the charge the next day immediately before the jury resumes its deliberations" as Washington asserts. Br. of App., p. 16. Instead, in Tillman the appellant argued the trial court gave the instruction too soon. This Court disagreed and found no evidence the trial court tried to coerce a verdict. Tillman merely reinforces the wide discretion trial courts hold in conducting the trials in a way they deem fair for both parties. Id. at 519 (holding there was no indication the trial judge tried to coerce a verdict; "appellant's argument as to the timing of the charge meritless").

Just as the Court in Tillman held the timing of the charge did not indicate the trial judge tried

hospital liaison worker. Strickland, 350 S.C. at 308, 566 S.E.2d at 532.

⁴ In Strickland, the jury deliberated further before returning unable to return a verdict. The plaintiff asked if there was some way to seek appellate review without having to retry the case and the trial court granted a directed verdict for the defense. Id. at 307-08, 566 S.E.2d at 532. Since no verdict was reached, obviously Strickland does not involve an allegation of a coerced verdict.

to coerce a verdict, the Court should reach the same conclusion here. Tillman merely reinforces the wide discretion vested in trial courts to determine when Allen instructions are required. In the instant case, the trial court did not err.

Further, Washington was not prejudiced as the outcome of the trial was not affected. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). “Harmless error rules . . . ‘serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.’” State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014) (quoting Chapman v. California, 386 U.S. 18, 22 (1967)). In the instant case, the jury deliberated the following day from 9:36 a.m. to 2:41 p.m. R. p. 619, lines 6-9. Prior to the jury resuming deliberations, the trial court reminded the jurors that she provided the Allen instruction the previous night. R. p. 618, lines 17-22. Since the jury continued its deliberations for an additional five hours the next morning, this Court should feel secure in the view that the Allen instruction did not coerce the verdict. Accordingly, the conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

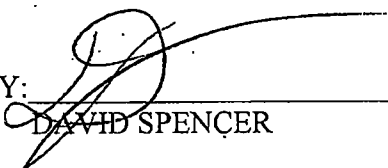
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March 8, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Kristi L. Harrington, Circuit Court Judge

Appellate Case No: 2015-002668

THE STATE,

Respondent,

vs.

SHA'QUILLE WASHINGTON,

Appellant.

CERTIFICATE OF COUNSEL

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

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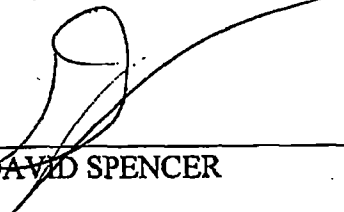
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March 8, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002668

The State,

Respondent,

v.

Sha'Quille Washington,

Appellant.

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Argument in Reply	1
Conclusion	16

TABLE OF AUTHORITIES

Cases:

<i>Allen v. United States</i> , 164 U.S. 492 (1896).....	2, 15, 16
<i>Arnold v. State</i> , 309 S.C. 157, 420 S.E.2d 834 (1992)	14
<i>Foye v. State</i> , 335 S.C. 586, 518 S.E.2d 265 (1999).....	14
<i>Harvey v. Strickland</i> , 350 S.C. 303, 566 S.E.2d 529 (2002)	15
<i>State v. Cooper</i> , 334 S.C. 540, 514 S.E.2d 584 (1999).....	6, 7, 8
<i>State v. Fossick</i> , 333 S.C. 66, 508 S.E.2d 32 (1998)	5, 6, 7
<i>State v. Foster</i> , 354 S.C. 614, 582 S.E.2d 426 (2003)	4
<i>State v. Graham</i> , 260 S.C. 449, 196 S.E.2d 495 (1973)	13
<i>State v. Gregory</i> , 198 S.C. 98, 16 S.E.2d 532 (1941).....	7, 8
<i>State v. Grovenstein</i> , 335 S.C. 347, 517 S.E.2d 216 (1999).....	14
<i>State v. Hamilton</i> , 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001), <i>overruled</i> , <i>State v. Gentry</i> , 363 S.C. 93, 610 S.E.2d 494 (2005)	4, 5
<i>State v. Pierce</i> , 289 S.C. 430, 346 S.E.2d 707 (1986), <i>overruled</i> , <i>State v.</i> <i>Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991).....	14
<i>State v. Queen</i> , 264 S.C. 515, 216 S.E.2d 182 (1975)	14
<i>State v. Simmons</i> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009)	12
<i>State v. Smith</i> , 391 S.C. 408, 706 S.E.2d 12 (2011)	12
<i>State v. Swafford</i> , 375 S.C. 637, 654 S.E.2d 297 (Ct. App. 2007)	7, 8
<i>State v. Tillman</i> , 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991)	15
<i>State v. Tisdale</i> , 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000)	12
<i>Watson ex rel. Watson v. Chapman</i> , 343 S.C. 471, 540 S.E.2d 484 (Ct. App. 2000)	11
<i>Wilds v. State</i> , 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014).....	14

Rules of Court:

Article IV, South Carolina Rules of Evidence.....	9
Rule 103(a)(2), South Carolina Rules of Evidence	4
Rule 401, South Carolina Rules of Evidence.....	9
Rule 402, South Carolina Rules of Evidence.....	9
Rule 403, South Carolina Rules of Evidence.....	9, 10, 11
Rule 404, South Carolina Rules of Evidence.....	9
Rule 613(b), South Carolina Rules of Evidence.....	6
Rule 801(d)(1)(A), South Carolina Rules of Evidence.....	3, 4, 5
Rule 803(1), South Carolina Rules of Evidence.....	3, 5, 8
Rule 803(2), South Carolina Rules of Evidence.....	3, 5, 8
Rule 804(b)(3), South Carolina Rules of Evidence	6

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in refusing to admit the testimony of a defense witness that Larry Kinloch told him he committed the shooting?
2. Did the trial court err in refusing to admit a toxicology report and testimony of the forensic pathologist concerning the report's findings as to the deceased's blood alcohol level?
3. Did the trial court err in excluding the testimony of a defense witness who had been present in the courtroom briefly, in violation of the court's sequestration order?
4. Did the trial court err in refusing the defense's request for a jury charge on self-defense?
5. Did the trial court err in granting the state's request for a jury charge on accomplice liability?
6. Did the trial court err in giving an *Allen* charge at the close of a day's deliberations, then excusing the jury for the night?

ARGUMENT IN REPLY

The state's brief portrays a one-sided version of the evidence presented at trial, highlighting the testimony favorable to the state's position. For example, the state asserts Larry Jenkins was 100 percent certain of his identification of appellant as the shooter, without acknowledging that Jenkins also testified he was less than 100 percent certain of that identification. R. p. 68. The state mischaracterizes the evidence of Arianna Coakley's arming herself with a beer bottle, claiming appellant struck the decedent, then Coakley grabbed the bottle. In fact, Coakley grabbed the bottle before going outside, not

after the altercation began. R. pp. 107, 221. She raised it to strike appellant before she claims appellant pointed a gun at her. R. pp. 85, 104.

The state makes the claim that “[t]he only evidence is this was an assassination.” This claim is not correct. The evidence was in sharp dispute. Even the state’s own witnesses contradicted aspects one another’s accounts. The jury certainly disagreed with the state’s unfounded “assassination” claim, acquitting appellant of the charge of murder and instead finding him guilty of voluntary manslaughter.

Throughout its brief, the state asserts that any errors committed by the court on the issues raised in this appeal were harmless and not prejudicial. To the contrary, the errors in the rulings of the trial court likely affected the outcome of this trial. The evidence was rife with inconsistencies as to the actions of the various individuals at the club that night. Two witnesses were personally observing appellant when the shots were fired and saw that he was not armed or engaged in the altercation at all. R. pp. 470-71, 476, 480, 483-84. After five hours of deliberations the jury reported to the court that it was deadlocked. R. pp. 604-05. Deliberations continued the next day for another five hours before the jury reached a verdict. R. p. 619. The jury had questions about the instructions on the law and even mischaracterized one of the legal doctrines charged by the court, without further clarification given by the court to dispel their misunderstanding of that doctrine. R. pp. 604, 619, 643, 645. Against this backdrop, it cannot be said that the court’s errors with respect to the evidentiary rulings, the jury charges, and the conduct of the proceedings related to the *Allen*¹ charge were harmless. This Court should reverse and remand for a new trial.

¹ See *Allen v. United States*, 164 U.S. 492 (1896).

I. THE TRIAL COURT ERRED IN REFUSING TO ADMIT THE TESTIMONY OF A DEFENSE WITNESS THAT LARRY KINLOCH TOLD THE WITNESS HE COMMITTED THE SHOOTING.

Appellant challenges the court's refusal to admit the testimony of Quentin Kenneth Grant that Larry Kinloch told him he did the shooting, arguing that the proffered testimony was admissible under Rules 801(d)(1)(A), 803(1), and 803(2) of the South Carolina Rules of Evidence. The state contends the only preserved argument with respect to this issue is the argument premised on Rule 803(1). To the contrary, the other bases for appellant's attempt to have this testimony admitted are apparent from counsel's statements and from the context revealed by the record, and each facet of this argument is preserved for appellate review.

It should be noted that throughout the trial the court limited counsel in placing objections on the record, repeatedly informing counsel that it would not allow "speaking objections," often cutting counsel off before the objection could be fully stated on the record, and requiring that the objection be argued in off-the-record bench conferences. This occurred when the state objected to the defense's questioning of Grant concerning Kinloch's statement.

The state called Kinloch as a witness in its case in chief. R. p. 156. On cross-examination, the defense questioned Kinloch about having told Grant and Darlene Washington that he did the shooting, and Kinloch denied having made that statement to them. R. p. 175. When the state objected to the defense's questioning of Grant on hearsay grounds, counsel initially asserted the grounds for admission of the testimony, stating that "Larry already testified." R. p. 436, line 12. The court sustained the state's objection over this argument. R. p. 436, line 15-16. When the statement was then

elicited and the state's objection was renewed, the remainder of the argument occurred in an off-the-record bench conference, after which the court struck the testimony, instructed the jury not to consider it, and instructed the foreman not to allow it to be discussed by the jury. R. p. 437, lines 1-18; p. 438, lines 18-25.

To be preserved for appellate review, the specific evidentiary basis for the offer of evidence need only be "made known to the court" or be "apparent from the context." *See* Rule 103(a)(2), SCRE; *cf. State v. Foster*, 354 S.C. 614, 620 n.4, 582 S.E.2d 426, 429 n.4 (2003) (specific ground for objection to evidence of prior consistent statement was apparent from context); *State v. Hamilton*, 344 S.C. 344, 360-61, 543 S.E.2d 586, 595 (Ct. App. 2001) (ground for objection made in off-the-record bench conference was apparent from context of later argument of jury charges and mistrial motion contained in the record), *overruled on other grounds, State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

One of the specific evidentiary bases counsel was asserting for admission of this evidence was that Kinloch had testified and denied the statement, and Grant was testifying concerning a prior inconsistent statement, admissible as non-hearsay under Rule 801(d)(1)(A). Counsel's specific reference to Kinloch's having already testified, in the context of Kinloch's having denied the statement, clearly reveals the basis for the defense's offer of this evidence – that it was a prior inconsistent statement. Nothing more was necessary to preserve this aspect of the evidentiary issue for appellate review. *Cf. Foster*, 354 S.C. at 620 n.4, 582 S.E.2d at 429 n.4.

Another ground that counsel argued during the bench conference was later revealed on the record in argument of the jury charges. With respect to the state's request

to give a charge on “the hand of one is the hand of all,” counsel revisited the court’s rulings on its repeated attempts to introduce evidence of Kinloch’s statements, specifically referencing its argument that the statement was an excited utterance. R. p. 533, lines 2-3 (noting that counsel had argued the “utter excited (sic) exception to the hearsay rule”). Counsel thereby placed on the record this basis for its earlier attempt to introduce the statement Kinloch made to Grant, and this aspect of the argument is preserved for appellate review. *Cf. Hamilton*, 344 S.C. at 360-61, 543 S.E.2d at 595.

All three grounds for admission of Kinloch’s statement – prior inconsistent statement under Rule 801(d)(1)(A), present sense impression under Rule 803(1), and excited utterance under Rule 803(2) – are properly before the Court based on the statements of counsel and the context reflected by the record. R. pp. 436-37 (prior inconsistent statement); p. 448 (present sense impression); and p. 533 (excited utterance). This Court should address all aspects of the argument of this issue.

The state contends the proper foundation was not laid for introduction of this testimony as a prior inconsistent statement, claiming Kinloch was not questioned as to the time and place the alleged conversation took place. To the contrary, in the context of questioning Kinloch about having made the statement, the defense questioned him about Grant’s having assisted him “away from the shooting” and his having seen Grant “after the shooting that night.” R. pp. 175-76. These questions supplied both the time and the place of the statement he was alleged to have made to Grant – after the shooting that night and at the location to which he went away from the shooting. Indeed, this questioning is far more specific as to time and place than that of *State v. Fossick*, 333 S.C. 66, 508 S.E.2d 32 (1998), in which the Supreme Court found error in exclusion of

similar testimony. In *Fossick*, the only foundation as to time was “a time back in 1989” – a reference far less specific than the questioning about “after the shooting that night” – and there was no reference whatsoever as to the place of the statement. Notwithstanding this lack of foundation, the Supreme Court found the trial court erred in not admitting the prior inconsistent statement under Rule 613(b), SCRE. See *Fossick*, 333 S.C. at 69-70, 508 S.E.2d at 33.

The state claims that the “elephant in the room” with respect to this issue is *State v. Cooper*, 334 S.C. 540, 514 S.E.2d 584 (1999), a case not addressed in appellant’s opening brief because it pertains to a different issue – admissibility of evidence of third-party guilt under Rule 804(b)(3), which addresses a statement against interest of an *unavailable* declarant. Contrary to the state’s assertion, the real “elephant in the room” is the state’s failure to address *Fossick*, cited in appellant’s opening brief, and the state’s further failure to address the *Cooper* decision’s discussion of *Fossick*.

In *Cooper*, the Supreme Court relied on *Fossick* in stating that “even if testimony is inadmissible as substantive evidence of third-party guilt, it may still be admissible for impeachment purposes.” *Cooper*, 334 S.C. at 550, 514 S.E.2d at 589, citing *State v. Fossick*, 333 S.C. 66, 508 S.E.2d 32 (1998). *Cooper*’s discussion of *Fossick* is instructive and applies precisely to the situation presented here. The Supreme Court stated:

In *State v. Fossick*, a State’s witness testified concerning the circumstances surrounding the murder. On cross-examination, defense counsel asked the witness if he had previously told his girlfriend that he was the one who killed the victim. The witness denied making the statement. Defense counsel then sought to admit extrinsic evidence of a prior inconsistent statement made by the witness. This Court held that even if the evidence was inadmissible as evidence of third-party guilt, it was admissible for impeachment purposes. However, unlike the instant

case, the witness in *Fossick* testified for the State concerning circumstances surrounding the crime.

See *Cooper*, 334 S.C. at 550 n.3, 514 S.E.2d at 589 n.3. Here, *Fossick* is controlling. Unlike *Cooper* and like *Fossick*, the individual being impeached with a prior inconsistent statement, Kinloch, was called by the state as a witness to the events in question. R. p. 156. He testified concerning the events surrounding the shooting, and he was asked about his prior statement on cross-examination and denied making the statement. R. pp. 157-71, 175-76. Under these circumstances, which are identical to those of *Fossick*, the court erred in excluding the testimony of Grant as to Kinloch's prior inconsistent statement.

The state devotes a significant portion of its argument of this issue to *Cooper* and other cases that excluded evidence of third-party guilt. Those cases are distinguishable. In those cases, no evidence linked the third party to the crime, and the third-party guilt evidence had no effect but to cast a "bare suspicion" or to raise a "conjectural inference" as to another's guilt. See *Cooper*, 334 S.C. at 547-50, 514 S.E.2d at 588-89; *State v. Gregory*, 198 S.C. 98, ___, 16 S.E.2d 532, 534-35 (1941); *State v. Swafford*, 375 S.C. 637, 641-43; 654 S.E.2d 297, 299-300 (Ct. App. 2007). However, in this case, multiple pieces of evidence linked Kinloch to the shooting. Kinloch had tried to "hit on" Manigault's girlfriend a week earlier. R. pp. 82, 97-98. He was at the club that evening and was engaged in the interactions with Manigault inside, before the parties moved outside where the altercation took place. R. pp. 422-23, 425-27. Manigault told a witness Kinloch was going to shoot him. R. pp. 423, 430-31. Jenkins testified *two* individuals were engaged in the fight with Manigault. R. pp. 42, 57. An independent witness, not there for the party, testified Manigault and Kinloch were fussing and Manigault removed

his shirt as if to engage in a fight. R. pp. 459-60. The state's brief acknowledges Kinloch was fighting. There was also evidence negating that it was appellant who did the shooting. Witnesses who were observing appellant when the shooting occurred testified he was not armed, was not in proximity to where the shots were fired, and ran away after the shooting started. R. pp. 470-71, 476, 480, 483-84. On this evidentiary record, *Cooper*, *Gregory*, and *Swafford* are inapplicable, and the testimony of Grant was admissible as evidence of a prior inconsistent statement by Kinloch.

For the reasons more fully set out in appellant's opening brief, this testimony was also admissible as a present sense impression and an excited utterance. See Rule 803(1), (2), SCRE. Contrary to the assertions of the state's brief and the authorities relied on therein, this statement was made immediately after the shooting – within 20 to 25 minutes. It was not made after a period of reflection. Indeed, had there been sufficient time for reflection on Kinloch's part (to negate present sense impression) or sufficient time to no longer be under the stress of the excitement caused by the event (to negate excited utterance), Kinloch certainly would *not* have made a statement incriminating himself in a homicide. The court erred in sustaining the state's objection to this evidence.

Disingenuously, the state contends appellant was not prejudiced by the exclusion of this evidence and any error is harmless beyond a reasonable doubt. To the contrary, the evidence in this case was replete with discrepancies and contradictions. Two witnesses were personally observing appellant when the shots were fired and negated his being the shooter. R. pp. 470-71, 476, 480, 483-84. The evidence implicating appellant was weak, and the jury was deadlocked after five hours of deliberations, then deliberated an additional five hours before arriving at a verdict. R. pp. 604-05, 619. Based on the

evidence in the record, it cannot legitimately be said that the outcome of the jury's deliberations would not have been affected by an admission by Kinloch, a participant in the altercation, that he, rather than appellant, did the shooting. The court's ruling was prejudicial, was not harmless, and constitutes reversible error.

II. THE TRIAL COURT ERRED IN REFUSING TO ADMIT A TOXICOLOGY REPORT AND TESTIMONY OF THE FORENSIC PATHOLOGIST CONCERNING THE REPORT'S FINDINGS AS TO THE DECEASED'S BLOOD ALCOHOL LEVEL.

Appellant challenges the court's refusal to admit into evidence a toxicology report and related testimony of the forensic pathologist who conducted Manigault's autopsy, which revealed he had a blood alcohol level of .235. R. pp. 452-56, 635, 638. The state implies that this claim of error is not preserved because the defense never put on the record the basis for seeking admission of the evidence. The issue is preserved. The state objected to the evidence invoking Rule 404, which pertains to relevance. R. p. 452; *see* Article IV, SCRE ("Relevancy and Its Limits"). Although the objection was argued in an off-the-record bench conference, the trial court later placed on the record the basis for its ruling, stating, "[t]here has been abundant testimony as to the fact that there was drinking or not drinking by the victim, and so I have excluded this testimony." R. pp. 452-53. In context, despite the lack of argument by defense counsel on the record, the record reveals that the basis for offering this evidence and the basis for the court's exclusion of it was relevance.

As fully addressed in appellant's opening brief, this evidence was relevant and was not inadmissible under Rule 404, the stated basis for the state's objection to its admission. As argued there, it was admissible under all of the applicable evidence rules – Rules 401, 402, 403, and 404. Rather than pursuing a Rule 404 analysis, the state now

argues the court properly excluded the evidence under Rule 403. Under a Rule 403 analysis, the evidence was admissible, and the court's ruling is reversible error.

Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence." As the court noted in putting its ruling on the record, and contrary to the state's contention, the evidence was disputed as to Manigault's drinking that night. Moreover, there was no evidence to establish the level of his drinking – whether a single drink or a continuous course of drinking that would result in an extremely high blood alcohol level. The scientific evidence that established the *exact* level of his intoxication – a blood alcohol content of .235 – was not cumulative to the other evidence in the record as to Manigault's "drinking or not drinking." R. p. 453. This evidence was probative of his actual level of intoxication, as compared to witness testimony that was vague and imprecise on the issue of his drinking that night. The evidence would not have resulted in undue prejudice, confusion of the issues, or misleading of the jury. See Rule 403, SCRE. In fact, the admission of the evidence would have resulted in *clarity* on the issue of his drinking, which was relevant to the question of who provoked the altercation.

The state argues the question of provocation is not relevant because, it claims, there was no evidence to support a claim of self-defense. To the contrary, even Coakley, Manigault's girlfriend and ally that night, who claimed appellant displayed a weapon, testified he did so only after she threatened appellant with a beer bottle. R. pp. 85, 104. The question of provocation was a central issue in the case, and Manigault's extreme

intoxication was probative and relevant. The evidence of his extreme intoxication was not prejudicial, confusing, misleading, or cumulative, therefore its probative value outweighed any factor that would justify its exclusion. *See* Rule 403, SCRE; *cf. Watson ex rel. Watson v. Chapman*, 343 S.C. 471, 477, 540 S.E.2d 484, 487 (Ct. App. 2000) (physician's alcohol dependency admissible under Rule 403 test).

Again, the state argues exclusion of this evidence was not prejudicial. For the reasons more fully argued in the opening brief, exclusion of this evidence prevented the jury from having a complete picture of the events that evening and, in particular, Manigault's extreme intoxication and the resulting impact such intoxication would have on his judgment, inhibitions, behavior, and tendency toward aggression or violence. Exclusion of this evidence likely impacted the jury's conclusions as to who instigated the altercation. Exclusion of the toxicology evidence of his .235 blood alcohol content was reversible error.

III. THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF A DEFENSE WITNESS WHO HAD BEEN PRESENT IN THE COURTROOM BRIEFLY, IN VIOLATION OF THE SEQUESTRATION ORDER.

Appellant challenges the court's ruling excluding a defense witness who was briefly present in the courtroom during a portion of a prior witness's testimony, in violation of a sequestration order. Appellant adheres to his argument of this issue in his opening brief. The state contends the purpose of a sequestration order is to prevent the witness from shaping his testimony to conform to that of another witness. That clearly did not happen here. The witness entered the courtroom when Detective Shuler was on the stand, while a video was playing, but otherwise heard no testimony. *R.* pp. 409-10. Thus, there was nothing for him to conform his testimony to. As shown by the proffer of

his testimony, he did not model it after anyone else's testimony, but merely testified to his own observations – that he was outside the club when tussling was going on, saw fighting, and did not see either Kinloch or appellant with a weapon. R. p. 414. His presence in the courtroom earlier did not shape his testimony in any way, and the court abused its discretion in excluding the witness. *Cf. State v. Simmons*, 384 S.C. 145, 173-74, 682 S.E.2d 19, 33-34 (Ct. App. 2009); *State v. Tisdale*, 338 S.C. 607, 615-18, 527 S.E.2d 389, 394-95 (Ct. App. 2000). For the reasons stated in appellant's opening brief, this error was prejudicial and should be reversed.

IV. THE TRIAL COURT ERRED IN REFUSING THE DEFENSE'S REQUEST FOR A JURY CHARGE ON SELF-DEFENSE.

Appellant challenges the court's refusal of his request for a jury charge on self-defense. The state responds with its one-sided version of the evidence, contending there was no evidence that appellant was under a threat and that "this was an assassination." To the contrary, there was clear evidence in the record that Coakley grabbed a beer bottle before going outside. R. pp. 107, 221. She raised it to strike appellant, and she testified he defended himself with a weapon in response to her own threatening action. R. pp. 85, 104. The evidence from multiple witnesses was that Manigault was bothered by something, was "about to snap," and went outside to fight, even removing his shirt for that very purpose. R. pp. 42, 56, 100-01, 109, 124, 126, 460. These facts support a self-defense charge.

The court commits reversible error in not giving a charge if there is *any evidence* to support the requested charge. *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011). The evidence, highlighted in argument of this issue in the opening brief, warrants a charge on self-defense, and the court committed reversible error in refusing that charge.

The state injects the issue of mutual combat into this argument, asserting mutual combat defeats a claim of self-defense. Neither party asked for a jury charge on mutual combat, and that issue was not before the jury. R. pp. 523-35, 588-603. But had it been, *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973), on which the state relies, makes clear that the decision whether a person acted in self-defense or engaged in mutual combat is for the jury. The presence of some evidence of mutual combat does not deprive the defense of the right to a charge on self-defense, where there is also evidence to dispute mutual combat and to support a claim of self-defense. Such was the case here, and the failure to charge self-defense was reversible error.

V. THE TRIAL COURT ERRED IN GRANTING THE STATE'S REQUEST FOR A JURY CHARGE ON ACCOMPLICE LIABILITY.

Appellant challenges the court's giving of a charge on accomplice liability, based on the absence of any evidence in the record that Kinloch was the shooter and that appellant was acting with him when the shooting took place. The defense had attempted to introduce Kinloch's statement that he did the shooting, but the court excluded that evidence and instructed the jury to disregard it. No other evidence in the record supported an accomplice liability charge.

The state relies on questions defense counsel asked of Kinloch to argue that the defense suggested Kinloch was the shooter. However, those questions did not elicit any *actual evidence* that Kinloch was the shooter, and counsel's questions, which were not evidence, do not support an accomplice liability charge. The state also relies on testimony the court struck to argue the accomplice liability charge should have been given. When that testimony was elicited, the court sustained an objection to it, instructed the jury not to consider it, and instructed the jury foreman not to allow it to be discussed.

R. p. 437, lines 1-18. Later, the court again instructed the jury not to consider that testimony. R. p. 437, lines 18-25. Based on the court's rulings, there was absolutely no evidence in the record that Kinloch shot Manigault, and no basis for a charge on accomplice liability.

The state essentially argues that a charge is warranted on this theory of criminal liability, even without any evidentiary support, based on an assumption that the jury would disregard the court's clear instructions. This argument runs afoul of the fundamental principle of our jurisprudence that jurors are presumed to follow the court's instructions. See *Foye v. State*, 335 S.C. 586, 590 n.1, 518 S.E.2d 265, 267 n.1 (1999); *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999); *Arnold v. State*, 309 S.C. 157, 166, 420 S.E.2d 834, 838-39 (1992); *State v. Pierce*, 389 S.C. 430, 433, 346 S.E.2d 707, 710 (1986), *overruled on other grounds*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). Indeed, the state invokes this very presumption in its argument of Issue 6, citing *State v. Queen*, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The state should not be allowed to defend the giving of an inappropriate jury charge on the assumption that the jury disregarded the court's instructions and considered evidence the court had stricken from the record.

As in *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014), where there was no evidence that anyone other than appellant was the shooter, an accomplice liability instruction was improper. The state seeks to distinguish *Wilds* on the basis that the offending jury charge was given in answer to a jury question and therefore was unduly emphasized. This distinction does not render *Wilds* inapplicable. Here, the accomplice liability charge was improper because it was without evidence to support it. In its

deliberations, the jury was clearly giving this charge its attention, sending out a request that the law be clarified on “hand of one is hand of all.” R. p. 643. The jury also was clearly confused in its understanding of the doctrine, characterizing it in another note as “acting in concert with victim.” R. p. 645. These communications demonstrate the jury was focused on this principle of law – which had no evidentiary support in the record – and the resulting prejudice is clear.

VI. THE TRIAL COURT ERRED IN GIVING AN *ALLEN* CHARGE AT THE CLOSE OF A DAY’S DELIBERATIONS, THEN EXCUSING THE JURY FOR THE NIGHT.

Appellant challenges the court’s decision to give an *Allen* charge and release the jurors for the evening, without having them immediately resume deliberations. The state contends trial counsel’s objection was premised on personal preference, not on any legal authority. In fact, counsel also invoked what it understood to be the proper procedure based on 33 years of trial experience. R. pp. 610-11. Counsel’s understanding of the customary procedure was in keeping with the authorities cited in appellant’s opening brief. *See Harvey v. Strickland*, 350 S.C. 303, 307-08, 566 S.E.2d 529, 532 (2002); *State v. Tillman*, 304 S.C. 512, 521, 405 S.E.2d 607, 612 (Ct. App. 1991). The fact that counsel could not name a reported decision does not undermine the validity of the objection he articulated.

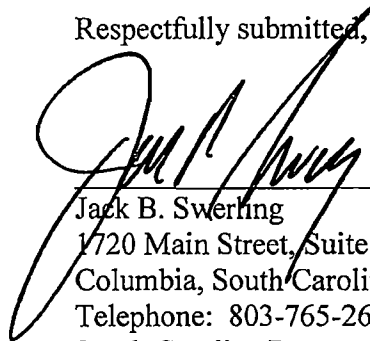
The trial judge believed she was required to give the *Allen* charge before adjourning for the evening, as she stated on the record. R. p. 612. But there is clearly no such requirement in the law, as shown by the state’s failure to invoke any authority setting forth such a requirement. The premise of an *Allen* charge is to require continued deliberations, during which the jurors are instructed to listen to one another, voice their

opinions, and discuss their differences with open minds. It is not the purpose of an *Allen* charge to send the jurors home to contemplate and focus on their own individual view of the case, without further deliberations with their counterparts. This Court should address this issue, find that the proper procedure is the one sought by the defense, and give guidance to that effect to the bench.

CONCLUSION

For the foregoing reasons and for the reasons set out in appellant's opening brief, this Court should reverse appellant's conviction and remand his case for a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002668

The State,

Respondent,

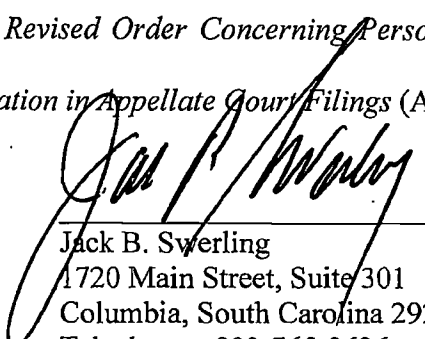
v.

Sha'Quille Mi'Leak Jamal Washington,

Appellant.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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

The State, Respondent,

v.

Sha'quille Washington, Appellant.

Appellate Case No. 2015-002668

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Opinion No. 5586
Heard March 15, 2018 – Filed August 8, 2018

AFFIRMED

Katherine Carruth Goode, of Winnsboro, and Jack B. Swerling, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Deputy Attorney General David A. Spencer, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

HUFF, J.: Sha'quille Washington appeals his conviction and sentence for voluntary manslaughter. He raises numerous arguments concerning the admission or exclusion of evidence and the charging of the jury. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

On August 25, 2013, twenty year-old Herman Manigault (Victim) died after being shot in a parking lot at a club located in a secluded area of Berkeley County known as "A Place in the Woods" (the Club). Victim's cousin, Larry Jenkins, who was with Victim at the Club, described the events of that night. Jenkins testified he and Victim arrived at the Club between 11:00 and 11:30 p.m. At some point, Victim and Jenkins picked up Victim's girlfriend, Arianna Coakley, along with Christina "Taj" Lockwood, and brought them to the Club. Jenkins first saw Washington at the Club when Washington bumped into Jenkins, and Washington, thereafter, began to "stare[] us down for a little bit." Jenkins felt a "bad vibe or [that] something wasn't right" from this behavior. Near the end of the night, Jenkins and Victim went outside. At the entrance of the Club, Victim took off his shirt, at which point Victim was "[hit] from behind." Jenkins acknowledged that removal of a shirt suggested there was going to be a fight. Jenkins indicated Victim was struck by more than one person and Jenkins "got into it" with a second individual, because he was not going to let his cousin get jumped. The fight started as a "two-on-one" situation and evolved into "two-on-two" once Jenkins joined the row. Jenkins was wrestling on the ground with the second person, and toward the end of the altercation, Jenkins heard a couple of shots. Jenkins first checked himself to make sure he did not have any stab or bullet wounds. He then observed Victim on the ground and saw Washington shooting toward the ground. Jenkins stated at least one of these shots missed, because he saw the "ground spark up." He clarified he heard one or two shots and then observed Washington shoot at least three more times toward the ground while Victim was on the ground. Jenkins explained that Washington had the gun concealed in his hand, he was shooting like he was not really paying attention, and he was shooting from high and shooting down as he was walking away from Victim. Jenkins could not tell whether the person he fought had a weapon. After the shooting, Jenkins ran to Victim and observed Victim had been shot in the back. By then, Washington was gone. The last time Jenkins saw Washington, it looked like he was headed toward a car. Jenkins did not see where the individual he had been fighting went. Jenkins noticed, aside from being shot in the back, Victim's eye was bruised where he had been hit, and he was bleeding from his face. Jenkins identified Washington in a photo line-up. He testified he was "a hundred percent sure" Washington was the person who shot Victim.¹

¹ On cross-examination, Jenkins stated he was "ninety-five percent" sure Washington shot Victim. However, on recross-examination, Jenkins stated he could "a hundred percent say [Washington] shot [Victim]," and it was a fact that he saw Washington shoot Victim.

Coakley, who was dating Victim, testified she went to the Club with Victim, Jenkins, and Lockwood on the night in question. While there, she saw Washington, who she had known for about eight years. Washington was at the Club with his uncle, Larry Kinloch. The week before this incident, Kinloch had approached Coakley asking for her number and hitting on her. Victim kept coming up to Coakley while at the Club, telling her "[Washington] keep looking at me," and Coakley advised Victim not to pay any attention to Washington. Around the third time that Victim approached Coakley and noted the situation with Washington, Victim stated to her that he was "going to snap in a moment."

When Victim went outside, Coakley observed Washington and Kinloch immediately trail behind Victim and Jenkins, so Coakley followed them. While still inside the Club, Coakley picked up a glass beer bottle. Once outside, Coakley could not hear what Washington said to Victim, but she heard Victim say "what's up," at which point Washington started hitting Victim with his left hand. Washington hit Victim on the side of his face, and as Victim started sliding down to get away, Washington continued to hit him. Coakley saw Washington hit Victim twice; once in his eye and the other in the back of his head as Victim was spinning around to get away. Victim was on the ground toward the back of a van. Coakley saw Washington initiate the fight, throwing the first punch at Victim. She observed Kinloch hit Jenkins right after Washington hit Victim. The fight moved to the front of the van. Washington turned around and put a gun in Coakley's face when he saw Coakley was about to hit him with the beer bottle, and he said, "I ain't playing, I ain't playing." Coakley, who had been standing on a stoop, dropped the bottle, put up her hands, and slowly backed up to the door. After Washington pointed the gun in Coakley's face, he jumped off the stoop and ran around the right side of the van, which obstructed Coakley's view. Before Coakley could get to the ground to see what was happening, she heard four gunshots. After the shooting stopped, Coakley went around the road to find Victim. Washington and Kinloch were not around the van by the time she got there, apparently having run from the vicinity. Victim did not have a gun, and she did not see anyone else with a gun that night. Coakley acknowledged she could not see the shooting because the van was in her way, and she did not see Washington shoot Victim. There were about four or five people in the vicinity when she heard the shots. Coakley gave police a statement, identifying Washington as the shooter. She also picked Washington out in a photo line-up because he was the person who pointed a gun in her face.

Darius Alls, a cook at the Club that night, testified Victim told him someone was bothering him and he thought his life was in danger. Alls suggested Victim stay at

the bar until it closed and they would make sure he got to his car. Victim did not tell Alls who was bothering him.

The State also presented the testimony of Kinloch, who acknowledged being at the Club that night and seeing his nephew—Washington—there a couple of times and talking to him. When asked what he remembered about the shooting, Kinloch stated he did not know there was a commotion going on, and he was just outside smoking a cigarette. Kinloch testified he was standing on the stoop with a bunch of people, he knew nothing about a fight, and he did not see anybody with a gun. While smoking his cigarette, he heard three gunshots. The solicitor then inquired whether Kinloch talked on the phone to his brother—Patrick—on August 27, 2013, while Patrick was locked up in the detention center. Kinloch initially denied talking to him, then admitted talking to Patrick, but denied discussing this incident. Kinloch further denied ever telling anyone he drove Washington away from the scene or telling Patrick he saw Washington with a gun. The solicitor then confronted Kinloch with a recorded jail phone call—ostensibly between Kinloch and Patrick occurring two days after the shooting—which was played for the jury. The solicitor questioned Kinloch regarding the following language used in the call: "I fighting with this fuck -- big fucking light-skinned dude, man, tussling with this mother fucker. He got me on the car. I got [Victim] on the car. Me and him going back and forth. Dow, dow, dow." Kinloch agreed the "dow, dow, dow" represented the three shots he either saw or heard. The solicitor asked Kinloch if he knew at least two shots hit Victim, and Kinloch stated he was not sure. The solicitor then asked if it was just coincidence Victim suffered two gunshots, noting the following that Kinloch said in the recorded call: ". . . that n-word shoot three damn times, man, and they been like -- yeah. Head up, boy. I ain't know all that. But I know he had at least two of the three. He hit at least two of the three." Kinloch replied that he was not sure. The solicitor also asked Kinloch whether the word "strap" in the recorded phrase "he keep his strap" referred to a gun. Kinloch denied it was a reference to a gun and, when asked what it meant, stated he did not know.

On cross-examination, defense counsel questioned whether Kinloch's phone conversation with Patrick was really a self-serving means to protect himself by clearing himself and "put[ting] it squarely on the shoulders of [his] nephew," knowing that phone conversations in the detention center were recorded. He also asked Kinloch whether the jailhouse phone conversation's reference to Washington being "already strapped" and Kinloch responding "you know how we do," suggested that Kinloch had "strapped [himself] with a firearm" such that both Washington and Kinloch were "strapped." Kinloch denied this, claiming it was

"[j]ust a little figure of speech." Kinloch testified he was not sure when Washington arrived at the club, and he denied the two of them went outside or that he retrieved a .357 Magnum weapon from the car. Defense counsel confronted Kinloch with a part of the conversation in which Kinloch relayed to Patrick, who was in jail on a murder charge, that someone must remain on the outside and that they both could not be in prison for murder. Kinloch agreed he said that, but stated it happened so long ago that he did not remember the phone call. When asked if he shared with an individual named Quinton Grant that he "did the shooting," Kinloch denied doing so. He likewise denied telling Darlene Washington that he "did the shooting." He further denied saying he had a .357 Magnum in his possession, and disagreed that, from the outset, he had been described in the streets as the person who did the shooting. Defense counsel asked Kinloch if he recalled fighting a chubby, light-skinned guy that night, and Kinloch replied that he was drunk. When asked again if he got into an altercation with a chubby, light-skinned boy that night, Kinloch agreed that the individual "[h]ooked up to [him] and [they] just grabbed," but denied any punches were thrown.

Christina Lockwood was also called to testify by the State. She and Coakley were transported to the Club on the night in question by Victim and Jenkins. She saw Washington there that night with Kinloch and another man, whose name she did not know. When asked if she saw Washington shoot Victim, Lockwood said she did not remember. Lockwood testified she observed Coakley get a beer bottle and walk outside. Coakley said something about Victim, and Lockwood walked behind Coakley. She stated she did not see the actual fight, but knew they were fighting because "she said that and Larry also said that, too."² She testified she did not see anyone shoot anybody, but she heard the gunshots. Lockwood acknowledged that in her statement to police she indicated Washington shot Victim, but claimed she did not remember that. She also maintained she did not remember including in her statement that she heard Washington talk about shooting someone that night or that Washington and Victim were fighting and "then he pointed the gun and shot." Lockwood stated she was not saying what she wrote in her statement was not the truth, but she did not remember. She also agreed, "If it's written on paper, it's the truth." Lockwood did remember Victim commenting that night about Washington looking or staring at him. When asked about the portions of her statement indicating Washington said he was going to get

² It appears the "she" Lockwood referred to was Coakley, but it is not clear if she was referring to Kinloch or Jenkins when she indicated "Larry" said they were fighting, too.

Victim, that she followed Washington and asked what he was talking about but Washington kept walking, and that Washington and Kinloch followed Victim and Jenkins outside, Lockwood stated she did not remember. When asked what Coakley did once the fight started, Lockwood stated she grabbed a beer bottle and went outside. She did not see Washington point a gun at Coakley, and though her statement indicated he pulled out a gun and said, "Back up, I ain't playing, for real," Lockwood claimed she was "only going off what [Coakley] said."

Lockwood admitted her statement said she was standing in the doorway of the Club when she "saw [Washington] shoot [Victim]." When asked if what was on paper was true, Lockwood stated, "As I remember." Lockwood agreed that she stated in her statement that she witnessed the shooting of Victim, that Washington had the gun, and that she saw Washington shoot Victim. She also acknowledged she identified Washington as the shooter of Victim multiple times. Lockwood picked Washington out of a photo line-up and wrote in a statement concerning the line-up that she recognized Washington because she knew him and he was the person she saw kill Victim. Lockwood testified she remembered making the statements, but she did not remember the things she said in the statements.

On cross-examination, when asked if she witnessed Washington shooting Victim, Lockwood stated she did not remember "a lot of stuff," and "[i]f it's on paper and I wrote it that night, if it's true — — I don't know what to say." Lockwood agreed she heard Victim state that he was "about to snap." When asked if she saw the shooting, Lockwood stated she did not remember. However, she thereafter testified she did not see anybody get shot. Although she acknowledged writing in her statement that Washington, Victim, Kinloch and Jenkins were fighting in the Club parking lot, she testified, "I really don't remember anything." She did recall, however, her statement that, after being at the Club about ten minutes, Victim commented, "That 'n' keep looking at me," and Coakley told Victim to pay him no attention.

Jenkins, Coakley and Lockwood all identified Washington as the shooter in a photo line-up. The bullets recovered from Victim's body were fired from the same gun, which was either a .357 Magnum or a .38 Special. After the authorities received information indicating Washington was involved in the shooting, Washington called them and told them he had some information about the matter. He gave a written statement indicating he was outside when he heard a commotion; three people were involved in a fight; the victim's friend was helping him fight the suspect; the suspect had a revolver; after the fight was over, the victim walked away and the suspect fired a shot at him; and as Washington ran, he heard two more shots. Washington denied he had a gun that night and also told the officers

neither the victim nor Jenkins had a gun. A gunshot residue test was performed on Washington, but it was done about six hours after the shooting and Washington stated he had washed his hands.³ No gunshot residue test was performed on Kinloch because he was not identified as being there and possibly involved until much later in the afternoon, well outside the time limits for the test. From their investigation, authorities understood there was a fight involving Jenkins, Kinloch, Victim and Washington on the night in question.

Victim's autopsy revealed he suffered two gunshot wounds to his body, a rectangular shaped laceration to the back of his head and a chipped skull bone caused by blunt force trauma, and lacerations near his left eye. The fatal injury was a close-range gunshot wound to his back, and Victim would have died within minutes of receiving the wound.

After the State rested, the defense called Aja Williams, who testified she was bartending that night at the Club and she served alcohol to Victim. According to Williams, she saw Kinloch at the Club that night, and observed him "walking everywhere [Victim] went." She stated that everywhere Victim went in the Club, Kinloch and Washington followed. The last thing Victim said to Williams was "[Kinloch] going to shoot me, they going to kill me." Williams asked him why, and Victim replied that he did not know. When the Club was shutting down and everyone was walking out, Williams heard gun shots. On cross-examination, Williams confirmed that both Kinloch and Washington followed Victim around that night, and that when Victim spoke to her, he said that "they" were going to kill him. Williams clarified that when Victim said "they," he was referring to Washington and Kinloch. Williams testified that when Victim walked out the door, Washington and Kinloch were six feet behind him.

The defense also called Renard Deveaux, who testified he was walking through the parking lot of the Club that night and was going to the door when he observed a young man standing there with his back to him. As he walked past this person, a guy with short pants, who was standing in front of the first individual, pulled off his shirt like he was about to engage in a fight. The person who pulled off his shirt was in proximity to and standing in the opposite direction of Kinloch. Deveaux "heard them fussing." As he went through the first door of the Club and got to a second door, Deveaux overheard gunshots. He did not see who fired the shots and did not witness the fight.

³ SLED ultimately did not perform an analysis on the kit collected from Washington due to the fact it was collected more than six hours after the incident.

Robin Williams also testified on behalf of Washington. Robin stated she was walking out of the Club when she looked up and saw a woman holding a glass bottle in Washington's face. Approximately five seconds later, she heard four shots. She observed Washington run on the second shot. When she heard the last two shots, Washington was running away, and was "not in that proximity" when the last shots were fired. According to Robin, Washington was not near the fight. Robin testified she did not see Washington point a gun in the woman's face, and Washington did not have a gun. She saw Kinloch inside the Club that night, but did not see him when she heard the shots. She did not know if Kinloch was outside during the shooting.

Tyson Singleton was also called by the defense. Singleton testified he was in the parking lot when everyone was leaving the Club and he heard three shots. Washington was in his sight at that time, and Washington was not anywhere near where the shots were fired. Singleton stated that Washington was in the road before the first shot was fired.

Finally, the defense sought the admission of testimony from other witnesses, which the trial court denied. In particular, the defense called Washington's cousin, Kenneth Grant,⁴ and elicited testimony from Grant that after the shooting occurred, Kinloch said "he did it." However, the trial court sustained the solicitor's hearsay objection to the testimony and instructed the jury to strike it from consideration. The defense also called Kevin Watson as a witness. Upon determining Watson was in violation of the court's sequestration order, defense counsel was allowed only to proffer his testimony. In his proffer, Watson testified he was at the Club that night when he went outside to smoke a cigarette and observed some fighting and then left. He did not see Kinloch, Washington, or any individuals with a weapon. The defense also recalled the forensic pathologist who performed Victim's autopsy in an attempt to admit a toxicology report and testimony concerning Victim's blood alcohol level. The trial court, however, sustained the solicitor's objection to such.

⁴ The record indicates Kenneth Grant's full name is Kenneth Gordon Grant. Nevertheless, Washington and the State both refer to this witness as Quentin Kenneth Grant in their briefs and acknowledge this to be the same person referred to in Kinloch's testimony, wherein he denied stating to that individual that he had been the shooter.

Following closing arguments, the trial court charged the jury, including an instruction on "the hand of one is the hand of all" at the behest of the State. However, the court declined to charge the jury on self-defense, as requested by the defense. After the matter was submitted to the jury, following several hours of deliberation and toward late afternoon, the jury sent a note indicating it was deadlocked. Over defense counsel's objection, the trial court gave the jury an *Allen* charge and instructed the jurors to return in the morning to resume deliberations. The next day the jury returned a verdict, finding Washington guilty of voluntary manslaughter. The trial court sentenced him to thirty years in prison.

ISSUES

1. Whether the trial court erred in refusing to admit the testimony of defense witness Grant that Kinloch told Grant he committed the shooting.
2. Whether the trial court erred in refusing to admit a toxicology report and testimony of the forensic pathologist concerning the report's findings as to Victim's blood alcohol level.
3. Whether the trial court erred in excluding the testimony of defense witness Watson, who had been present in the courtroom briefly in violation of the trial court's sequestration order.
4. Whether the trial court erred in refusing the defense's request for a jury charge on self-defense.
5. Whether the trial court erred in granting the State's request for a jury charge on accomplice liability.
6. Whether the trial court erred in giving an *Allen* charge at the close of the day's deliberations, then excusing the jury for the night.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence is within the discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of discretion. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). An abuse of discretion occurs when the trial

court's conclusions either lack evidentiary support or they are controlled by an error of law. *Id.* "An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010).

LAW/ANALYSIS

I. Refusal to Admit Testimony of Defense Witness Grant

As noted, defense counsel asked Kinloch if he shared with Grant that "[he] did the shooting." Kinloch denied this. Defense counsel also asked if, when the shooting took place, he ran and Grant assisted him in getting away from the shooting, and Kinloch likewise denied this. Kinloch also disputed that he saw Grant after the shooting that night. Later, the defense called Grant to the stand. When asked if he had any information concerning this case, Grant stated "[T]hat night after it happened . . . I came back because [Kinloch] called me." The solicitor promptly objected on hearsay grounds. The trial court asked defense counsel if there was an applicable exception to the rule against hearsay, and counsel responded there was, stating, "[Kinloch] already testified." The trial court sustained the solicitor's objection. When defense counsel began to ask Grant, "As a result of the conversation with a specific individual, you — —," the solicitor again objected on hearsay grounds, but the trial court noted defense counsel may be able to ask the question without eliciting hearsay. Defense counsel then asked Grant, "so you returned to the club," to which Grant responded, "Yes. Yes. Larry Kinloch told — — said he did it."⁵ Defense counsel then asked, "Larry [Kinloch] said he did it?" Grant responded, "He said he did it." Following the solicitor's objection, Grant again stated, "He told me he did it." The trial court asked counsel to approach, and an off-the-record bench conference was held. Thereafter, the trial court instructed the jury to strike the last statement the witness made. Defense counsel asked that they be allowed to approach the bench, and another off-the-record bench conference was held. Defense counsel then resumed questioning Grant. Grant stated he did not witness the shooting, but learned of it ten to fifteen minutes after it happened. He further stated he saw Kinloch twenty to twenty-five minutes after the shooting. Defense counsel then asked, "And that's when you heard what he said?" Grant replied, "Yes." Defense counsel asked, "That, in fact, he had [sic] did it?" Grant replied, "Yes." The solicitor again objected, and the trial court sustained the objection and instructed the jury to strike the testimony from

⁵ Grant thereafter stated he never went back to the Club, claiming he went to Kinloch's house and that was where he saw Kinloch.

consideration.⁶ On redirect, defense counsel asked Grant why he was there, and Grant began to respond, "To say that [Kinloch] — —," at which point the solicitor objected. The trial court sustained the objection, instructing the witness, "You cannot testify as to what someone told you, unless there is an exception and I have established there is no exception." Defense counsel then inquired, "Judge, what about Rule 803, presence [sic] sense — —," at which point a bench conference was held off the record. No further evidence was elicited on the subject and no more arguments were made at that time. However, after the State and the defense rested, during the charge conference defense counsel, in arguing against inclusion of a "hand of one" charge, maintained the evidence did not support an accomplice liability charge because there was no evidence Kinloch shot anyone. In making the argument, defense counsel maintained, "The only possible witness that had a chance to say that under an utter excited [sic] exception to the hearsay rule, the jury was instructed to disregard that completely from their deliberation and . . . [could not] discuss the fact that . . . Grant said . . . I heard [Kinloch] say he did it."

Washington contends the trial court erred in refusing to admit Grant's testimony that Kinloch told him he committed the shooting. He first argues Grant's testimony to that effect was not hearsay because it qualified as a prior inconsistent statement under Rule 801 of our rules of evidence. He further contends, even if the trial court correctly found the statement was hearsay, it erred in its conclusion that it did not fit into any hearsay exception. In particular, Washington argues the statement Kinloch made to Grant was admissible under evidentiary Rule 803 exceptions (1) present sense impression and (2) excited utterance. In response to the State's appellate argument that the only preserved argument with respect to this issue is that premised on the present sense impression under Rule 803, Washington argues the other two bases are preserved because they are apparent from the record. He asserts the trial court limited defense counsel in placing objections on the record, repeatedly informing counsel it would not allow "speaking objections," cutting off counsel before the objection could be fully stated for the record, and requiring the objection be argued in off-the-record bench conferences. Washington maintains defense counsel's specific reference to Kinloch already having testified clearly reveals the basis of the argument was that of a prior inconsistent statement. He

⁶ We note, although the trial court sustained the solicitor's objection and twice instructed the jury to disregard the testimony, Grant testified four times before the jury that Kinloch told him he had committed the shooting, with defense counsel patently eliciting the testimony after the trial court had already ruled it inadmissible.

contends defense counsel's excited utterance argument was made during the bench conference on the matter, as was revealed on the record during his argument on jury charges when he noted his "utter excited [sic] exception to the hearsay rule."

"Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "The rule against hearsay prohibits the admission of evidence of an out of court statement to prove the truth of the matter asserted unless an exception to the rule applies." *State v. Price*, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006). A statement that is admissible because it is "not hearsay" under Rule 801(d), SCRE, or because it falls within a Rule 803, SCRE exception may be used substantively to prove the truth of the matter asserted. *State v. Stahlnecker*, 386 S.C. 609, 622-23, 690 S.E.2d 565, 572-73 (2010); *State v. Dennis*, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999).

A. Prior Inconsistent Statement

We question whether Washington's prior inconsistent statement argument is preserved for our review. There is no indication from the record that defense counsel ever raised this as a basis for admission of Grant's testimony in the face of the State's hearsay objection. We acknowledge, and find problematic, that the trial court did, throughout the trial, indicate it would not allow "speaking objections," and numerous bench conferences were held off the record. However, it does not appear the trial court implemented its "no speaking objections" rule concerning this particular matter. After the State objected to the proposed testimony on the basis of hearsay, the trial court asked defense counsel if he had any exceptions, to which counsel only replied, "[Kinloch] already testified." Though a party need not use the exact name of a legal doctrine in order to preserve it, it must be clear by the record that the argument has been presented on the ground argued on appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). We acknowledge three bench conferences were held off the record during this testimony, however, one was instigated by defense counsel asking if he could approach the bench and another occurred in regard to defense counsel's on-the-record assertion that Rule 803's present sense impression exception applied, an argument which is clearly preserved and is addressed below. Further, there is no indication the trial court prohibited defense counsel from stating his arguments on the record. *See Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 n.3 (2018) ("When a conference takes place off the record, it is trial counsel's duty to put the substance of the discussion and the trial court's ruling on the record.").

At any rate, even assuming for the sake of argument that the issue is properly preserved, we find no abuse of discretion by the trial court because no proper foundation was laid for admission of the evidence as a prior inconsistent statement. "A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . inconsistent with the declarant's testimony." Rule 801(d)(1)(A), SCRE. "The South Carolina rule differs from the federal rule in that a proper foundation must be laid before admitting a prior inconsistent statement." *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). "Under the rules of evidence, a prior inconsistent statement may be admitted when the proper foundation has been laid" pursuant to Rule 613(b), SCRE. *State v. Stokes*, 381 S.C. 390, 398, 673 S.E.2d 434, 438 (2009). This rule states in pertinent part as follows:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b), SCRE.

Rule 613(b) specifically requires that *the witness* be advised of these matters and be given the opportunity to explain or deny the statement before extrinsic evidence of a prior inconsistent statement may be admitted into evidence on this basis. During cross-examination of Kinloch, defense counsel asked him only if he shared with Grant that he "did the shooting," whether he ran and Grant assisted him in getting away from the shooting, and whether he saw Grant "[a]fter the shooting that night." These general questions are insufficient to lay the proper foundation. Even if defense counsel's question of whether Kinloch shared with Grant that he did the shooting was sufficient to advise Kinloch of the substance of the statement and provide him an opportunity to explain or deny the statement, counsel did not lay the foundation as to the *time and place the statement was allegedly made*. Though defense counsel asked Kinloch if Grant assisted him in getting away after the shooting and whether he saw Grant that night, these questions did not reference his alleged statement to Grant and did not advise Kinloch of the time and place he allegedly made the statement to Grant. Additionally, Grant testified that the statement was not made to him at the Club, but was made at Kinloch's home some

twenty to twenty-five minutes after the shooting. Accordingly, while Washington argues the question concerning whether Grant assisted Kinloch in getting away from the shooting provided advisement concerning the place the statement was made, this is contrary to Grant's testimony as to the place the statement was allegedly made.

B. Present Sense Impression

Rule 803, SCRE, provides a "present sense impression" exception to the rule against hearsay, which is defined as "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." Rule 803(1), SCRE. "There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event." *State v. Parvin*, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015) (quoting *State v. Hendricks*, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014)).

As previously noted, it is clear trial counsel argued to the trial court that Grant's testimony concerning Kinloch's statement was admissible under the present sense impression exception of Rule 803, SCRE. Accordingly, this argument is preserved on appeal. However, we find no error in the trial court's denial of admission of Grant's testimony on this basis.

"The rationale for admissibility [under the present sense impression exception] is that the statement is reliable, since it is contemporaneous with the event or occurrence and there was no time for reflection, faulty recollection, or deliberate misrepresentation." 31A C.J.S. *Evidence* § 505 (2018). "The rule[] generally refer[s] to a declaration made 'immediately thereafter,' but this does not necessarily mean 'instantly thereafter' or precisely at the same moment." *Id.* However, "[s]tatements of past events are excluded, because it is more likely that statements that are not contemporaneous are calculated interpretations of events rather than near simultaneous perceptions." *Id.* "Present sense impression evidence differs from the excited utterance exception, since the excited utterance exception requires that the shock or excitement of an incident or event trigger the outburst, while the present sense impression exception does not require that the declarant be excited." *Id.* "The present sense impression exception requires a closer time proximity than the excited utterance one." *Id.*

"The theory supporting the present sense impression exception is that substantial contemporaneity of the event and the statement negates the likelihood of memory deficiencies or deliberate misstatements." 2 *Wharton's Criminal Evidence* § 6:19 (15th ed.) "Its use is limited to statements made while the witness is perceiving an event or condition or immediately thereafter." *Id.* "If the statement describes something that happened at an earlier time, it does not fit within this exception and will not be admitted as a present sense impression." *Id.* "The basis of the present sense impression exception is that closeness in time between the event and the declarant's statement reduces the likelihood of deliberate or conscious misrepresentation." *State v. Pickens*, 346 N.C. 628, 644, 488 S.E.2d 162, 171 (1997).

Here, the alleged statement to Grant was not made *while Kinloch was perceiving the event or immediately thereafter* such that it could be said to meet the requirement that it was contemporaneous with the event in order to be admissible under the present sense impression exception. The alleged statement clearly was not made while Kinloch was perceiving the event. Thus, it could only be admissible under the rule if made "immediately thereafter." Rule 803(1), SCRE. This court has noted, "[o]ur courts have not delineated a time frame that would constitute 'immediately thereafter'; however, this court has held a statement given nearly ten hours after the perceived incident cannot be admitted under Rule 803(1)." *Parvin*, 413 S.C. at 503, 777 S.E.2d at 4 (citing *State v. Burroughs*, 328 S.C. 489, 499, 492 S.E.2d 408, 413 (Ct. App. 1997))⁷. However, *Parvin* and *Burroughs* certainly do not provide that anything less than ten hours would qualify the statement as having been made contemporaneous with or immediately after the event or condition was perceived. Grant's testimony indicates the alleged statement was not made until Kinloch had left the scene and arrived at his home, well after the shooting. While twenty to twenty-five minutes is clearly a significantly shorter amount of time than ten hours, we find, under the circumstances, such time frame does not qualify as "immediately" after the event. Notably, the time between the event and the alleged statement does not negate or reduce the likelihood of deliberate misstatements. Additionally, *Burroughs* provides it is appropriate for the appellate courts to look to South Carolina pre-Rules *res gestae* cases—prior to the adoption of Rule 803—in analyzing the present sense impression exception to the hearsay rule. *Burroughs*, 328 S.C. at

⁷ In *Parvin*, this court found error in the admission of statements under the present sense impression exception because the witness gave no indication of the amount of time that lapsed between the alleged statements and the event. *Id.* at 504, 777 S.E.2d at 4.

499, 492 S.E.2d at 413. In *Wilson v. Childs*, 315 S.C. 431, 439, 434 S.E.2d 286, 291-92 (Ct. App. 1993)—a case dealing with *res gestae* issues prior to the adoption of Rule 803(1)—this court upheld the trial court's ruling excluding testimony that the decedent told his daughter shortly before his death that he told the defendant doctor about his bleeding condition. We noted the trial court reasoned the testimony was hearsay and was not admissible as a present sense impression because the decedent had made the statement in "reflection of past events." Here, the statement attributed to Kinloch was a statement reflecting something that occurred in the past; i.e., that he had shot Victim. It was not the revelation of a contemporaneous event. Considering that the alleged statement was made some twenty to twenty-five minutes after the event and after Kinloch had left the scene and gone home, there was time for reflection and deliberate misrepresentation, and it was not made within such time as to negate the likelihood of a deliberate misstatement. Thus, the alleged statement was not contemporaneous with the event and, therefore, does not qualify as a present sense impression exception to the rule against hearsay. Accordingly, we find no abuse of discretion in the trial court's refusal to admit the testimony under the present sense impression exception to the hearsay rule. See *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015) ("The admission or exclusion of evidence rests in the sound discretion of the trial [court], and will not be reversed on appeal absent an abuse of discretion.").

C. Excited Utterance

As with Washington's prior inconsistent statement argument, there is some question as to whether his assertion that Grant's testimony was admissible under the excited utterance exception to the rule against hearsay is sufficiently preserved for our review. There is no indication defense counsel raised the excited utterance exception to the hearsay rule at the time the trial court ruled Grant's testimony concerning Kinloch's alleged statement was inadmissible. However, defense counsel's argument on the propriety of an accomplice liability charge does provide some indication that defense counsel may have, at some point during discussion of the matter, made an argument to the trial court that Grant's testimony regarding Kinloch's alleged statement was admissible under this exception. Given the trial court's propensity to hold off-the-record bench conferences and the fact that there is some indication from trial counsel's argument during the charge conference that an excited utterance exception to the rule against hearsay may have been raised as a basis for admission of Grant's testimony, we find it appropriate to address the argument. See *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012) (finding it to be "good practice for [the appellate court] to reach the merits of an issue when error preservation is doubtful"); *id.* at

333, 730 S.E.2d at 287 (Toal, C.J., concurring in result in part and dissenting in part) ("[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation."). On the merits, however, we find no error.

Evidentiary Rule 803 also provides an "excited utterance" exception to the rule against hearsay. An "excited utterance" is defined as "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Rule 803(2), SCRE.

Three elements must be met for a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

Stahlnecker, 386 S.C. at 623, 690 S.E.2d at 573. "In determining whether a statement falls within the excited utterance exception, a court must consider the totality of the circumstances." *State v. Sims*, 348 S.C. 16, 20, 558 S.E.2d 518, 521 (2002). The passage of time between the startling event and the statement is one factor to consider, but it is not the dispositive factor. *Stahlnecker*, 386 S.C. at 623, 690 S.E.2d at 573. "Other factors useful in determining whether a statement qualifies as an excited utterance include the declarant's demeanor, the declarant's age, and the severity of the startling event." *Id.* (quoting *Sims*, 348 S.C. at 22, 558 S.E.2d at 521). "The excited utterance exception is based on the rationale that 'the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication.'" *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007) (quoting *Dennis*, 337 S.C. at 284, 523 S.E.2d at 177). The determination of whether a statement qualifies as an excited utterance exception "is left to the sound discretion of the trial court." *Sims*, 348 S.C. at 21, 558 S.E.2d at 521.

In the present case, there is no evidence Kinloch made the alleged statement while under the stress of excitement. See *Stahlnecker*, 386 S.C. at 623, 690 S.E.2d at 573 (holding the following three elements must be met for a statement to qualify as an excited utterance: "(1) the statement must relate to a startling event or condition; (2) *the statement must have been made while the declarant was under the stress of excitement*; and (3) the stress of excitement must be caused by the startling event or condition (emphasis added)). According to Grant, the statement was not made at the scene of the shooting, but was made at least twenty to twenty-five minutes

later at Kinloch's house. Though not dispositive, time is a factor to be considered in the totality of the circumstances. *See id.* (noting, though not dispositive, the passage of time between the startling event and the statement is a factor to consider in determining whether a statement is an excited utterance). Further, there is no evidence Kinloch's demeanor was such as to indicate the alleged statement was an excited utterance. *See id.* (noting one of the factors useful in determining whether a statement qualifies as an excited utterance is the declarant's demeanor). Nor is there evidence that the shooting suspended Kinloch's process of reflective thought, reducing the likelihood of fabrication. *See Ladner*, 373 S.C. at 116, 644 S.E.2d at 691 ("The excited utterance exception is based on the rationale that 'the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication.'" (quoting *Dennis*, 337 S.C. at 284, 523 S.E.2d at 177))). Accordingly, we find no abuse of the trial court's discretion in declining to find the statement fell within the excited utterance exception.

II. Refusal to Admit Toxicology Evidence

Washington challenges the trial court's refusal to admit evidence of Victim's intoxication. The record reflects the following in regard to Victim's alcohol consumption and level of intoxication on the night in question: Aja Williams testified she was bartending at the Club that night, she served alcohol to Victim, and she did not believe Victim was "heavily intoxicated" that night when she served him. Jenkins testified he did not witness Victim drinking that night. Coakley, however, confirmed that Victim was drinking that night. Alls, the cook at the Club, testified he could not say whether Victim appeared to be under the influence that night, because he—Alls—"was probably under the influence [himself]". The defense re-called the forensic pathologist who performed Victim's autopsy in an attempt to admit a toxicology report and testimony concerning Victim's blood alcohol level. The solicitor objected, citing Rule 404, SCRE.⁸ The trial court sustained the objection, stating "[t]here has been abundant testimony as to the fact that there was drinking or not drinking by the victim." In a proffer, the doctor testified Victim had a blood alcohol level of .235, which was high. While the forensic pathologist surmised Victim would have acted intoxicated and his judgment would have been impaired, she noted she could not predict, from that level, whether Victim would have acted in an aggressive manner or one that was subdued.

⁸ While the State recognizes the solicitor objected to admission of the evidence based on Rule 404, it contends the trial court's ruling nonetheless reflects it sustained the objection based on Rule 403, SCRE.

Washington argues the trial court erred in refusing to admit the toxicology report and testimony concerning Victim's blood alcohol content. He argues the .235 level was relevant, as it was probative of the issue of whether Victim provoked the altercation or instigated the fight outside the Club. Washington contends Rule 404 is inapplicable, asserting intoxication is not a matter of character, nor is it a crime, wrong, or other bad act. He further contends the erroneous ruling was prejudicial inasmuch as a person with such a high alcohol content would have a decreased sensitivity to pain, lowered inhibitions, a tendency toward overreaction to a perceived affront, and aggressive or violent behavior. Washington maintains evidence of Victim's extreme intoxication likely would have influenced the jury's deliberations as to who instigated the fight, and it likely would have altered the outcome of the trial.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). "The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling [on such] will be disturbed only upon a showing of an abuse of discretion." *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). An appellate court reviews a trial court's Rule 403, SCRE ruling pursuant to an abuse of discretion standard and gives great deference to the trial court's determination. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014). Thus, "[a] trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *Id.* (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)). "To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." *State v. Howard*, 384 S.C. 212, 221, 682 S.E.2d 42, 47 (Ct. App. 2009) (quoting *State v. Douglas*, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006)).

Initially, we find no preservation problem with this issue, as implied by the State. Notably, the State argues the trial court's ruling reflects it sustained the objection to the evidence based on Rule 403, and this is the issue addressed on appeal.

On the merits, we find no abuse of discretion in the trial court's refusal to admit toxicology evidence of the Victim. First, we question the relevance of the toxicology evidence. *See* Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Washington asserts the evidence is relevant as it is probative of the issue of whether Victim provoked the altercation or instigated the fight outside the Club and would show Victim had a decreased sensitivity to pain, lowered inhibitions, a tendency toward overreaction to a perceived affront, and aggressive or violent behavior. There is no evidence in the record that Victim was the aggressor in the physical altercation. Rather, the evidence adduced at trial demonstrates that Victim was followed by Washington and stared at by him in the Club that night, he expressed fear that Washington and Kinloch were going to kill him, Victim was followed outside by Washington and Kinloch, and, once outside, Washington struck the first blow, hitting Victim from behind. While there is evidence Victim removed his shirt, this is probative of his willingness to fight but not necessarily that he provoked the fight. Nonetheless, even assuming removal of his shirt is evidence that Victim was the aggressor, no evidence was offered to support Washington's assertion that Victim's intoxication would have exhibited in him a decreased sensitivity to pain, lowered inhibitions, a tendency toward overreaction to a perceived affront, and aggressive or violent behavior. Rather, this is mere speculation. In fact, the forensic pathologist's proffered testimony was that she could not predict from Victim's high alcohol level whether Victim would have acted in an aggressive manner or in a subdued one. Finally, even assuming there was some relevance to evidence of Victim's toxicology at the time of his death, we conclude the minimal probative value was substantially outweighed by the danger of unfair prejudice under Rule 403. Notably, while Washington was not successful in admission of the extent of Victim's intoxication, he did elicit evidence that Victim had been drinking that night. Further, as noted, there is no evidence Victim's intoxication would have led him to provoke the fight, so the evidence is of minimal probative value. Based on our standard of review and the deference accorded the trial court, we find no abuse of discretion. Finally, we question whether Washington can show prejudice from the exclusion of this evidence. As noted by the State, the jury returned a voluntary manslaughter verdict, acquitting Washington of murder. Accordingly, it necessarily found Washington had sufficient legal provocation. *See State v. Smith*, 391 S.C. 408, 412-13, 706 S.E.2d

12, 14 (2011) ("Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.").

III. Violation of Sequestration Order

Washington next challenges the trial court's exclusion of a defense witness' testimony based on violation of the court's sequestration order. The record reflects the trial court ordered sequestration of the witnesses. Thereafter, during a pretrial hearing, the solicitor noted some of the defense witnesses were in the courtroom. Defense counsel countered that some of the witnesses in there were witnesses of the State. The trial court then read a list of witnesses and asked them to stand if their name was called. Included in the list was Kevin Watson, although it does not appear he responded. The court then instructed the three witnesses who stood about the sequestration order. The court noted there were many names on the list called to which no one responded and asked the solicitor and defense counsel to look around the courtroom for any of those individuals. Defense counsel responded, if his witnesses did not stand when called, they were not present. The solicitor did not believe any of the State's witnesses were still present. Shortly before opening arguments the next day, the trial court again noted the sequestration order was in effect and instructed the solicitor and defense counsel to ensure no one was in the courtroom who should not be.

After the State rested, the defense called Kevin Watson as its first witness. After a couple of preliminary questions, the solicitor interrupted the examination, informing the court he had been informed Watson was present in violation of the sequestration order. When questioned by the trial court, Watson initially stated he had not been in the courtroom to hear any testimony, the first time he came into the courtroom was that day, and he had not sat and listened to any of the testimony. The State then presented the testimony of Lieutenant Mark Hamilton, who stated he thought he saw Watson in the courtroom earlier on a break. When asked by the court if he was in the courtroom, Watson replied that he was "here today" and acknowledged he saw "a thing on the screen." Watson agreed he was there when Detective Shuler was testifying and he saw a video being played. The record reflects the video being played during Shuler's testimony was that of Washington's interview, which included his statement to the authorities.

The trial court found Watson indicated he saw the video, which was exactly what the rule of sequestration was in place to prevent, and declined to permit Watson to testify, but it allowed defense counsel to proffer his testimony for the record. Defense counsel protested that when the matter commenced Watson "was not

listed as one of the witnesses" on the State's witness list or the defense's witness list and, therefore, Watson would not have been in a position to receive the sequestration instruction. The trial court noted defense counsel, as an officer of the court, knew about the rule of sequestration and should have advised accordingly. Defense counsel maintained that Watson did not come to him "until today and share with [him] he was going to testify," so counsel did not believe there was a need to consider him sequestered. The trial court nevertheless affirmed its ruling.

On appeal, Washington contends the trial court erred in excluding Watson's testimony, arguing violation of the order was minor since Watson was present only for the playing of the video but heard no testimony. He further argues, because Watson had not been present in the earlier days of the trial, he had not been made aware of the sequestration order. Thus, his violation of the order was unknowing and unintentional. Washington maintains, under these circumstances, the trial court abused its discretion in excluding the witness. He also contends exclusion of Watson's testimony was prejudicial, as his proffer showed Watson witnessed the fight and did not see Washington or Kinloch with a weapon, which was in sharp contrast to Coakley and Jenkins' testimony concerning Washington having a gun.

"Whether a witness should be exempted from a sequestration order is within the trial court's discretion." *State v. Singleton*, 395 S.C. 6, 15-16, 716 S.E.2d 332, 337 (Ct. App. 2011) (quoting *State v. Tisdale*, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000)). "The decision whether to waive a sequestration order for witnesses present during the trial rests in the sound discretion of the trial [court]." *State v. Huckabee*, 388 S.C. 232, 240, 694 S.E.2d 781, 785 (Ct. App. 2010) (quoting *State v. Saltz*, 346 S.C. 114, 126, 551 S.E.2d 240, 247 (2001)).

The purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial; and if a witness violates the order he may be disciplined by the court. The question of the exclusion of the testimony of the offending witness, however, depends upon the particular circumstances and lies within the sound discretion of the trial court.

Id. at 241, 694 S.e.2d at 785 (quoting *U.S. v. Leggett*, 326 F.2d 613, 613-14 (4th Cir. 1964)).

We find no reversible error in the trial court's exclusion of Watson's testimony. First, though it does not appear that Watson was aware of the sequestration order, the trial court found defense counsel, as an officer of the court, was responsible for enforcing the order involving its witnesses. Washington does not challenge this determination by the trial court on appeal. Though defense counsel asserted at trial that Watson was not on any of the witness lists when the matter commenced, the record clearly shows that Watson was, in fact, listed as a witness and his name was called by the court in an attempt to enforce the sequestration order. Further, while Watson denied he heard any testimony, he acknowledged he was present while the officer was on the stand and the video of Washington's interview was played for the jury. Accordingly, the potential existed for Watson to conform his testimony to information presented in Washington's video-recorded statement. Given the trial court's discretion in deciding whether to exclude testimony of a witness in violation of a sequestration order, we find no error. At any rate, even assuming *arguendo* the trial court abused its discretion, we do not believe Washington was prejudiced by the exclusion. Watson's proffered testimony established only that he was present at the Club that night, he observed some fighting, and he did not see Kinloch, Washington, or any individuals with a weapon. This testimony does not establish that no one had a weapon, but only that Watson did not see anyone with a weapon. Further, Watson's testimony was, at best, cumulative to witness Robin's testimony that Washington did not have a gun.

IV. Refusal to Charge Self-Defense

Washington next contends the trial court erred in refusing to charge the jury on the law of self-defense. We disagree.

Washington argues the evidence was sufficient to support a charge of self-defense. He asserts testimony was presented tending to establish Victim provoked the altercation based on testimony that Kinloch had "hit" on Victim's girlfriend, Coakley, the week before and Victim was bothered and was about to snap before he went outside and removed his shirt. Further, he maintains Coakley's testimony establishes he drew the gun to defend himself after Coakley raised a beer bottle to strike him.

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial [court's] refusal to do so is reversible error." *State v. Light*,

378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008). "A self-defense charge is not required unless the evidence supports it." *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *Id.*

Though self-defense was, at one time, an affirmative defense in this State which placed the burden on a defendant to establish it by a preponderance of the evidence, our law now "requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt." *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998). To raise self-defense, the defendant must produce some evidence from which the jury could have a reasonable doubt as to guilt. *See State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000) ("A defendant is not required to establish self-defense by a preponderance of the evidence; instead, the defendant must only produce evidence which causes the jury to have a reasonable doubt as to his guilt.").

To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Slater, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007).

"Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). "Mutual combat exists when there is 'mutual

intent and willingness to fight." *Jackson v. State (D. Jackson)*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) (quoting *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973)). "Mutual intent is 'manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.'" *Id.* "Mutual combat bars a claim of self-defense because it negates the element of 'not being at fault.'" *Id.*

"A defendant is not required to retreat if he has 'no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in [the] particular instance.'" *State v. Dickey*, 394 S.C. 491, 502, 716 S.E.2d 97, 102 (2011) (alteration in original) (quoting *Wiggins*, 330 S.C. at 545, 500 S.E.2d at 493). In order to satisfy the fourth element of self-defense, there must be evidence the defendant:

had no other probable means of escape except to take the life of his assailant or stated another way, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily harm than to act as he did in the particular instance; that it is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased.

State v. Jackson (H. Jackson), 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). "The law says if one can give back or step aside, or retreat without increasing his danger, and thus avoid taking human life, it is his duty to do so, and unless he has done so, it will not permit his plea of self-defense." *State v. Burriss*, 334 S.C. 256, 268, 513 S.E.2d 104, 111 (1999) (Burnett, J., dissenting) (quoting *State v. George*, 119 S.C. 120, 121, 111 S.E. 880, 880 (1921). "Unless the incident occur[s] in the accused's home or business or on the curtilage thereof, the accused generally has a duty to retreat." *State v. Jackson (C. Jackson)*, 384 S.C. 29, 37, 681 S.E.2d 17, 21 (Ct. App. 2009).

First, we find there is no evidence Washington was without fault in bringing on the difficulty. We acknowledge there is a wide range of evidence—from Washington not having been the person who shot Victim to Washington shooting Victim after Coakley attempted to hit him with a beer bottle and after Washington and Victim engaged in a physical altercation. Accepting evidence that Washington was not the

individual who shot Victim, self-defense would not be applicable. The only evidence regarding Washington's interaction with Victim that night shows Washington followed Victim around in the Club and stared him down throughout the night; Washington followed Victim out the door as everyone was leaving the Club; Washington threw the first punch, hitting Victim from behind once Victim removed his shirt and hitting Victim at least twice; Victim was on the ground, and after Washington pointed the gun in Coakley's face, Washington jumped off the stoop and ran around the van, and before Coakley could get to the ground to see what was happening, four gunshots rang out; and immediately after Victim was shot, Washington was seen heading toward a car. Based upon evidence that Washington shot Victim only after the two engaged in a fight upon Victim removing his shirt, we agree with the State that this evidence, at best, indicates mutual combat, which defeats a claim of self-defense. *See D. Jackson*, 355 S.C. at 571, 586 S.E.2d at 563 ("Mutual combat exists when there is 'mutual intent and willingness to fight.' Mutual intent is 'manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.' Mutual combat bars a claim of self-defense because it negates the element of 'not being at fault.'" (citations omitted) (quoting *Graham*, 260 S.C. at 450, 196 S.E.2d at 495 (1973))). Further, we do not believe evidence that Coakley attempted to strike Washington with the beer bottle is sufficient to show Washington was not at fault in bringing on the difficulty. We agree with the State that Coakley's testimony demonstrates she raised the bottle in an attempt to hit Washington only after he had already struck Victim, and Washington threw the first punch at Victim. We also note there is no evidence Victim was aware that Kinloch had recently "hit" on his girlfriend. Rather, Coakley stated to the contrary.

Second, there is no evidence Washington was in actual imminent danger of losing his life or sustaining serious bodily injury or that he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. As noted, the only evidence regarding Washington's interaction with Victim shows Washington followed Victim around the Club staring at him and followed Victim out the door as he left the Club that night. Even though there is evidence Victim removed his shirt, Washington threw the first punch, hitting Victim from behind. He continued to hit Victim, causing him to fall to the ground and, after pointing the gun in Coakley's face, Washington jumped off the stoop and ran around the van, at which point Victim was shot. There is no evidence that Victim ever struck Washington, much less that Washington was in actual imminent danger of losing his life or sustaining serious bodily injury. Further, there is no evidence Washington believed he was in actual imminent danger of losing his life or sustaining serious bodily injury. *See State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d

450, 452 (1996) ("[Appellant] was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury.").

Third, even assuming there is evidence Washington believed he was in imminent danger, the evidence does not show a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life. As noted above, the only evidence concerning the altercation between Washington and Victim reveals Washington struck Victim and Victim ended up on the ground before he was shot. Further, even considering the fact that Coakley raised a glass bottle in an attempt to strike Washington as he was fighting Victim, the evidence shows Coakley dropped the bottle and backed away toward the door after Washington put the gun in her face, and Washington then ran back toward the Victim, firing the weapon before Coakley could even get off the stoop and around to the area.

Fourth, there is no evidence Washington had no other probable means of avoiding the danger than to shoot Victim. The evidence concerning the fight engaged in between Washington and Victim shows only that Washington hit Victim. There is nothing to indicate Victim ever placed Washington in a position that required him to shoot Victim in order to avoid the danger of losing his own life or sustaining serious bodily harm. *See State v. Lockamy*, 369 S.C. 378, 383-84, 631 S.E.2d 555, 558 (Ct. App. 2006) (holding, because appellant was no longer in danger when he fired the shot at the victim, he failed to meet the fourth element of the defense—that he had no other probable means of avoiding the danger—and, accordingly, was not entitled to a charge on self-defense). Further, the only evidence concerning Washington's participation in the fight shows Washington had the opportunity, and in fact did remove himself momentarily from the fight when he came up to the stoop and pulled a gun on Coakley. Thus, he could have retreated at that moment. *See C. Jackson*, 384 S.C. at 37, 681 S.E.2d at 21 ("Unless the incident occur[s] in the accused's home or business or on the curtilage thereof, the accused generally has a duty to retreat."); *H. Jackson*, 227 S.C. at 279, 87 S.E.2d at 685 (holding one who pleads self-defense "must show that he had no other probable means of escape except to take the life of his assailant or stated another way, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily harm than to act as he did in the particular instance; that it is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the

danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased"); *Burriss*, 334 S.C. at 268, 513 S.E.2d at 111 ("The law says if one can give back or step aside, or retreat without increasing his danger, and thus avoid taking human life, it is his duty to do so, and unless he has done so, it will not permit his plea of self-defense." (Burnett, J., dissenting) (quoting *George*, 119 S.C. at 121, 111 S.E. at 880 (1921))).

Accordingly, we find there is no evidence to support any of the four requirements for a charge on self-defense and conclude the trial court did not commit error in refusing to charge the same.

V. Charge on Accomplice Liability

The solicitor requested the trial court charge the jury on the "hand of one is the hand of all." He argued the theory that Kinloch was the shooter had been presented in this case based on "multiple indications from the defense." He further argued, under the "hand of one is the hand of all" doctrine, if someone participates in an altercation, he is responsible for the end result, and even if Kinloch shot Victim, Washington was part of the assault. Defense counsel disagreed, arguing the State's theory was that Washington was the shooter, and though the defense tried to make suggestions or have the jury infer Kinloch was the shooter, there was no evidence in the record Kinloch shot anybody. Defense counsel reminded the trial court it had instructed the jury to strike Grant's testimony that Kinloch said "he did it." The trial court noted evidence from the bartender, Williams, in which Victim referred to "they"—Washington and Kinloch—as planning to kill Victim, and the State also noted there was evidence in the record that "they" followed Victim out of the Club. Thereafter, the trial court charged the jury in part as follows:

If a crime is committed by two or more persons who were acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a natural and probable consequence of the act - - carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two fired the shots that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of

one is the act of all, or as it is sometimes said, the hand of one is the hand of all.

It further charged the jury the law concerning mere knowledge and mere presence, as well as the requirement of a prior arranged plan or scheme before one may be found guilty as a principal.

Washington argues the trial court erred in granting the State's request to charge the jury on accomplice liability, asserting the record is devoid of any evidence to support such a charge. He contends there is no evidence that a co-conspirator was the shooter and that he was acting with the co-conspirator when the crime took place. Washington maintains, although he attempted to introduce evidence that a co-conspirator shot Victim, the trial court refused to admit Grant's testimony that Kinloch stated he did the shooting. Washington cites to this court's decision in *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014) arguing, like *Wilds*, it was error to give an accomplice liability charge in the absence of any evidence that someone else was the shooter. Washington also argues giving such a charge was confusing to the jury as evidenced by the fact that the jury requested clarification on the "hand of one is hand of all" law and maintains this confusion was also reflected in a later note from the jury that confused the "hand of one is the hand of all" doctrine with that pertaining to "acting in concert with the victim." Washington complains the trial court did not act to correct this confusion.⁹

"Under the 'hand of one is the hand of all' theory [of accomplice liability], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Harry*, 420 S.C. 290, 299, 803 S.E.2d 272, 276-77 (2017) (alteration in original) (quoting *State v. Thompson*, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05) (Ct. App. 2007)). "Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (quoting *State v. Langley*, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)). "In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the

⁹ Although the record contains the note Washington seems to refer to in this argument, there is nothing in the record to indicate defense counsel objected to the court's response to the note, raised any concern about jury confusion, or argued the note supported the impropriety of an accomplice liability charge.

State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010). "[A]n alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). Although a jury may have doubts about witness testimony, "an alternate theory of liability, such as accomplice liability, 'may not be charged merely on the theory the jury may believe some of the evidence and disbelieve other evidence.'" *Wilds*, 407 S.C. at 439, 756 S.E.2d at 390 (quoting *Barber*, 393 S.C. at 236, 712 S.E.2d at 438).

In *Barber*, evidence was presented that Barber and three other individuals—Kimbrell, Walker, and Kiser—gathered together and discussed plans to rob a minor drug dealer, Alan Heintz. 393 S.C. at 234, 712 S.E.2d at 437. The four individuals procured a semi-automatic handgun and drove to Heintz's house. *Id.* Upon learning more people than expected were at the house, the individuals left to procure a rifle and returned to the house. *Id.* Kimbrell remained in the vehicle while Barber, Walker, and Kiser entered the house to rob the drug dealer. *Id.* Once inside, the three men demanded money and drugs. *Id.* One of the suspects, who was armed with a semiautomatic handgun, shot and killed Heintz and shot and wounded another man in the house. *Id.* at 234, 712 S.E.2d at 438. Kimbrell, Walker, and Kiser implicated Barber in the planning and execution of the robbery and as the individual who shot and killed the drug dealer. *Id.* at 234-35, 712 S.E.2d at 438. All three also testified at Barber's trial that Barber was armed with the semi-automatic handgun and had shot both victims. *Id.* at 235, 712 S.E.2d at 438. Testimony was presented at trial that only two guns were brought to the robbery, with Barber carrying the semi-automatic handgun and Kiser carrying a rifle. *Id.* However, defense counsel elicited testimony that Walker was also in possession of a semi-automatic handgun and all three of the men were armed—one with a rifle and two with semi-automatic handguns. *Id.* at 235, 237, 712 S.E.2d at 438, 439. Over defense counsel's objection, the trial court instructed the jury on accomplice liability. *Id.* at 235, 712 S.E.2d at 438. Barber appealed, arguing the charge was improper because the evidence presented at trial did not support a jury charge on accomplice liability as to the murder charge. *Id.* at 236, 712 S.E.2d at 438. Our supreme court disagreed, finding there was evidence to support the conclusion that Barber was acting with the other men during the robbery, and there was also evidence presented at trial to support a finding that one of the other robbers was the shooter. *Id.* at 237, 712 S.E.2d at 439.

In *Wilds*, the victim was robbed and shot while walking down a street. 407 S.C. at 435, 756 S.E.2d at 388. During the trial, evidence was presented from Wilds' co-defendants, Simmons and Dungee, that they were walking down the street with Wilds when they saw the victim walking toward them. *Id.* As they approached the victim, Wilds commented that he bet the victim had some money. *Id.* Additionally, Wilds told them before they saw the victim that he was "going to stick somebody or jack somebody," and Wilds had a pistol. *Id.* at 435-36, 756 S.E.2d at 388. When they met the victim on the road, while Wilds stopped to talk to him, Simmons and Dungee continued walking. *Id.* at 436, 756 S.E.2d at 388. After talking to the victim for a few minutes, Wilds pulled out a gun and pointed it at the victim. *Id.* Thereafter, Wilds ordered Simmons and Dungee to hit the victim, which they did. *Id.* at 436, 756 S.E.2d at 389. Simmons and Dungee removed some items from the victim's pockets. *Id.* When the victim refused to let go of his wallet, Wilds shot him in the chest. *Id.* Wilds, Simmons, and Dungee ran, but stopped across the street from the scene, at which time Wilds gave Simmons and Dungee some money from the victim's wallet. *Id.* Simmons told Wilds he should get rid of the gun. *Id.* In his defense, Wilds presented alibi testimony from several of his relatives. *Id.* "During jury deliberations, the jury sent a note to the trial court asking, '[I]f we say [Wilds is] guilty of murder, are we saying he of the three [alone] actually pulled the trigger?'" *Id.* at 437, 756 S.E.2d at 389 (alteration in original). Over Wild's objection, the trial court responded to this question by instructing the jury on accomplice liability. *Id.* Following a post-conviction relief hearing, the PCR court found Wilds' appellate counsel was ineffective for failing to appeal the trial court's accomplice liability jury charge, and granted Wilds' application on that ground. *Id.* The State filed a petition for certiorari, arguing the PCR court erred in finding Wilds' appellate counsel was ineffective for failing to raise the issue of accomplice liability. *Id.* at 438, 756 S.E.2d at 390. This court affirmed the PCR court's grant of relief, citing the law in *Barber*—that "an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Id.* at 438-39, 756 S.E.2d at 390. We noted our supreme court found in *Barber* that the evidence presented at trial was equivocal as to who was the shooter, while in Wilds' case, there was no evidence to indicate anyone other than Wilds was the shooter. *Id.* at 439, 756 S.E.2d at 390.

Washington does not argue that there is no evidence he and Kinloch joined together to accomplish an illegal purpose or that the two aided, abetted, or assisted in the commission of a crime. Rather, he argues the accomplice liability charge was improper because there is no evidence an accomplice—Kinloch—was the

shooter instead of him. In other words, Washington essentially maintains that there is no evidence to support the alternate theory of accomplice liability—that he was an accomplice to Kinloch who was the shooter. Thus, the question becomes whether there was evidence adduced at trial that Kinloch, rather than Washington, shot Victim, such that Washington could be convicted on the basis of accomplice liability. We agree with the State that, unlike *Wilds*, there is evidence presented in this case to support an accomplice liability charge. We find this case more akin to *Barber*.

First, as in *Barber*, there is evidence to support the conclusion that the defendant, Washington, was acting with another in assaulting Victim, "join[ing] with another to accomplish an illegal purpose." *Harry*, 420 S.C. at 299, 803 S.E.2d at 276-77. Specifically, there was evidence that Washington and Kinloch were together at the Club that night; Washington continuously stared at Victim inside the Club and Kinloch and Washington were seen following Victim everywhere he went in the Club; Victim expressed to one of the witnesses that Kinloch was going to shoot him and that Kinloch and Washington were going to kill him; when Victim walked out the door that night, Washington and Kinloch walked out behind him; and Washington and Kinloch both got into a physical altercation with Victim outside the Club.

Second, as in *Barber*, there was evidence presented at trial that could support a finding that Washington had an accomplice who was the shooter. Aside from the above evidence that Washington and Kinloch joined together to assault Victim, evidence was presented that Kinloch stated in the detention center phone call that during the altercation that night he—Kinloch—"got [Victim] on the car." Additionally, defense witness Deveau testified that as he was walking into the Club that night, he saw the individual who pulled off his shirt—Victim—standing in proximity to and in the opposite direction of Kinloch and heard them "fussing." As Deveau went through the first door of the Club and got to the second, he heard gunshots. Finally, the defense presented witness Robin—who testified Washington was not near the fight and Washington did not have a gun—and witness Singleton—who testified he was in the parking lot at the time of the incident, Washington was in his sight when he heard three shots being fired, and Washington was not anywhere near where the shots were fired and was in the road before the first shot was fired. Accordingly, there was equivocal evidence as to who shot Victim, and from which the jury could have found Washington's accomplice was the shooter.

Based on the above, we find evidence was presented to support an accomplice liability charge and the trial court, therefore, did not err in giving such a charge. *See Barber*, 393 S.C. at 236, 712 S.E.2d at 439 (2011) (finding no error in the trial court's decision to give an accomplice liability jury instruction because "the sum of the evidence presented at trial, both by the State and defense, was equivocal as to who was the shooter").

VI. *Allen* Charge

The case was submitted to the jury at 11:55 a.m. At 4:58 p.m. that afternoon, the jury sent a note indicating it was deadlocked. The trial court indicated its intention to give the jurors an *Allen* charge and then release them for the evening. Defense counsel objected, stating he desired the *Allen* charge be given in the morning, and if the charge were given that night then the jury should go back and continue to deliberate the matter that night. He noted he was "contrary to an *Allen* charge and disbursement," he would prefer an *Allen* charge be given in the morning and the jury continue from there, and he was "leery" of the trial court's proposed approach. The solicitor stated he preferred the *Allen* charge be given that night and that they reconvene in the morning. The trial court noted defense counsel's objection but gave the jury an *Allen* charge at that time. Following the *Allen* charge, the trial court instructed the jurors to return in the morning to resume deliberations. It further admonished them that in breaking for the evening, they "must stop [their] deliberations," and they "must not consider any issue in this case until all twelve of [them] [were] back together."

Defense counsel noted he had no exception to the *Allen* charge itself, but he continued to object to the proposed procedure of allowing the jury to be disbursed and to commence deliberations in the morning. He argued "the whole integrity of these twelve people should be in line that they stay together until a decision has been reached." When asked by the court if he had any law to support his position, counsel replied that all he had was his thirty-three years of experience and in similar situations they stayed "until the wee, wee hours in the morning." The trial court asked if defense counsel was requesting that the court send the jury back to continue deliberations, and counsel clarified he had no objection to the jury leaving. However, he noted he told the trial court before it gave the *Allen* charge that he preferred that not occur until the morning, and at that point his objection was to the fact that they had received the *Allen* charge that night and not that they were leaving that evening. The trial court stated that once the jury indicated it was unable to reach a verdict, she could not tell them to continue their deliberations without an *Allen* charge. The court noted it was after 5:00, it thought it best to

break for the evening, and in order to break for the evening, the jury "had" to be given the *Allen* charge. When pressed by the trial court as to why he objected to the giving of the *Allen* charge that night, defense counsel stated, "[Y]ou have given instructions as a group now to ponder individually for the next twelve hours or more. . . ," and the jurors had been given instruction as a group to adhere to their own individual "moral conscientiousness," allowing them to disburse and ponder individually, not as a group.

The next morning, when the jury returned, the trial court asked the jurors if they had each complied with the court's "instructions over the evening hour," and the jurors indicated they had so complied. A little over five hours later, the jury returned a verdict finding Washington guilty of voluntary manslaughter.

Washington contends the trial court erred in giving an *Allen* charge at the close of the day's deliberations and then excusing the jury for the night. He contends, contrary to the trial court's ruling, the law does not require the jury to be given an *Allen* charge before it could be sent home for the evening. He argues the practice in a situation like this is to send the jury home with instructions to return the next day and to give the *Allen* charge the next day immediately before the jury resumes deliberations. Washington cites two cases—*Harvey v. Strickland*, 350 S.C. 303, 566 S.E.2d 529 (2002) and *State v. Tillman*, 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991)—as examples of cases in which the jury was excused for the day, but then brought back the next morning for further deliberations following an *Allen* charge. Washington further argues the procedure adopted by the trial court was prejudicial, as it undermined the purpose of an *Allen* charge, which directs jurors to continue to deliberate and consult with each other. He contends the effect of the trial court's procedure was to separate the jurors and send them home to contemplate the case individually.

It does not appear our courts have addressed whether, when a jury indicates it is unable to reach a verdict late in the day, an *Allen* charge should be given prior to allowing the jury to go home and have the jury resume deliberations the following day, or whether the trial court should send the jury home without the *Allen* charge and then give the charge upon their return the next day before they resume deliberations. While Washington cites two cases that indicate the latter procedure was used, neither of those cases address the issue of the timing of the *Allen* charge. *Harvey*, 350 S.C. at 307-08, 566 S.E.2d at 532; *Tillman*, 304 S.C. at 521, 405 S.E.2d at 612. Rather, they are simply part of the procedural history of the case and do not provide any guidance on this issue. Though we believe this decision

was in the discretion of the trial court,¹⁰ we recognize that, if the procedure suggested by defense counsel was appropriate, the trial court may have committed an abuse of discretion in indicating it was *required* to give the *Allen* charge to the jury before releasing them that evening. See *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) ("An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or *controlled by an error of law*." (emphasis added)).

However, because we do not believe Washington was prejudiced, we need not decide whether, under such circumstances, the trial court was required to give the *Allen* charge before releasing the jury for the evening and then allowing the resumption of deliberations the next morning. See *Sinclair*, 275 S.C. at 614, 274 S.E.2d at 414 ("In this State, the conduct of a criminal trial is left largely to the sound discretion of the [trial court] and [an appellate] court will not interfere *unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way*." (emphasis added)). Washington's argument concerning the impropriety of the process used by the trial court centers on concern that the purpose of the *Allen* charge was undermined when the jurors were charged and then went home for the evening because they were directed to continue to deliberate and consult with each other by the charge but were then separated and sent home to individually deliberate. However, review of the record reveals the trial court specifically instructed the jury at the end of the *Allen* charge that they must stop their deliberations at that point and could not consider any issue in the case until all twelve of them were back together to resume deliberations. "[J]urors are presumed to follow the law as instructed to them." *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999). Accordingly, we find no reversible error.

For the foregoing reasons, Washington's conviction and sentence are

AFFIRMED.

GEATHERS, J., concurs. MCDONALD, J., concurs in result only.

¹⁰ See *State v. Sinclair*, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981) ("In this State, the conduct of a criminal trial is left largely to the sound discretion of the [trial court] and [an appellate] court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way.").

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002668

RECEIVED
AUG 23 2018
SC Court of Appeals

The State,

Respondent,

v.

Sha'Quille Washington,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, appellant, Sha'Quille Washington, respectfully requests rehearing of his appeal, decided August 8, 2018 (Published Opinion No. 5586), based on principles of law and evidence overlooked or misapprehended by the Court of Appeals, as follows:

I. Exclusion of Larry Kinloch's Prior Statement.

Appellant challenged the trial court's refusal to admit the testimony of Kenneth Grant that Larry Kinloch told him he did the shooting, arguing that the proffered testimony was admissible under Rules 801(d)(1)(A), 803(1), and 803(2) of the South

Carolina Rules of Evidence. The Court rejected appellant's arguments with respect to each of these grounds.

A. Prior Inconsistent Statement.

The Court initially questioned whether the prior inconsistent statement argument was preserved. Its discussion of the preservation issue overlooked the principle that, to be preserved for appellate review, the specific evidentiary argument need only be "made known to the court" or be "apparent from the context." *See* Rule 103(a)(2), SCRE; *cf. State v. Foster*, 354 S.C. 614, 620 n.4, 582 S.E.2d 426, 429 n.4 (2003) (specific ground for objection to evidence of prior consistent statement was apparent from context); *State v. Hamilton*, 344 S.C. 344, 360-61, 543 S.E.2d 586, 595 (Ct.App. 2001) (ground for objection made in off-the-record bench conference was apparent from context of later argument of jury charges and mistrial motion contained in the record), *overruled on other grounds, State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Here, counsel's articulation that the testimony was not hearsay because Kinloch had already testified, in the context of Kinloch's having denied the statement, advised the court that the grounds for introducing this testimony was that it was non-hearsay as a prior inconsistent statement. *See* Rule 803(d)(1)(A), SCRE.

The Court also noted that the trial court's admonition of "no speaking objections," made throughout the trial, did not appear to be implemented with respect to this issue. In drawing this conclusion, the Court misapprehended the impact of the court's earlier repeated admonitions to that effect, which established that the court would not allow argument on the record of the evidentiary issues that arose. Grant's testimony was during the afternoon of the third day of trial, the second day of witness testimony before the jury.

The day before and earlier on the day Grant testified, the trial judge had repeatedly admonished against “speaking objections,” establishing a practice and mode of trial in which full development of evidentiary arguments on the record was not permitted. That the judge did not repeat the admonition during the argument of the hearsay objection does not negate the impact the earlier admonitions had in limiting how much trial counsel said on the record with respect to this particular objection. Under these circumstances, and in the context of what counsel did place on the record, the argument is preserved. *Cf. Foster*, 354 S.C. at 620 n.4, 582 S.E.2d at 429 n.4.

On the merits, the testimony of Grant that Kinloch said he did the shooting was admissible as a prior inconsistent statement under Rule 803(d)(1)(A). The Court misapprehended the foundation requirement of Rule 613(b) and required much greater specificity as to time and place than has been required by our Supreme Court. The Court overlooked the precedent of *State v. Fossick*, 333 S.C. 66, 508 S.E.2d 32 (1998), cited in appellant’s principal and reply briefs, in which the Supreme Court found error in the exclusion of similar testimony upon a far weaker foundation. In *Fossick*, the only foundation as to time was “a time back in 1989.” There was no reference whatsoever as to the place of the statement. Notwithstanding this lack of foundation, the Supreme Court held the trial court erred in not admitting the prior inconsistent statement under Rule 613(b), SCRE. *See Fossick*, 333 S.C. at 69-70, 508 S.E.2d at 33. Here, the foundation testimony was far more precise than in *Fossick*. In the context of questioning Kinloch about having made the statement, the defense questioned him about what occurred “the night when the shooting took place” when he ran and Grant assisted him “away from the shooting,” and about his having seen Grant “after the shooting that night.” R. pp. 175-76.

These questions supplied both the time and place of the statement, with far more precision than the foundation testimony in *Fossick*. The foundation for the statement Kinloch denied making was that it occurred the very night the shooting took place, not some vague time in another year. It occurred at the location to which he had run and where Grant was assisting him, “away from” the shooting. The foundation as to time, the night of the shooting, was clearly established. The foundation as to place, while less precise than that as to time, was far greater than the non-existent foundation as to place in *Fossick*.

The Court found the question of Kinloch as to place – away from the shooting – was contrary to Grant’s testimony they were at Kinloch’s home. To the contrary, the foundation question and Grant’s testimony are consistent, because Kinloch’s statement at his home was made at the place to which he had fled upon getting “away from the shooting.” Like the statement in *Fossick*, Grant’s testimony concerning Kinloch’s statement should have been admitted as a prior inconsistent statement.

B. Present Sense Impression.

Appellant also contended Kinloch’s statement was admissible under the present sense impression exception of Rule 803(1). In rejecting this ground for admission, the Court misapprehended the immediacy requirement of that rule. While acknowledging that the declaration does not need to be made “instantly” after the perceived event to which it pertains, the Court held a declaration occurring 20 to 25 minutes after the event was not sufficiently immediate to qualify for admission under this exception. The Court’s conclusion overlooked the unique circumstances of this case and the close temporal proximity of the statement to the event that had occurred. Grant had assisted

Kinloch away from the scene of the shooting, and Kinloch made the declaration after he had gotten away, within 20 to 25 minutes. Under these circumstances, this brief lapse of time was within the Rule 803(1) requirement that the statement occur “immediately thereafter.”

The Court correctly noted the rationale behind the present sense impression but misapprehended its significance under the circumstances of this case. A present sense impression is admissible because its close temporal proximity to the event negates the likelihood of deliberate or conscious misrepresentation. The Court’s analysis overlooked the content of the declaration, which negated any possibility that it was the product of reflection or a deliberate misrepresentation. Had it been the product of reflection, it would not have been inculpatory and against Kinloch’s personal interest.

C. Excited Utterance.

The Court also questioned whether the excited utterance exception argued by appellant was preserved. As the Court acknowledged, the argument of the hearsay objection occurred in multiple off-the-record bench conferences. And as the Court also acknowledged, a statement later made by trial counsel during discussion of the proposed jury charges revealed that one of the grounds he had argued was the excited utterance exception, which counsel referenced or the court reporter transcribed as “utter excited exception to the hearsay rule.” Counsel thereby placed on the record this basis for the earlier objection, and it is properly preserved. *Cf. Hamilton*, 344 S.C. at 360-61, 543 S.E.2d at 595.

On the merits, Kinloch’s statement to Grant that he did the shooting was admissible as an excited utterance under Rule 803(2). The Court correctly noted the

requirements for an excited utterance, but misapplied those requirements to the circumstances presented in this case. The Court correctly acknowledged that the time between the startling event and the declaration is not dispositive, but then it unduly focused on the lapse of 20 to 25 minutes in finding the statement was not made while under the stress of excitement due to the shooting. And, as with its analysis of the present sense impression exception, it misapprehended that the circumstances did not comport with the rationale behind the excited utterance exception – that the startling event suspends reflective thought and thereby reduces the likelihood of fabrication. In this case, Kinloch’s declaration against his own interest, in which he confessed to a shooting and exposed himself to possible criminal liability, could not be the product of reflection and could only be attributable to the stress of the excitement of having just shot someone, thereby negating any possibility of fabrication.

II. Evidence of Blood Alcohol Level.

Appellant challenged the trial court’s refusal to admit into evidence a toxicology report and related testimony of the forensic pathologist as to the blood alcohol content of the alleged victim, Herman Manigault. The Court found no error in exclusion of the evidence that his blood alcohol level was .235.

Under Rule 403, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.” Although the Court stated this standard, the Court’s analysis focused only on the probative value aspect, not on the remainder of the standard. The evidence was in dispute as to Manigault’s drinking that night, and no

eyewitness established the level of his drinking – whether a single drink or a continuous course of drinking that would result in an extremely high blood alcohol level. On the other hand, the proffered scientific evidence established the exact level of his intoxication – a blood alcohol content of .235. Contrary to the Court’s conclusion, this evidence was highly probative of his actual level of intoxication, as compared to the vague and imprecise witness testimony concerning his drinking or not drinking that night.

In finding the evidence was not relevant, the Court placed undue emphasis on the absence of evidence as to the effect this level of intoxication would have had on Manigault. Such evidence was not required, since the jurors could draw on their common knowledge and experience as to the loss of judgment, loss of inhibitions, and tendency toward aggression that result from such extreme intoxication. No expert testimony was necessary to assist the jurors in this area, *see* Rule 702, SCRE, and the absence of such evidence does not render the blood alcohol evidence irrelevant. This evidence was relevant and necessary to provide a complete picture of the circumstances and events of that night.

The Court summarily concluded there was danger of unfair prejudice, without articulating what that prejudice was. This conclusion misapprehended the applicable test – that the probative value be “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.” There was no such danger from admission of this evidence. In fact, its admission would have resulted in clarity on the issue of Manigault’s drinking, which was relevant to the issue of provocation. The evidence was not prejudicial, confusing, misleading, or cumulative,

therefore its probative value outweighed any factor that would warrant its exclusion under Rule 403. *Cf. Watson ex rel. Watson v. Chapman*, 343 S.C. 471, 477, 540 S.E.2d 484, 487 (Ct.App. 2000) (physician's alcohol dependency admissible under Rule 403 test).

III. Violation of Sequestration Order.

Appellant challenged the exclusion of a defense witness, Kevin Watson, who was briefly present in the courtroom during a portion of a prior witness's testimony, in violation of a sequestration order announced earlier in the trial when he was not in the courtroom. The Court found no reversible error in the trial court's exclusion of Watson's testimony. In its analysis of this issue, the Court misapprehended the potential for Watson to conform his testimony to what he heard while in the courtroom. That clearly did not happen here. Watson entered the courtroom when a detective was on the stand, while appellant's recorded statement was playing, but otherwise Watson heard no testimony. As shown by the proffer of his testimony, he did not model it after appellant's recorded statement, instead testifying to his own observations – that he was outside the club when tussling was going on, saw fighting, and did not see either Kinloch or appellant with a weapon. He did not provide in his testimony the details appellant described in the recording. His brief presence in the courtroom before taking the stand did not shape his testimony in any way, and the Court overlooked this fact in analyzing the issue.

The Court further overlooked prior precedents that approved allowing witnesses to testify, notwithstanding violation of a sequestration order, where the violation was not knowing, intentional, or flagrant. *See State v. Simmons*, 384 S.C. 145, 173-74, 682

S.E.2d 19, 33-34 (Ct.App. 2009); *State v. Tisdale*, 338 S.C. 607, 615-18, 527 S.E.2d 389, 394-95 (Ct.App. 2000).

The Court also misapprehended that, at best, the testimony was cumulative to that of another witness. In this case, there were numerous witnesses who gave contradictory accounts. Where there was such a sharp conflict in the testimony, it was prejudicial to the defense for the court to prohibit the testimony of this witness who would have corroborated that appellant did not have a weapon.

IV. Requested Charge on Self-Defense.

Appellant challenged the trial court's refusal of his request for a jury charge on self-defense. The Court found there was no evidence to support the giving of a self-defense charge. In so doing, the Court wove together factual conclusions with respect to each of the four elements of self-defense, based on parts of certain witnesses' testimony and other parts of other witnesses' testimony. But those factual conclusions excluded other aspects of the evidence that favored the defendant's contention a self-defense instruction was warranted. The ultimate factual determination was for the jury, and the court should have allowed the jury to consider self-defense because it was a factual issue in dispute based on the evidence presented.

Much of the Court's discussion of the requested charge on self-defense and its elements turned on the Court's factual finding that the evidence indicated mutual combat, which defeats a claim of self-defense. That finding overlooked the testimony of multiple witnesses that it was Manigault who was about to snap and who took what he apparently perceived as an affront to a new level, going outside and removing his shirt in preparation to fight. Once appellant was outside and saw Manigault's act of aggression, he could act

on appearances. *See State v. Starnes*, 340 S.C. 312, 320-22, 531 S.E.2d 907, 912-13 (2000); *State v. Fuller*, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989); *State v. Jackson*, 227 S.C. 271, 278, 87 S.E.2d 681, 684-85 (1955). He did not have to wait for Manigault to get the drop on him, and he had the right to act under the law of self-preservation. *See Starnes*, 340 S.C. at 322, 531 S.E.2d at 913; *State v. Rash*, 182 S.C. 42, 188 S.E. 435, 438 (1936). The fact that appellant may have thrown the first punch does not negate his claim of self-defense, where Manigault had displayed his readiness and made the first move toward a physical altercation.

Thereafter, Arianna Coakley supplied further evidence in support of the requested charge on self-defense, testifying that she raised a beer bottle to strike appellant and he defended himself with a weapon in response to her threatening action. Her testimony established he was in actual imminent danger, and his response of drawing a weapon provided evidence of his belief he was in danger. No one testified he displayed a weapon before Coakley threatened him with the bottle.

The testimony concerning Manigault's and Coakley's actions was also sufficient to give rise to a jury issue on the question whether appellant's belief he was in danger was reasonable and whether, under the circumstances presented, he had any other probable means of avoiding the danger presented. Manigault was clearly agitated to the point of being about to snap, and he demonstrated an intention and readiness to fight. Coakley armed herself and physically threatened appellant with a beer bottle. Upon the evidence presented, it was the province of the jury to resolve the factual issues of the reasonableness of appellant's belief, his ability to avoid the danger presented, and the existence or non-existence of an opportunity to retreat without increasing the danger.

The Court's discussion of mutual combat misapprehended its significance at the stage of determining the law to be charged and overlooked the precedent of *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973), which held the question whether a person acted in self-defense or engaged in mutual combat is for the jury to determine. The presence of some evidence of mutual combat does not deprive the defense of the right to a charge on self-defense, where there is also evidence to dispute mutual combat and to support the claim of self-defense. The Court's summary of the evidence on all the elements of self-defense overlooked the existence of some evidence contradicting the state's claims as to appellant's involvement in provoking, precipitating, or participating in the altercation that led to the shooting, and that evidence necessitated that a self-defense charge be given.

V. Jury Charge on Accomplice Liability.

Appellant challenged the court's giving of a charge on accomplice liability, based on the absence of any evidence in the record that Kinloch was the shooter and that appellant was acting with him when the shooting took place. In rejecting this claim of error, the Court misapprehended the applicability of precedents and incorrectly found this case to be analogous to *Barber v. State*, 393 S.C. 232, 236-37, 712 S.E.2d 436, 439 (2011), where in fact *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (Ct.App. 2014), is controlling.

To determine if an accomplice liability charge should have been given in this case, the question was whether there was any evidence that a co-conspirator was the shooter and that appellant was acting with him when the crime took place. *See Barber*, 393 S.C. at 237, 712 S.E.2d at 439. The alternate theory of liability may only be charged

when the evidence is equivocal on some integral fact and the jury has been presented some evidence upon which it could rely to find the existence or non-existence of that fact. *Id.*, 393 S.C. at 236, 712 S.E.2d at 439. Here, there was no evidence that a co-conspirator was the shooter. The defense attempted to introduce evidence that Kinloch was the shooter, but the court refused to admit Grant's testimony concerning Kinloch's statement to that effect and further instructed the jury to disregard that testimony. With Grant's testimony excluded, there was no evidence in the record to support an accomplice liability charge

In *Wilds*, the Court of Appeals addressed the precise issue presented here. The trial court gave an accomplice liability charge, over defense counsel's objection. Appellate counsel failed to appeal this issue and was found to have provided ineffective assistance of counsel in this omission. The trial record established there was no evidence that anyone other than the defendant was the shooter, and the Court of Appeals found the trial court erred in giving the charge and the error was prejudicial. *See Wilds*, 407 S.C. at 438-40, 756 S.E.2d at 390-91. The Supreme Court agreed, dismissing a writ of certiorari as improvidently granted. *See Wilds v. State*, 414 S.C. 341, 778 S.E.2d 112 (2015).

The Court's determinations that there was evidence to support a conclusion that Washington and Kinloch were acting together and that there was evidence to support a finding that Washington had an accomplice who was the shooter overlooked the premise of the *Barber* and *Wilds* decisions, which both turned on the existence or non-existence of evidence that an alleged accomplice of the defendant was the shooter. There was such evidence in *Barber*, and the accomplice liability charge was appropriate. There was no

such evidence in *Wilds*, and an accomplice liability charge was improper. The facts of this case are in keeping with the facts of *Wilds*.

The Court misapprehended the significance of the witness testimony it relied on in reaching its conclusion as to the existence of evidence on these points. None of the testimony on which the Court relied supplied evidence that Kinloch was the shooter. While some witnesses refuted that Washington was the shooter, they did not implicate Kinloch in that role. Any inference from a witness's testimony that someone other than Kinloch or appellant was the shooter does not support a charge on accomplice liability, because there was no allegation and no evidence whatsoever that appellant was acting with anyone other than Kinloch. In the absence of any evidence that Kinloch was the shooter, it was improper to charge the jury on accomplice liability. There was no basis for appellant to be found guilty as an accomplice for Kinloch's actions, where there was no evidence that it was Kinloch who shot Manigault.

The Court made only passing mention of the apparent confusion the jury had with respect to the accomplice liability charge, based on two notes the jury sent out during its deliberations. Those notes are important because they demonstrate the jury was focusing its attention on the accomplice liability charge and did not have a correct understanding of that concept. The notes demonstrate the jury was focused on this principle of law – which had no evidentiary support in the record – and therefore demonstrate that prejudice resulted from the erroneous giving of the accomplice liability instruction.

VI. Giving of *Allen* Charge and Dismissing the Jury for the Night.

Appellant challenged the court's decision to give an *Allen* charge and release the jurors for the evening, without having them immediately resume deliberations. The

Court agreed the trial court may have abused its discretion in giving the charge and then dismissing the jury for the night, due to the judge's statement that she was required to give the charge before sending the jury home. Neither the state nor the Court of Appeals has pointed to any authority in support of the trial court's assertion of such a requirement in this state, and there is none.

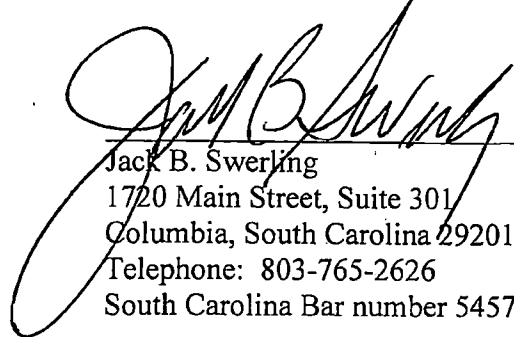
Rather than giving an answer to the legal question presented – what is the proper timing for the giving of an *Allen* charge when a jury is deadlocked but needs to be excused for the night to resume deliberations the following day – the Court declined to answer the question. Instead, the Court determined appellant was not prejudiced by the procedure the trial court followed. But a lack of prejudice should not be presumed under the circumstances presented. The premise of an *Allen* charge is to require continued deliberations, which by its terms directs the jurors to continue to deliberate and to specifically consult with each other, express their views, listen to the other jurors, and discuss their differences with open minds. The procedure adopted by the court defeated that purpose, because it interrupted those deliberations, separated the jurors, and sent them home for the night. This procedure thwarted the very purpose of the *Allen* charge, which is to require continued deliberations in an effort to reach consensus, and was therefore prejudicial.

The impact on the deliberations was not obviated by the judge's additional instruction immediately before releasing the jurors. The brief cautionary statement on which the Court relied in finding no prejudice did not negate the effect of sending the jurors home with their own individual thoughts, rather than having them immediately resume their deliberations in light of the *Allen* charge. The Court should rehear its

determination as to prejudice and resolve the question of the proper procedure to be employed under the situation presented here.

For all the reasons outlined above, the Court should rehear this appeal as to every issue, find reversible error, and remand for a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
General Sessions Court
Kristi L. Harrington, Circuit Court Judge

Case No. 2015-GS-08-01333
Appellate Case No. 2015-002668

RECEIVED
AUG 23 2018
SC Court of Appeals

The State,

Respondent,

v.

Sha'Quille Mi'Leak Jamal Washington,

Appellant.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing by mailing a copy, postage prepaid, to counsel for respondent, Senior Assistant General David Spencer, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211-1549, on August 23, 2018.



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The South Carolina Court of Appeals

The State, Respondent,

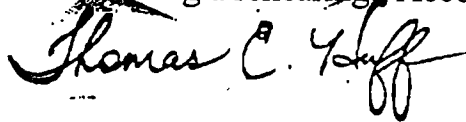
v.

Sha'quille Washington, Appellant.

Appellate Case No. 2015-002668

ORDER

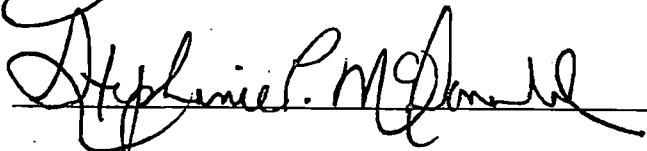
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

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FILED

Sept. 20, 2018

Scarlett Anne Wilson, Esquire
The Honorable Kristi Lea Harrington