

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Robin B. Stilwell, Circuit Court Judge

WILLIE M. WILLIAMS,

RESPONDENT/PETITIONER

V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT

APPELLATE CASE NO 2020-000796

JOINT APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

TAYLOR Z. SMITH
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Suite 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 Q Before you do, I want to ask you, during the
2 cross-examination of Mr. Whaley -- Investigator Whaley
3 with the Sheriff's Department, the Defense introduced an
4 exhibit of the back of your head. Is that an accurate
5 reflection of how your head appeared when you were
6 arrested on July the 10th -- July the 11th when that
7 photograph was taken?

8 A Yes, sir.

9 Q And Defendant's Exhibit No. 3 depicts -- what's
10 depicted in that photograph?

11 A That would be my right elbow -- no, my left.

12 Q Left elbow?

13 A Yes.

14 Q And there's an injury there to it?

15 A Yes.

16 Q Is that an accurate depiction of your left elbow when
17 you were arrested on July the 10th? And the photograph
18 was taken on July the 11th; is that correct?

19 A (Witness nodded.)

20 Q And is this another photograph of it?

21 A Yes, sir.

22 Q Now, one of the officers testified that they did a
23 search of your home at Eichelberger -- or Mattie Pearl
24 Drive?

25 A Mattie Pearl Drive.

1 Q Mattie Pearl Drive?

2 A Yeah. Eichelberger is a road. And the drive is --

3 Q And it was introduced into evidence as Defendant's
4 Exhibit No. 5?

5 MS. MUNSON: May it please the Court, Your Honor.
6 I'm having difficulty understanding what's going on with
7 his back to me.

8 BY MR. JONES:

9 Q Well, stand over this away --

10 THE COURT: Why don't you stand over there, and
11 you'll have a view of what's being said. Or there's a
12 chair you can sit in.

13 BY MR. JONES:

14 Q Is this a photograph of one of the bedrooms at
15 Eichelberger -- I mean, at Mattie Pearl Drive?

16 A Yes, sir.

17 Q It is?

18 A That's the front room.

19 Q Is that the bedroom where you slept?

20 A Right. Correct.

21 Q Where you slept?

22 A (There was no response.)

23 Q How many bedrooms did you have in the house?

24 A It had four bedrooms, but I made it into three. So
25 that's when you come through the front, that's the first

1 bedroom, and there's another one. There's a wall here and
2 there's another one on the backside.

3 Q Okay. Well, what was in that bedroom, to the best of
4 your recollection?

5 A The bed was right here. And then you can't see the
6 rest of it. This is the window here with the curtain. On
7 the other side, I had an entertainment system with a
8 television.

9 Q At some point in time, did you move your bed out of
10 that room?

11 A Yes, sir. What I was going to do is I was going to
12 remodel the bedroom, take up the carpet, repaint the
13 walls. And, actually, I was going to paint it pink with
14 yellow scribbling. Because I was going to make it for my
15 daughter.

16 Q But when this -- when they went in there and searched
17 this room, were you living in it at that time?

18 A No, sir.

19 Q I'm going to ask you to return to the stand, please,
20 just for a moment.

21 A (Witness complied.)

22 Q Willie, what I want to ask you is, during February of
23 2010, describe to the jury what was going on with Natasha
24 and you and the family. What was the relationship like?

25 A When I first got home back from Iraq and I was

1 staying at Idlewild, the first month, it was -- because of
2 the -- being overseas, you've got like an eight-hour time
3 zone. Say, right now, it's 2:30 here, it's about 10:30 at
4 night or 10:20 at night in Iraq.

5 So my sleeping habits had to adjust. So I slept
6 through the day. And I was up like at night until I
7 started adjusting.

8 Q How long did it take you to adjust, approximately?

9 A Probably about a little over a month.

10 Q Okay. So in March, tell the jury the relationship
11 that you had with your children and your wife while living
12 at [REDACTED]?

13 A The relationship was pretty good, even though I had
14 problems, you know, sleeping, as far as, you know, because
15 of the environment over there. It was a hostile
16 environment. Then being back on the -- state side, it's
17 not -- and I managed to make -- first, I focused on my
18 daughter. Because she really looked at me as a stranger
19 sometimes. She would wake up and like push her hand back
20 from me until I would have to fondle with her, change her
21 diaper, whatever, and, you know, slowly gradually make her
22 get to know me.

23 And Jakyre, he -- you know, as usual, me and him just
24 got along fine. And Natasha, she said she had to get used
25 to me being back, you know. A lot of things had changed.

1 The house was rearranged. So we had to get used to just a
2 number of things.

3 Q Well, you told us that from 1984 until this year,
4 2010, approximately 26 years, you had been working pretty
5 steady finding a job wherever you could, whatever it was,
6 seeking the best paying job you could; correct?

7 A Correct.

8 Q But, at this point in time, were you working?

9 A No, sir.

10 Q Did you take on some responsibilities at the home so
11 Natasha could go to school and work?

12 A My bank account, at the time, it looked pretty good.
13 Because I did a lot of saving, you know, while I was over
14 there. I like pinched pennies a lot.

15 Q So what were you doing at home when you were there,
16 just trying to adjust still and --

17 A I was adjusting. And, basically, I took on the
18 duties of being a husband. I had took on more
19 responsibilities with the kids.

20 And, basically, I was giving Natasha a break from the
21 load. She had been doing everything without me being
22 there. And she had what you call a singing career that
23 she desired. So that gave her room to start focusing on
24 her career, singing career.

25 Q All right. Well, let me take you into April of the

1 same year, 2010. What was going on between y'all then, if
2 anything, different?

3 A In April, she was getting close to graduation at
4 Greenville Technical College. And so she was like doing
5 her -- what do I say -- intern or something where she
6 would, actually, do something in her curriculum. And she
7 would put in like four hours.

8 So once she would get off of work, she came home,
9 fixed a meal, and then she would leave. And I had the
10 kids, Jakyre and Jadance. And, you know, I did the
11 regular duties of, you know, cleaning up and all that,
12 just helping out.

13 And during that time, things started happening,
14 things started happening with me, you know. I started
15 having nightmares, waking up, flashbacks, and stuff like
16 that. So I didn't know exactly what was going on.

17 So my first step was on Tuesday nights, I started
18 going to some VA meetings back down here in Laurens. They
19 meet on Tuesday and Thursday. I was going on Tuesdays
20 meeting with a lot of VA veterans that had been in
21 different wars listening to everybody telling their
22 problems and stuff, interacting. And then the counselor
23 that was teaching the course, he recommended me to see an
24 advocator from Columbia, which come to the One Stop Center
25 in Clinton.

1 So I made an appointment to see him. And he came --
2 I really can't say what day it was. But he came and met
3 with me. And he gave me an application to fill out to try
4 to get into the VA. And off the bat, I was disqualified.
5 Because they went by the prior year and what you made.
6 Even though I wasn't working at the time, they was going
7 by what I made last year. And so it disqualified me. And
8 so he was working with me on another avenue to try to get
9 into the VA.

10 Q Did you get in in April or May?

11 A No, sir. What happened was I had to get my
12 military -- all of my military background from Columbia,
13 the medical records, all my service records. And so that
14 was taking a lot of time. I didn't have no insurance.

15 So what I did, I went to social security disability
16 and tried to take that avenue, fill out the -- it was like
17 a 16-page form asking all kinds of questions. And I tried
18 to get in that way just to get some assistance so I could
19 start seeking some professional help. And I did make a
20 doctor's appointment to go to my family doctor. Because
21 my CDL license was coming to renewal -- renewal. And I,
22 also, had to get a physical done.

23 So I met with my family doctor. And she did an
24 examination on me. And we discussed each step. I had
25 told her I was returning from Iraq. So we discussed each

1 step in filling out the form.

2 Q All right. So you were proceeding towards trying to
3 get some disability for your problems that you were having
4 adjusting; is that correct?

5 A Correct. Because I left it out, but I tried to go
6 back to work. I was working at this -- I went to one of
7 these job placement places, a temp service, or whatever.
8 And, anyway, immediately -- I filled out my application.
9 And they immediately offered me a job. I accepted the
10 job. It was in Mauldin being an assembler assembling
11 hydraulic hoses.

12 So I started the job. And I worked like three weeks.
13 But I had problems doing all the steps required to
14 assemble the hose. So they let me go.

15 Q Well, let me ask you, Willie, to tell the jury then,
16 in May, how was your relationship with Natasha? How was
17 it developing? And were there any changes in your living
18 conditions and relationship in May of 2010?

19 A May of 2010?

20 Q Yes.

21 A In May of 2010, Natasha, she would get off work. And
22 she was going to doing her assessments, four hours. I
23 think she was working at Safe Harbor. And when she would
24 get off, she was going and doing open mic stand-ups at a
25 club.

1 So she, actually, was coming in 1:00, 2:00, sometimes
2 3:00 in the morning. And so, you know, I would be up
3 because I can't sleep. And so in May of 2010, an incident
4 happened. I was asleep. And I woke up. I heard some
5 noise outside. I thought, you know, somebody was trying
6 to break in.

7 So there was two weapons kept in the house. One in
8 the -- I had to put them up high because of the kids. One
9 was kept in the closet, and one would be in the vehicles.
10 And so I had got the weapon from the closet, and I went to
11 the door. And it was Natasha coming in on the cell phone,
12 coming into the door.

13 So when she came in, I scared her, you know. She got
14 frightened, or something. And she had already been
15 complaining about me, you know, getting up walking through
16 the house at night, stuff like that. And so she felt
17 like -- she was like, something ain't right with you.
18 And, you know, I kind of felt like things wasn't right
19 with me either.

20 And so through May, we continued going on, but things
21 got -- we got distant for some reason. We got distant.
22 And so I came home one day. She got off work. And I
23 think it was around about May the 20th then. We had
24 another little incident, you know. We was going through
25 problems like any other married couple, I guess, probably

1 to a little more extreme.

2 So I decided to start spending more time back in Gray
3 Court, you know. I kind of went back and spent a little
4 time in Gray Court.

5 Q Well, that's May 20th. So, say, between May 20th and
6 June 20th, approximately, how much time would you spend a
7 week in Gray Court, and how much time would you spend a
8 week at Idlewild in Greenville?

9 A See, what was happening was my daughter, she asked
10 about me a lot. So Natasha would call me and let me talk
11 to her. And she would be asking me where I'm at. Daddy,
12 why ain't you here? Because I used to take her to the
13 park and all that all the time. And I was trying to
14 explain to her that daddy needed a little time to adjust.

15 And so I tried to be there. Mostly, I came on
16 Tuesdays and Thursdays when Natasha would do her
17 assessments, like 5:00 to 9:00 at night. And then what
18 happened with that, she kept -- she -- instead of coming
19 home, she would go to these clubs and whatever they do,
20 rap competitions, and all that. So it wasn't making it
21 better.

22 Q So how did you feel about that?

23 A Well, I didn't feel good about, you know, her being
24 out that late. And the type of clubs she was going to,
25 you know, they -- like some of them are not in the best

1 parts of Greenville. And then coming home late, you know,
2 because of the kids -- you know, kids need attention. So
3 it caused a problem between us, if that's what you're
4 asking.

5 Q But -- and so you -- did you spend less time there at
6 Idlewild as a result of that or what in June?

7 A Yes, I did. Because what happened is in Gray Court,
8 it's more secluded, you know. Because I'm so far off the
9 road and the surroundings, I can like think better and
10 just feel like I ain't got that much pressure on my
11 shoulder, that much weight on my shoulder.

12 So I started spending more time in Gray Court. And
13 then I started doing little activities to keep myself busy
14 since I wasn't working. I started doing stuff to the
15 place, the house, painting. And I was going back and
16 forth getting stuff. And my brother would come down and
17 help me and stuff like that as much as he can -- well, me
18 helping him as much as he can.

19 Q Did you own a motorcycle?

20 A Yes, sir.

21 Q And did you ride it some during this time?

22 A Yes. I started back riding my motorcycle, because I
23 felt like maybe it would help. Because I loosened up and
24 started doing things that I enjoyed, kind of like trying
25 to relax myself, basically, is what I'm saying.

1 So I started riding with my friends. And what I
2 started doing, I started pulling it to Greenville into
3 like a grocery store parking lot, you know, unloading it,
4 and then riding around Greenville and going to different
5 clubhouses.

6 Q Well, let me ask you this, Willie. During the latter
7 part of June and early part of July, were you still seeing
8 your children, your daughter, and Jakyre?

9 A Yes. At times, I was.

10 Q Were you still having conversations with Natasha?

11 A We got a lot of distance between us, but we still was
12 conversating [sic]. What happened was I started letting
13 my niece get my daughter a lot, you know. Because I was
14 giving her space. We felt like we needed space. So I was
15 giving her space. She was giving me space.

16 So my niece, Kendra, would pick up my daughter. And
17 then I'd come up and see my daughter over at her house, or
18 over at her sister's house.

19 Q As far as you understood at that point in time in
20 late June and the early part of July, were you seeing
21 anybody else?

22 A Well, I was going -- on the weekends, I was riding to
23 different clubs and, you know, shows, and stuff. And,
24 unfortunately, at bike rallies, everything does come with
25 it. And so I started like -- I don't want to say

1 mingling, but just having casual conversations.

2 Q Well, would it be fair to characterize your and
3 Natasha's relationship at that point in time that you were
4 going your way and she was going hers, and you were trying
5 to take care of the kids the best you could?

6 A Yes, sir.

7 Q And, at some point in July, did you -- late June or
8 July, did you get a notice that she was serving you with a
9 notice for some sort of order to come into court?

10 A Yes, sir.

11 Q Okay.

12 A It was kind of odd. Because, you know, I was being
13 up there sometimes to get that type of order served on me
14 to go to court for a restraining order. And then I think
15 she was asking for child support, too.

16 Q How did that make you feel?

17 A At first, I was upset about it. I called Natasha and
18 asked her what was this, what's going on? And she
19 explained to me because of my behavior since I've been
20 home, she kind of feared me. And she felt like that, you
21 know, at this point in time, we need to take this route.
22 We need -- this is what needs to take place.

23 Q What was your response to that conversation that you
24 had with her?

25 A Like I said, I was, at first, upset about it. Then I

1 understood. I was like okay with it. Because I had
2 started back riding my motorcycle and going out. And I
3 felt that, okay, we should try this, maybe we should
4 explore another avenue. And maybe then we'll come to a
5 decision where we're going to continue our marriage or
6 not.

7 Q So did you meet somebody else in late June, early
8 July?

9 A Yes, sir. It was on a Sunday. I was up in
10 Greenville riding my motorcycle. And I was at -- there's
11 so many different motorcycles clubs. I think I was at the
12 Matrix, or something. I was hanging out there. I had met
13 some friends from high school up there that I was talking
14 with. And there was a lot of people out in the yard
15 there, grilling out, playing music. And we was just
16 eating and looking at one another's motorcycles, things
17 that guys do.

18 And I noticed this young lady -- well, she was about
19 my age, so I guess you wouldn't call her young. And I
20 approached her, and I talked to her. And we exchanged
21 numbers. And she said she was with her sister, aunts,
22 friends. So I let her go back to doing what she was
23 doing. I went back to doing what I was doing. Then the
24 next day, I called her. I didn't get her. I left a
25 message. She called me back. And then we just went from

1 there.

2 Q All right. So you had met somebody else?

3 A Yes, sir.

4 Q And you, essentially, had moved out of the Idlewild
5 home pretty much. I mean, you hadn't -- did you have
6 anything at the house that was yours that was there?

7 A I still had some clothing. And I had some, you know,
8 cologne and probably some necklaces, something like that,
9 nothing major.

10 Q Well, what about the guns? Where were the guns?

11 A As far as I know, the one gun was still up in the
12 closet. And the other gun, Natasha was taking it in her
13 purse when she would go out at night. Because she said
14 sometimes she goes to clubs, and guys are kind of like
15 strange, so.

16 Q Do you remember what kind of gun was up in the
17 closet? Do you remember what it looked like?

18 A Could you show me the picture, or do you have a
19 picture?

20 Q Well, the State has introduced it into evidence. I
21 think there's a photograph of it. It's a black -- been
22 testified to as a 9mm.

23 A I remember it. That's the one that was kept in the
24 closet up high.

25 Q And what did the gun look like that she carried in

1 her pocketbook?

2 A The other one was a small revolver, what you would
3 call a fire shot .38 Special.

4 Q Okay. Now, where had that gun come from?

5 A That gun, initially, came from -- back in 2007, I
6 think it was around Father's Day, I think Natasha had gave
7 me that gun for a Father's Day present.

8 Q So you gave it back to her?

9 A When I -- yeah, this was in 2007. So when I went
10 back to Iraq, I gave her that gun. I gave her that gun
11 back to keep. That's when she started carrying it.

12 Q Did you have any guns in your home on Mattie Pearl on
13 Eichelberger?

14 A I had a shotgun that was stolen and that was,
15 basically, it. Because back in my yard, it was just like
16 a forest with rabbits, deer, you name it. People would
17 drop wild dogs off. So, basically, I used it to run off
18 wild dogs.

19 Q Well, I asked you to tell me about Defendant's
20 Exhibit No. 5 that was introduced that the officers came
21 to your home out at Mattie Pearl, and you showed me that
22 night stand. And then the Defense introduced another
23 exhibit, Defendant's Exhibit No. 6, that depicts some
24 bullets on the floor underneath that night stand. Is that
25 in that spare bedroom at Mattie Pearl Drive?

1 A Yes, sir. This is the bedroom that I was cleaning
2 up, going to take up the carpet, paint, and everything.
3 And what's here -- you can't see it. It's a jewelry box.
4 It's a jewelry box back here, and a lot of a part of the
5 mail that I kept underneath the stand. And like I think
6 that's a title to a four-wheeler that I rode. And I kept
7 this up under the table.

8 Because what happened when I got broke into, the
9 house got broke into, the person that broke into it walked
10 through with candles searching everything. Candle wax was
11 all over the house. So that was more like a hiding spot,
12 too.

13 And the bullets probably was in the -- there was a
14 box of bullets. All the way to the back, there was
15 supposed to be a box with some 12 gauge shotgun shells.
16 And then here, there was a bag with bullets in it. And
17 the weapon was kept in there before I left to go back
18 overseas.

19 Q All right. So when you returned the weapon to her,
20 there were some bullets that belonged to it you think,
21 possibly?

22 A Possibly.

23 Q You didn't have any other weapons in the house?

24 A No other weapons.

25 Q In 2010, were there any weapons at Mattie Pearl

1 Avenue?

2 A No, sir.

3 Q I was asking you about meeting somebody else, and you
4 said you did. Did you have occasion to see her on July of
5 2009 -- July the 9th of 2010?

6 A Yes, sir. I was down in Gray Court that day -- well,
7 actually, that -- well, I was down for the weekend. I was
8 staying in Gray Court. And I was down there because, you
9 know, I hadn't been in the house, 2005, 2010. And what
10 happened was the walls had mildewed, and all that. So I
11 was down there with bleach and stuff cleaning. I worked
12 in the house all day. Let's put it like that.

13 And Cynthia called me and asked me what I was doing.
14 And I told her, you know, I was doing housework. And she
15 asked me when I was planning on coming to Greenville. And
16 I told her I wasn't planning on coming to Greenville. And
17 so she asked me to come. And I told her I would think
18 about it.

19 So I called her back later on, or she called me back
20 one. Yeah, she called me back and told me where she was
21 located at, and asked me when I was coming. And I told
22 her, okay, I would come on. It was late. It was probably
23 like 10:30. And I got dressed as fast as I could. And I
24 got to Greenville about 12:00, somewhere in there. And
25 she was at a clubhouse called Chosen Few.

1 Q How were you dressed when you met her that night?

2 A I was planning on going somewhere else, hopefully.
3 So I was dressed casually. I had on some casual shoes.
4 And I had on some green -- kind of military-like pants.
5 They was military colored. And I had like a three-button
6 neck shirt, pull over, three buttons with the collar.

7 Q And did you meet with her?

8 A Yes, I did.

9 Q And what all did y'all do?

10 A Basically, out there, they be [sic] in there playing
11 music, dancing, cooking, selling food, drinking. We,
12 basically, stayed out in the yard. Because I had,
13 actually, had some beer in the cooler in the trunk of the
14 car. And I think they went in and got some other types of
15 drinks. But we, basically, stood outside. We stayed
16 there about an hour and a half.

17 Q Then what did you do?

18 A She decided that she wanted to go to another place.
19 And so she wanted me to follow her back to her house -- or
20 apartment, which I didn't know where it was located. So I
21 followed her. And I think we went on White Horse Road to
22 some apartments over there by some truck riders -- truck
23 center somewhere over there.

24 Q All right. Well, let me ask you this. This is July
25 the 9th, the late night hours of July 9th. When was the

1 last time you remember that you had talked to Natasha?

2 A I called Natasha that morning -- well, actually, it
3 was afternoon. It was like 2:00. And I called her
4 wanting to speak to my daughter. Because I was supposed
5 to have been getting her that Saturday, and she told me
6 she was asleep. And I asked her what she was doing. She
7 said she had company. She had some friend girls over,
8 that she was going to call me back.

9 And so time went by. I called her again around 5:00
10 that afternoon. And I asked if Jadance was up. And she
11 said she was still asleep. And it was kind of funny that
12 she would be still asleep. Because she's a night owl.
13 She usually goes to bed late and wakes up around 2:00.
14 And I told her, okay, then just call me when she wakes up.

15 And I went back to doing what I was doing. And
16 that's when later on, Cynthia had called and we started
17 conversating [sic] back and forth. And I decided to come
18 to Greenville to meet her.

19 Q So you had talked with Natasha, and then you met with
20 Cynthia. Cynthia is one of the witnesses that came in and
21 testified earlier this week; is that correct?

22 A Yes, sir.

23 Q That's who you were meeting and socially seeing;
24 right?

25 A Right.

1 Q Right?

2 A Yes, sir.

3 Q Okay. And how late did you stay out with her? And
4 what happened on this date?

5 A Okay. When I met -- I followed Cynthia over back to
6 her apartment. She got out. She was going to get in the
7 car with me, and her aunt got in the car. And she spilled
8 a drink in the backseat of my car. So she had to go in
9 the house and get a towel and bring it back and clean it
10 up.

11 So once we cleaned up the mixed drink, she got in the
12 car with us. And we left. And she gave me directions on
13 how to get to another club that probably was a mile from
14 her house -- from her apartment.

15 Q Did you go there? What did you do?

16 A We went there. It was a little clubhouse behind a
17 house. You know, it ain't really my type of place to go,
18 but I went along since I was driving. We pulled up. We
19 got out and went in. And we sat down. I ordered a drink.
20 And I got up and went to the restroom.

21 When I came back, her and her aunt had some drinks.
22 They got up and left. I guess they went to another part
23 of the -- because they had like a little patio out there
24 where you could sit or whatever, part of the little
25 clubhouse. The bartender came to me giving me a tab to

1 pay for some drinks. And I was asking him where did these
2 drinks come from. And he told me the lady that --

3 MS. MUNSON: Objection, Your Honor. Hearsay.

4 THE COURT: Sustained, hearsay.

5 I'm going to interrupt --

6 BY MR. JONES:

7 Q You can't testify to what the bartender told you --

8 THE COURT: I'm going to interrupt you for one
9 second.

10 Ladies and gentlemen, you've been sitting for quite a
11 considerable amount of time. I'm going to give you a
12 brief restroom break. During the break, please, do not
13 discuss the case. And, please, leave your note pads in
14 your seats.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:48 p.m.)

17 THE COURT: We'll be at ease.

18 (WHEREUPON, a break was taken.)

19 THE COURT: Is the State ready to proceed?

20 MS. MUNSON: Yes, Your Honor.

21 THE COURT: Is the Defense ready to proceed?

22 MR. JONES: Yes, Your Honor.

23 THE COURT: Please bring in the jury.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:06 p.m.)

1 THE COURT: You may proceed when you're ready.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MR. JONES: May it please the Court.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. JONES:

7 Q Willie, we were talking about -- I was asking you a
8 question about being out with -- what's her name again?

9 A Cynthia Booker.

10 Q Cynthia Booker. And you were -- you said that you,
11 and she, and her aunt had gone to a club. And then you
12 had paid for some drinks. And I want to know -- and they
13 went outside.

14 What I was going to ask you next is, at some point in
15 time during that evening, did you try to tell them you
16 were ready to go, ready to leave, or what?

17 A Yes, sir.

18 Q And were they ready to go?

19 A They didn't give me no indication that they were
20 ready to go. Actually, some more -- two or three more
21 girls come in, and they said they was her cousins and
22 stuff. And so they left the table where I was sitting and
23 went and sat with them.

24 Q Do you remember about what time that was?

25 A I really wasn't paying attention to the time. But I

1 know it was late. I would say probably about 3:00.

2 Q Now, this was on a Friday night?

3 A Yes, sir.

4 Q All right. And you were to get your daughter the
5 next morning, Jadance?

6 A Yes, sir.

7 Q All right. So when you decided to leave there,
8 describe, you know, kind of how you left, and what you
9 decided to do.

10 A They didn't give me no indication that they was ready
11 to leave. So I assumed that -- I got up and asked them
12 were they ready to go. They really didn't answer me. So
13 I assumed they was going to ride back with their cousins.

14 So I, actually, went to the car. And I sat out there
15 for a minute. And I had checked my messages on my cell
16 phone. And then I started up the car and backed up, and I
17 left.

18 Q Did you peel out of there?

19 A I wouldn't say that. Because my car has 22-inch rims
20 on it and the rubber on the rims like that -- on 22-inch
21 rims, the rubber is real small. And the tire in the
22 middle has got like kind of like a crater in it. So on
23 gravel, it will easily spin.

24 Q Were you on gravel?

25 A Yeah. It was behind a house that had gravel in the

1 yard.

2 Q When you left, were you upset about anything?

3 A Not really.

4 Q Well, what do you mean by "not really"?

5 A I mean, I was disappointed more than anything about
6 how the night went. Because I could have been spending my
7 time at a better place.

8 Q Okay. Well, where did you go?

9 A When I left from the -- I guess that was the Matrix
10 clubhouse. I went back up on White Horse Road and took a
11 right. And there was another motorcycle clubhouse right
12 across the bridge over 85 across from a McDonald's. I
13 went over there.

14 And I always carry -- I parked back in -- there's a
15 lot of tree area back there. I parked back there. And I
16 always keep a backpack, military backpack in my car with a
17 change of clothes. So I took off my dress shoes and
18 changed out.

19 Q Into what?

20 A I had -- actually, in the back, I had a pair of
21 Wrangler blue jeans, a pair of Nike shoes. And I took my
22 shirt off, because I had a beige military T-shirt on. And
23 I, also, had my leather jacket with my colors on it
24 representing my bike club. I put it on. That's what all
25 the motorcycle guys wear.

1 Q So you put that on to go into that club?

2 A Right, to fit in.

3 Q Well, what was the weather like that night, like the
4 early morning hours of July the 10th?

5 A It was humid. It was humid like.

6 Q How long did you stay at this club?

7 A That club normally close at 5:00. And I think I left
8 right around about 4:15, 4:30.

9 Q Where were you headed?

10 A When I left the club, it was late. I checked my
11 phone to see if I had any messages. And so I called
12 Natasha's cell phone. I didn't get her. And I called the
13 house phone. It never did ring. So I didn't know if
14 anybody was there or not.

15 So, instead of driving 50 miles back to Gray Court, I
16 had my key to the place. So I said I was going to ride
17 over there. So I drove back down White Horse Road. And I
18 went down by Donaldson and went toward the house.

19 Q Did you get to the house?

20 A Yes, sir.

21 Q And when you got there, what did you see at the
22 house?

23 A When I pulled up, there was an SUV in the yard, a
24 vehicle I had never seen before that had North Carolina
25 plates. I didn't see Natasha's car at all in the yard.

1 Q Did you think anything about the vehicle with North
2 Carolina plates? Did you know what it was, or who it was?

3 A Well, the only person I could think that would be
4 driving a vehicle with North Carolina plates that I know
5 that would be over at the house would be her sister. I
6 think her name is Crystal.

7 Q Where did you park your car?

8 A I parked directly behind that SUV. I left a little
9 space where I could walk in between and walk up the
10 sidewalk.

11 Q And what car were you driving again?

12 A A Chrysler 300.

13 Q I want to hand you State's Exhibit No. 12, and ask
14 you if you can recognize what's depicted in that
15 photograph?

16 A The vehicle?

17 Q Well, just the whole -- what is depicted in there?
18 Tell me what you see in the photograph.

19 A Okay. I see an SUV in the front.

20 Q In the front of what?

21 A The house.

22 Q What house?

23 A The house on [REDACTED] where me and my wife did
24 reside.

25 Q Okay. And you parked behind that vehicle?

1 A Yes, sir, right behind it.

2 Q And I want to ask you --

3 MR. JONES: Your Honor, I'd ask for a brief
4 opportunity to publish this photograph to the jury.

5 THE COURT: On the Elmo?

6 MR. JONES: I'm old school. I don't know how --

7 THE COURT: You closed it.

8 MS. MUNSON: I closed it?

9 THE COURT: Yes.

10 (Pause.)

11 MS. MUNSON: Here you go. Fabulous.

12 BY MR. JONES:

13 Q Can you point with your finger where you parked, and
14 where the vehicle that you noticed with the North Carolina
15 tags was? Just kind of stand up and point with your
16 finger, if you would, please.

17 A Okay. I parked directly behind this vehicle with the
18 North Carolina plates on it. Like I said, I pulled up and
19 had enough room where I could get out and walk between the
20 vehicle and walk up the side here.

21 Q And where did you go?

22 A I walked up to the side here in between -- there's a
23 little space where you come up. And the house is on a
24 foundation. So you could walk -- the sidewalk and the
25 porch are flush. There's no step up. So I walked up here

1 and went to the door, which is here.

2 Q Right there on the other side of that tree?

3 A Right. It's right behind the tree.

4 MR. JONES: That's the only testimony I need that
5 for.

6 Thank you, ma'am.

7 MS. MUNSON: All right.

8 MR. JONES: Thank you.

9 BY MR. JONES:

10 Q Now, you walked to the front door. I want you to
11 tell the jury what you did while you were at the front
12 door of the home at Idlewild?

13 A At first, I attempted to open up the storm door.
14 When I tried to open the storm door, it was locked. The
15 only way you can lock the storm door is from the inside.
16 So I wasn't able to use my key. Because I couldn't get
17 the storm door open and be able to unlock the door.

18 Q So what do you recall happening? What do you recall
19 going on during that period of time?

20 A Okay. So I started knocking on the door. I probably
21 knocked three to five minutes knocking on the door. And,
22 as I was standing there, I heard the dogs barking. And
23 the dogs bark when you pull up. And, usually, when you
24 turn the car off, they normally stop barking. But I
25 didn't know whether it was my knocking or what. When I'm

1 knocking on the door, the dogs are getting louder and
2 louder.

3 Q Where were the dogs?

4 A The dogs are around the back of the house.

5 Q Okay.

6 A And so I turned to walk off the porch. I see the
7 curtain move. And once I see the curtain move, I stopped
8 to turn facing the house in the window to kind of peep in
9 through the curtain, peep in through the window. As I did
10 that, I heard -- it was in the grass -- it was on the
11 grass there, maybe hit the concrete. I hear some noise.

12 And so I turned. When I turned, I see a guy, an
13 individual approaching me. And they pulled out a weapon
14 and pointed it at me and said --

15 Q Hold on a minute. Hold on a minute. Let me -- go
16 ahead. What was said? Go ahead. I'm sorry. Tell the
17 jury what was said.

18 MS. MUNSON: Objection, hearsay.

19 THE COURT: Approach.

20 (WHEREUPON, a bench conference was held.)

21 THE COURT: Approach once more time for me, please.

22 MR. JONES: Yes.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: Mr. Foreman, and, ladies and gentlemen, I
25 have a brief matter of law I need to take up. Please

1 don't discuss the case. And, please, leave your note pads
2 in your seats.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 3:21 p.m.)

5 THE COURT: You may continue with your questions of
6 the witness.

7 MR. JONES: Yes.

8 DIRECT EXAMINATION

9 BY MR. JONES:

10 Q Willie, I interrupted you when you were about to say,
11 as you were standing there on the front porch, you heard
12 somebody in the grass. You said they walked to the
13 concrete, and then were headed towards your direction.
14 You saw it was a man. And you were about to testify that
15 the man said something to you. What was it that the man
16 said to you?

17 A He said, I, finally, get to meet the man whose money
18 I've been spending.

19 Q And did you say anything back?

20 A No. I did not say anything back. Because, I mean,
21 there was a gun pointed right at me.

22 MR. JONES: Well, Your Honor, I would then next go
23 into the questioning about what occurred with regard to
24 Willie's reaction to the gun pointed at him, what
25 happened.

1 THE COURT: Does that involve any statements?

2 MR. JONES: No.

3 THE COURT: He can testify that a gun was pointed at
4 him. But the words that were spoken are not really
5 relevant to state of mind. I thought he was going to
6 say -- originally, he was going to say something about --
7 I thought it was something that was provocation. And I'm
8 not hearing that.

9 MR. JONES: Well, you know, in Willie's mind, it kind
10 of could have been -- I mean, he would have to testify to
11 it.

12 THE COURT: Well, words, no matter how -- don't
13 justify self-defense. It would have to be something that
14 is life threatening. You just taunting me is not enough
15 for self-defense. And that would be in the nature of a
16 taunt, if I were to take it in the light most favorable as
17 you're advancing it.

18 MR. JONES: Yes, Your Honor.

19 THE COURT: But I don't think it falls within the
20 exception.

21 MR. JONES: He's, also, testifying that the declarant
22 had a gun pointed at him.

23 THE COURT: Well, he can testify to that. But the
24 words do not rise to the level of provocation. So that
25 would be excluded. But he can testify that someone

1 pointed a gun at him.

2 Get the jury back in.

3 (WHEREUPON, the jury came into open court at
4 approximately 3:24 p.m.)

5 THE COURT: You may proceed.

6 MR. JONES: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. JONES:

10 Q Willie, I don't want you to testify what the man you
11 saw said to you at that point in time. What I want you to
12 do is come down here, please, and demonstrate to me and
13 the jury, using me as the man and you positioned
14 approximately where you were. Come down here.

15 A (Witness complied.)

16 Q And I want you to come around as you were before,
17 please. And I want you to point for the jury on this
18 diagram that represents Defendant's Exhibit No. 1, the
19 house at Idlewild. And I want you to stand back so we can
20 see this. And I want you to get a good look at it before
21 you point anywhere.

22 Where is the porch that you were referring to that
23 you were standing on knocking on the front door? Put an
24 "X" where you started out that night knocking on the front
25 door.

1 A Okay. This is the porch here. And you go up here --

2 MS. MUNSON: May it please the Court, Your Honor.

3 I'm so sorry. This is blocking the view of the last
4 four jurors back there.

5 MR. JONES: Well --

6 MS. MUNSON: I know they would want to see it.

7 THE WITNESS: Can I move up here?

8 BY MR. JONES:

9 Q That would be fine.

10 A Like I said, I came between the cars, walked up here,
11 came up on the porch. And right here is the front door.

12 Q Put a mark right there. Put an "X" where you were
13 standing when you were knocking.

14 A It was about right here.

15 Q Okay. And, as you knocked, you say you noticed
16 something in the curtains. Where were the curtains
17 located?

18 A Okay. Once I was here and I was knocking, like I
19 said, I heard the dog barking and getting louder and
20 louder. I turned and I walked here. And once I got here,
21 I seen the curtains move.

22 Q Draw a line from that point to where you are right
23 now with that marker.

24 A From here, and I get right in here.

25 Q Okay.

1 A Because the curtains are like three curtains
2 together.

3 Q Yeah.

4 A They're like panel curtains, one, two, three. And
5 the curtains moved right in here. This curtain right
6 here, and right in here.

7 Q Okay. And what happened? What did you see? What
8 did you do?

9 A It was dark. And, you know, usually, up here,
10 there's a motion light that will come on that will shine
11 on all this front area here. But since the light was off,
12 there's no street light. So it was dark.

13 So I go here to the corner and try to look in here.
14 That's at the end where the curtain slides to the back,
15 about right there. And it was dark. So I couldn't see
16 anything at the end right here.

17 So this end of the porch, I turned right here. And
18 that's when I see an individual come here. It's in view
19 here. They come up to me like that, walk up to me kind of
20 fast like. And we face about right in here.

21 Q Okay. Now, not saying what he said, but what did he
22 do when you saw him coming toward you? Don't say what he
23 said.

24 A He pointed a weapon at me.

25 Q What kind of weapon?

1 A It appeared to be a handgun.

2 Q All right. I want -- now, you're -- if the jury is
3 on the inside of Idlewild in the living room looking out
4 the window, you were standing outside on the porch facing
5 me, being the person approaching you; correct?

6 A Correct.

7 Q I want you to demonstrate. Put the pen down. And as
8 he comes forward, did he have a right hand, left hand --
9 what hand did he have with the gun?

10 A It was in the right hand.

11 Q He had it out like this?

12 A Right.

13 Q All right. For purposes of demonstration, assume
14 that I'm the person, the man coming towards you with it.
15 I want you to demonstrate for the jury what you did, if
16 anything.

17 A Come up to me. I can't say what he said. So that's
18 the -- right here. So -- and I just react, self-defense
19 like. I took self-defense, so I react. And by control
20 movement of self-defense, you're going to grab here, which
21 you're going to grab in here, and put pressure to keep
22 from doing a squeeze. And then you're going to come here
23 in a control movement like that, and then like that.

24 Q And then what happened?

25 A Then the gun went off, pow.

1 Q And what happened next?

2 A After that, he went back and hit -- right here's the
3 railing on the porch. And then went -- then we went --

4 Q What?

5 A Wrestling back, like that there. And then we moved
6 like that, boom, and fell and hit the window.

7 Q The both of you?

8 A Yeah. We went -- well, you know, one is going to go
9 in before the other one. Because you're going to kind of
10 fall and go like that.

11 Q Yeah. And you went in?

12 A Uh-huh.

13 Q All right. Show me what window you went through with
14 the pen.

15 A Right here.

16 Q All right. And into that room?

17 A Yeah. I fell into the room right here.

18 Q And what happened after that?

19 A There was a scuffle here. And I think right here,
20 this is the table that -- I hit this table. And it
21 collapsed and fell out through here in the struggle right
22 here.

23 Q What were you doing at that point in time? And what
24 was he doing?

25 A We was struggling. He got away from me here. I

1 think the weapon fell out here, but he got back control of
2 it.

3 So what I have to do here --

4 Q Do you want to demonstrate? I'll be him. Was he
5 facing you, or did he have his back to you?

6 A He had his back to me. I have to do -- I mean, when
7 you're wrestling with a person and you've got a weapon,
8 you can't hold them like that. Because you're wasting all
9 your energy on them. So I had to push him around like
10 that, scuffling like that.

11 Q Is that what you did?

12 A Yeah.

13 Q Well, what route did you go? And where did you end
14 up?

15 A We scuffled right in here and went this way, down
16 that way here, all in here. And I remember hitting --
17 something hurt -- I had a lot of pain right here on my
18 elbow. I hit something here going down the hallway here,
19 scuffling here. And we get to the end of the hallway.
20 Right here is the entrance to the door -- well, I'm going
21 to do that there. The door entrance is here.

22 Now, right here, I was sliding loose right here.
23 Because the scuffling is kind of like you're trying to get
24 somebody off your back. You kind of go this way right
25 here like this when he was turning around right here.

1 Q You're in the bedroom, in Jakyre's bedroom?

2 A Right there at the doorway.

3 Q All right.

4 A Right here. At the doorway right here.

5 Q And you're saying he got twisted around and was
6 facing you again?

7 A Right, trying to turn, yeah.

8 Q Okay.

9 A I'm going to turn you around. I don't want to hurt
10 you. Right here -- so I can't move here, because what's
11 going to happen is the door is here. So I did like that
12 there, and then here.

13 Q Uh-huh.

14 A And then that's when the gun went off, pow, pow, pow.

15 Q And what happened when the gun went off, pow, pow,
16 pow?

17 A He went to the floor. And when he went to the floor,
18 the gun was laying down on the floor. There was no
19 movement period there. And then it was dark in the house.
20 I looked around.

21 Q Did you see anybody in the bedroom?

22 A I didn't see nobody in the bedroom.

23 Q You didn't see Jakyre?

24 A I didn't see Jakyre.

25 Q Jadance?

1 A I went back where my daughter's bedroom was at.

2 Q Show me where you went.

3 A Here. I came down here. My drawing is crazy. I
4 went back up here. Jadance's room is right here. That's
5 her room. She wasn't in there.

6 I went back up here coming back out up the hallway.
7 And that's when I seen something over here laying by the
8 window here. I rushed over here. And I know that it's
9 Natasha here. I'm qualified to do CPR. So I dropped down
10 here to check her pulse. I didn't get no pulse.

11 So I see blood everywhere. And tears came to my
12 eyes. And that's when I started having an anxiety attack
13 right here.

14 Q Well, what did you think? I mean, what was going
15 through your mind as you were there and you found her, and
16 you left him laying in the floor?

17 A I was like, oh, my God, you know, everything was
18 going through my mind, you know. I just got confused. I
19 just like was flipping out here. I didn't know what to
20 do. Two people was in the house down. And I don't know
21 what to do.

22 I looked -- her cell phone was over here. I looked.
23 I see 911 on the face of it. And so I flipped out. I
24 didn't know what to do. And so I left. I don't know what
25 that is right there.

1 Q Just show us which way you left, where you went?

2 A There's a little crack through the couch. And this
3 right here is the entrance out the door, out the back.
4 And I went here. The door was unlocked. Because I
5 remembered -- it's a dead bolt. You've got two here and
6 here. And I went out here and went around here. I was
7 confused, crying, shaking. And I went back to my car
8 right here and got in my car.

9 Q All right. I'm going to ask you to return to the
10 stand now.

11 A (Witness complied.)

12 Q You got in your car?

13 A (Witness nodded.)

14 Q What did you do?

15 A I got in my car. I sat there trying to get it
16 together. And I started it up. I backed out and I left.

17 Q Why?

18 A Because I didn't know what to do. I was confused.
19 Like I said, I was having an anxiety attack. I was crying
20 and I didn't know what to do.

21 Q How do you feel about leaving now?

22 A How do I feel like what?

23 Q How do you feel about having left now?

24 A That's the worst mistake I made, I mean, leaving.

25 Q Where did you go?

1 A When I left, I went back down the street and went --
2 because, you know, there's like three different ways you
3 can come into Idlewild. I went back down and went back
4 up. And it took me back on to Antioch Church Road.

5 Q Where were you planning to go when you left? Did you
6 know where you were headed?

7 A I was just driving. And I went down Antioch. And I
8 got on to Forest Road, which I took a right and went down
9 Forest Road, which takes you down to -- it takes you down
10 to the toll road back out to Mauldin. And it leads you
11 back into Mauldin and back to 385.

12 Q Was it daylight?

13 A No. It was still dark. It was like kind of getting
14 light.

15 Q Where did you go? And who was the first person you
16 remember seeing?

17 A Well, I drove back down to Gray Court. And I got
18 into Gray Court. And I went into Laurens by -- I went
19 into Gray Court back towards the house. And when I got to
20 the house, I pulled up in the yard. I sat there. I
21 didn't know what to do. There wasn't nobody out. It
22 still was like getting light. So I didn't know what to
23 do.

24 And I sat there for a minute thinking, thinking,
25 thinking. And I got into -- I got out of the car. I was

1 walking around in the yard pacing back and forth trying to
2 get it together. My -- I was walking back and forth
3 pacing trying to get it together. And I got into my car.
4 The gas light was on. And I got into the Tahoe. And I
5 went down towards Laurens.

6 Q Were you trying to hide from anybody? Were you
7 trying to run from anybody?

8 A No.

9 MS. MUNSON: Objection, leading.

10 THE COURT: Sustained.

11 BY MR. JONES:

12 Q What was your intention when you got in the Tahoe?
13 Where were you going?

14 A Actually, I went down towards Laurens. There's a
15 back part of Laurens back there where they race cars. And
16 there's a race track back there. There's a VFW, and
17 there's a church over there. The church is over there
18 where my mom is buried at. I went over there to the
19 church, sat there at the church out there in the church
20 yard trying to get it together. I got -- then it dawned
21 on me about my kids. I was like, where my kids at?

22 And so I left and went back up to Gray Court on back
23 out to get back on 385. And I drove back up to
24 Greenville. And I went by -- trying to find where Teresa
25 Boyle lives at. That's who normally has the kids. I know

1 she lived in a trailer park back over there, but I
2 couldn't find out exactly where it was at.

3 So I rode around. There was like three or four
4 different trailer parks back there. And I couldn't
5 find -- I was looking for her Tahoe, brown Tahoe in the
6 yard. I didn't see it. So I came back out and this -- it
7 takes you back out to Bank of America over there where
8 Eckerd Drugs is at. It's vacant over there. I pulled up
9 right there and sat there. I wasn't too far back -- I was
10 right there by Donaldson on the backside of it. And I
11 wasn't too far from Idlewild.

12 Q Did you drive by Idlewild?

13 A Yeah. I drove back over there. I was sitting for a
14 while. And when I drove back over there -- because I'm
15 trying to think where else can the kids be at. But when I
16 pulled up, there was police officers and everything out
17 there.

18 So I turned -- I didn't turn to go back up. I was
19 like a street below and I turned and went back down. And
20 I went down to Fountain Inn to a relative's house. And I
21 told them, you know, what had -- you know, I was in a
22 situation and I didn't know what to do, and stuff.

23 And so I went back to -- I don't know who all -- I
24 don't know who all had called. But that's when my phone
25 started ringing, you know. At first, I wouldn't answer my

1 phone at all. And then I answered it.

2 Q Let me ask you this --

3 MR. JONES: And before I do, Your Honor, I'd like
4 to -- at this point, there's a State's Exhibit in, he
5 demonstrated on this one. I'd like to offer this diagram
6 into evidence for demonstration purposes.

7 MS. MUNSON: We object, Your Honor.

8 THE COURT: It was used for demonstrative purposes.
9 You already have one. It's cumulative. Sustained.

10 BY MR. JONES:

11 Q All right. Go ahead and return to telling me where
12 you went, and where you were when you got back into Gray
13 Court. You were getting phone calls; is that correct?

14 A Uh-huh. I talked to one of my brothers. My next to
15 the oldest brother had called me. And he asked me what
16 was going on. And I told him that I was in a struggle.
17 And that the guy that I struggled with was shot and he was
18 dead. And my wife was dead.

19 Q Were you having any feelings about that? I mean,
20 what was going through your mind? Explain to the jury
21 what was going on in Willie Marvin Williams' mind, and
22 what you were doing at that point in time.

23 A At the time, in my mind, like I said, I was having an
24 anxiety attack. And it was just everything going through
25 my mind. I didn't know what to do. So I started riding

1 around, just riding around. And, like I say, everybody
2 was calling my phone, family members. And --

3 Q Do you remember stopping and speaking to a friend of
4 yours at some point in time during that part of the day?

5 A Yes, I did. I ended up going back down to Gray
6 Court -- well, back to Laurens -- like up the street is
7 Laurens. And then you go down a few and it's Gray Court.
8 That's how close it is. And I went over to a friend's
9 house. While I was going down there --

10 Q What's the friend's name?

11 A Mr. Irby.

12 Q What's the first name?

13 A Tracy.

14 Q Did you speak to him?

15 A As I was going down, he was coming up. And I think
16 when I was coming down, he was coming up. But there was
17 another vehicle in front of him, which they went to the
18 side and kept going. And he asked me what was going on.
19 And I told him, Man, I messed up, you know. I felt like,
20 you know, at the time, everything was -- you know, with my
21 actions that, you know, it was like some of it was my
22 fault.

23 Q Why?

24 A Because if I wouldn't have came there that night, I
25 wouldn't have got into the altercation and things -- if I

1 just would have went on home and came back the next day --
2 and then he tried to get me to cut the vehicle off and get
3 out. But I backed up and sped out and left.

4 And I went back down Boyd Road. It took me back to
5 76, back towards Laurens. And I parked back down in
6 Laurens in a little spot where I was trying to get it
7 together. And that's when I got a call from my --

8 Q Well, let -- did you get more calls? And did anybody
9 talk you into trying to get back home?

10 A Yeah.

11 Q Did you try to get back home?

12 A People was calling telling me that the police --

13 MS. MUNSON: Objection, Your Honor. Hearsay.

14 THE COURT: Sustained, hearsay.

15 BY MR. JONES:

16 Q As a result of the calls you were receiving, what did
17 you decide to do?

18 A I decided to come back to Gray Court to Eichelberger
19 to Mattie Pearl Drive where my house is at.

20 Q And who did you understand was there, also? Who else
21 was there?

22 A I know family members was there, and some police
23 officers were there.

24 Q And that's where you were going?

25 A That's where I was headed.

1 Q At that point in time, did you notice whether you
2 were being followed by any police?

3 A I was not.

4 Q And so what direction were you headed at that point
5 in time, from where to -- headed to where?

6 A I was on 76 coming out of Laurens. And I turned off
7 and went on a road track and got on -- Nontrene [phonetic]
8 Drive, something like that. I exited back off to Boyd
9 Road. And I went down Boyd Road. And I went into the
10 curve. And I seen a Laurens County sheriff's deputy
11 sitting in the curve.

12 Q What did you do?

13 A I went on past and went on down. And then he --
14 well, the car pulled off and got behind me and followed me
15 at a distance and turned on his lights, activated his
16 lights. And I kept going on down. Because I was like a
17 road over from being to the house.

18 So I kept going on down. And I went to Boyd Road
19 leading back to Trinity Church Road. I turned and took a
20 left back on Eichelberger with the police officer still
21 following me, and I think another one. I see two cars
22 behind me now. They was up on me, so I kept a distance.

23 So when I was ready to slow down and turn into my
24 driveway, there was some police cars at the end of the
25 road keeping me from turning back into my driveway. So I

1 kept going down and went to the end of the road. I took a
2 right back on 76. I went up and took another right. And
3 there's some church road, Reagan Church Road, I think is
4 the name of it. And it takes you the back way back into
5 the town of Gray Court.

6 And I got back in the town of Gray Court and took
7 another right and got back on 76. I went back down toward
8 Gray Court and turned back on Trinity Church Road to take
9 me back to my house. And I was on my way back down the
10 road, Trinity Church Road, back to the house.

11 And that's when the police had put out stop sticks.
12 And I hit them. And I kept going. The tire went out, but
13 I kept going. And I was trying to turn back onto
14 Eichelberger. But I guess I was going too fast and missed
15 the turn.

16 I went all the way back out to 76 and took a left
17 like you're going back to the City of Laurens. And I was
18 going to turn back down on another road to take me back
19 into a circle, back towards the house again. But a
20 Laurens City police car had that road blocked. And there
21 wasn't no more turns back to my house. And it pushed me
22 down into the City of Laurens.

23 And once I got down in the City of Laurens and into
24 congested traffic, I got into town. I think I went up a
25 one way and took a left back, which was going to start

1 taking me back up out of town back to my house. But once
2 I started down that road, the city police had blocked the
3 road standing behind their cars with their guns
4 drawn [sic].

5 So I turned up into a parking lot. And once I turned
6 into the parking lot, that's when something came from
7 behind me and hit me real hard and knocked me up onto a
8 bank. And I went into the bank and got hit again. And it
9 pushed me up into a grass area there. I got hit again.
10 And that's when my vehicle came to a stop.

11 And I sat there for a minute. And I seen -- in my
12 rearview mirror, I seen the police coming up to the back
13 of the vehicle with their guns drawn. And there was a
14 knife in the dash drawer of the vehicle. I pulled it out.
15 And I was suicidal. I decided I didn't want to live any
16 more.

17 So I took the knife and stuck it into my chest. And
18 as it was going in, I passed out. And then everything was
19 kind of blurry. I knowed [sic] that I was on the ground.
20 And I felt my arms going behind my back. And I guess
21 that's when they was handcuffing me.

22 MR. JONES: Your Honor, could I have the
23 demonstrative evidence marked for identification as a
24 Court's Exhibit?

25 THE COURT: ID.

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification and admitted into evidence.)

3 MR. JONES: I beg the Court's indulgence for a
4 moment.

5 (Pause.)

6 MR. JONES: Willie, answer any questions Ms. Munson,
7 the Prosecutor, has for you.

8 THE WITNESS: Yes, sir.

9 THE COURT: You may proceed.

10 MS. MUNSON: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 CROSS-EXAMINATION

13 BY MS. MUNSON:

14 Q Do you need a drink of water, Mr. Williams?

15 A Yes, please.

16 THE COURT: He's pouring it for him.

17 BY MS. MUNSON:

18 Q Mr. Williams, after all this happened, you said you
19 went to the place where your mother is buried?

20 A Yes, ma'am.

21 Q Did you spend some time there?

22 A Yes, ma'am.

23 Q Do you think your mother would want you to tell the
24 truth today?

25 A Yes, ma'am. She was a religious person.

1 Q This gun right here --

2 A Yes, ma'am.

3 Q -- you say you're sure this is the gun that was in
4 the house in the closet? You're sure of that?

5 A Yes. It stays up in the closet.

6 Q And Natasha has had it for a long time?

7 A When I met her, she had that gun.

8 Q Back in 2004?

9 A Yes, ma'am.

10 Q You're sure of that?

11 A Yes, ma'am.

12 Q All right. You knew that the police were after you
13 in Laurens; right? At some point, you figured that out?

14 A Yes, ma'am.

15 Q And I believe that you said -- correct me if I'm
16 wrong. But I believe you said that when you, initially,
17 noticed them that you were pretty close to your house, or
18 a road or two --

19 A Yes. I was like a road over.

20 Q But you didn't stop?

21 A No, ma'am.

22 Q And do you dispute the fact that you led them on a
23 26-mile chase? Do you dispute that?

24 A No, ma'am.

25 Q And that, at points, you got up to 100 miles an hour?

1 A I really -- well, actually, a Tahoe would not run 100
2 and something miles. It will go up to 85 and cut back.

3 Q Well, do you think you were going 85?

4 A I probably have [sic] because, you know --

5 Q During the chase?

6 A Yes, ma'am.

7 Q Now, Mr. Williams, would it surprise you to know that
8 Natasha Kerns bought this gun --

9 MR. JONES: Objection, Your Honor. She can't lay a
10 foundation. She doesn't know anything about when she
11 bought the gun.

12 MS. MUNSON: I just asked him if it would surprise
13 him if he knew --

14 THE COURT: No speaking objections.

15 MR. WARDER: I object to what would surprise him --

16 THE COURT: One at a time.

17 Since you asked the questions, you get to object.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Proceed.

20 MS. MUNSON: Thank you, Your Honor.

21 THE COURT: The objection is overruled.

22 BY MS. MUNSON:

23 Q Mr. Williams, would it surprise you to know that
24 Natasha bought that gun on September the 20th of 2008?

25 A I mean --

1 Q Does that surprise you?

2 A Yes. It surprises me. Because like when -- may I
3 answer?

4 Q Absolutely.

5 A When I met her, she had -- it was a 9mm gun.

6 Q Okay.

7 A I don't know what brand it was, but it was a 9mm.

8 Q Well, after -- do you want to change your testimony?

9 A No. I do not want to change my testimony.

10 Q So your testimony is still that that's the gun that
11 Natasha had when you met her? That's still your
12 testimony?

13 A If it's a different gun, it looks just like the one
14 she had.

15 Q Is your testimony still that that's the gun Natasha
16 had when you met her?

17 A Yes.

18 Q Okay. You told Mr. Jones that Natasha was afraid of
19 you, did you not?

20 A Yes. She showed signs of -- I could tell the way she
21 acted, she showed signs of fear.

22 Q Okay. You said that in May of 2010 -- first of all,
23 you said in May of 2010, Natasha was working at Safe
24 Harbor?

25 A No. She was doing intern for Greenville Tech.

1 Q Okay.

2 A She was working at Greenville County Special Needs.

3 Q Okay. Do you know what Safe Harbor is?

4 A I think it's where battered women go, or something
5 like that.

6 Q You told Mr. Jones that -- there was one incident
7 where you scared her with a handgun in the house?

8 A Yes, ma'am.

9 Q And then you told him there was another little
10 incident in May?

11 A Yes, ma'am.

12 Q What was that little incident?

13 A Natasha, she was kind of upset about the first
14 incident about she come in the door at night and that I
15 came to the door, and I had a weapon in my hand.

16 Q Okay.

17 A So when I came home one afternoon -- like when she
18 got off work, I usually tried to be there before she get
19 there to try to cook a little something. But she came in.

20 And she started talking about that incident, you
21 know. And she was like, well, I don't know if I can --
22 the basis is she don't know if she can trust to be around
23 me. And I was explaining to her, well, you know, I just
24 came home. You know where I've been, you know. I'm going
25 through some stuff. I'm trying to work it out and trying

1 to get help.

2 Q So the second little incident that you described to
3 Mr. Jones as worse than the first incident was just an
4 argument?

5 A No. Because I think May the 20th was when she called
6 911.

7 Q She called 911 on May the 20th?

8 A Somewhere in there.

9 Q For what? Because she was afraid of you?

10 A Well, what had happened, we got in an argument and
11 she had a knife. And she called 911 and told them that I
12 was threatening her, or something like --

13 Q Okay --

14 MR. JONES: Let him finish answering, Your Honor --

15 MS. MUNSON: He can answer --

16 THE COURT: I don't want y'all talking to one
17 another.

18 MR. JONES: I was talking to Your Honor.

19 THE COURT: Except in the form of a question.

20 Sir, answer your questions "yes" or "no." And then
21 you can explain your answer.

22 Are you completed with your answer?

23 THE WITNESS: I just wanted to explain.

24 THE COURT: You may explain.

25 THE WITNESS: Thank you, Your Honor.

1 She called 911. And as she was talking on the phone
2 to 911 operators, she was telling them that I had
3 threatened her. And the 911 operator asked her where she
4 was at. And she said that she was in the house. And the
5 911 operator was saying -- I could hear all this. She had
6 it on speaker phone. She asked her can she get away from
7 me. And she say, yes.

8 And the 911 operator said, If he threatened you, why
9 are you still in the house?

10 So the sheriff's deputy arrived. And I was out back
11 getting a few of my things and putting them into my
12 vehicle and loading up my motorcycle. I was just going to
13 leave. And when he pulled up and called me to the front
14 of the house, when I came around the front of the house,
15 Natasha had throwed [sic] all my stuff out in the front
16 yard, throwed [sic] my computer out and crashed it, and a
17 lot of stuff.

18 And the officer said, Ma'am, it seems like you've got
19 the problem.

20 And so he told -- he asked me --

21 THE COURT: Sir, you can't -- although you can
22 explain your answer, you can't say what someone else said.
23 You can say what you did as a result of the incident.

24 THE WITNESS: Okay. As a result of the incident --
25 so it got kind of bad. Me being married, it's both our

1 place. So I didn't have to leave. But I volunteered to
2 leave, because I didn't want no problems.

3 BY MS. MUNSON:

4 Q Okay. Are you finished?

5 A Yes, ma'am.

6 Q On July [sic] the 25th, did you go back to the house
7 on Idlewild --

8 A Yes.

9 Q -- and did you tell Natasha -- did you take a gun
10 from the house on July -- June 25th, 2010?

11 A No, ma'am.

12 Q Okay. Did you tell Natasha that if you could not be
13 with her that no one could, and that you were going to
14 kill yourself?

15 A No, ma'am.

16 Q Okay. And it's your testimony that you did not take
17 the gun from the house on the 25th?

18 A No, ma'am.

19 Q Okay. When you were out with Ms. Booker on your
20 date, did you accuse her of flirting with people?

21 A Not really. I mean, I pulled up and she was talking
22 to another guy. I mean, actually, she knowed [sic] I was
23 coming, you know. To be lady like, she wouldn't do that,
24 you know. I wouldn't do that. And I just made a gesture
25 like, oh, you're flirting, you know.

1 Q Okay. Did you describe Natasha to her as real
2 jealous?

3 A Yes, I did. Because what happened is it's kind of --
4 when I met -- since I met Natasha at a bike rally, every
5 time I go to a bike rally, she thinks that's what I'm
6 doing, meeting another woman, so.

7 Q The training that you received in the military where
8 you were describing for Mr. Jones how you would go into
9 houses and learn how to clear them and take care of
10 everything, did that training include leaving behind a
11 dead woman and an injured man?

12 MR. JONES: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. JONES: It's inflammatory. It's not probative.

15 THE COURT: Rephrase.

16 MS. MUNSON: I'll just leave that one, Your Honor.

17 BY MS. MUNSON:

18 Q You told Mr. Jones that -- well, maybe I
19 interpreted -- you told Mr. Jones you were making a good
20 bit of money and sending it all -- sending a lot of it
21 back to Natasha; is that right?

22 A Yes, ma'am.

23 Q Did that bother you, that you were having to keep her
24 up?

25 A No, it did not. She was my wife.

1 Q Well, when she told you she was pregnant, you asked
2 for a pregnancy test; didn't you -- a paternity test?

3 A Yes, I did.

4 Q Because you didn't believe her?

5 A It wasn't that. But, you know, like I said, we had
6 kind of a -- we wasn't married at the time. We had kind
7 of like an open relationship.

8 Q So you didn't believe her?

9 A Well, basically --

10 Q You thought she was lying?

11 A If I'm going to support a child, I want to know,
12 being a man, if it's mine.

13 Q Okay.

14 A That's just --

15 Q Okay. You described for the jury that you had access
16 to gymnasiums. And were there some other amenities
17 overseas where you were?

18 A Yes, ma'am. We had the best gymnasiums and stuff,
19 better than the states over there.

20 Q That's pretty good. Did you have any access to
21 televisions, or movie theaters, or anything like that?

22 A We had movie theaters.

23 Q Okay. Did they allow you have to have any alcohol
24 over there?

25 A Rule number one, no alcohol, no sex --

1 Q All right. When you first came upon officers --
2 well, let me ask you this. When you left the Idlewild
3 house, you knew Natasha was dead; correct?

4 A Correct.

5 Q You knew that Mr. Wilson was injured?

6 A I thought he was dead.

7 Q Well, you knew he tried to kill you; right?

8 A Yes, ma'am.

9 Q Don't you think he was trying to kill you?

10 A Most definitely.

11 Q You didn't even call for help. You didn't call 911,
12 did you?

13 A Ma'am, I stated to Mr. Jones that when I went over
14 to -- that the phone already had 911 lit up on the face.

15 Q So you thought somebody was already coming?

16 A Yes, ma'am.

17 Q But you had been almost -- somebody tried to kill
18 you. You didn't want to wait around and tell the cops
19 about that, did you?

20 A I mean, I got confused. I had an anxiety attack. I
21 flipped out.

22 Q When did you stop being confused and flipping out?

23 A Actually, I got myself together when my brother --
24 when I, finally, answered the phone and talked to him.

25 Q Okay. Did you talk to your brother before or after

1 the 26-mile chase, or during?

2 A Before the chase -- before the chase began --

3 Q Before?

4 A -- I was on the way back to the house. That's when
5 the chase started.

6 Q So you were together and clear headed then?

7 A Right.

8 Q But you still didn't stop for the police?

9 A Because I wanted to turn into my -- I've got a bunch
10 of patrol cars following me. I wanted to turn into my
11 drive -- because I'm a mile away from my house -- and pull
12 into my yard and get out.

13 Q Okay. So there's no question at all that you went
14 over to the Idlewild house on the -- in the early morning
15 hours of July the 10th, 2010. That was your Chrysler in
16 the driveway?

17 A Yes, ma'am.

18 Q So Jakyre did see your car there?

19 MR. JONES: Your Honor, I have a matter for the
20 Court.

21 THE COURT: That would be pitting for you to ask him
22 to comment on the veracity of another witnesses testimony.

23 MS. MUNSON: That's not at all what I intended.

24 BY MS. MUNSON:

25 Q So it was your car there?

1 A Yes, ma'am. I admitted that.

2 Q And you went to the window?

3 A No. I went to the front door first.

4 Q You went to the front door and tried to get in?

5 A Right. I tried to open up the screen so I could use
6 my key to enter the -- our dwelling.

7 Q Without having talked to Natasha first?

8 A I mean, I didn't see her car. I didn't think she
9 was -- as far as -- I didn't know she was there until I,
10 actually, come back up the hallway and seen something
11 lying on --

12 Q You tried to get into the house at almost 5:00 in the
13 morning without talking to her first?

14 A I mean, why would I talk to her? It was our house.

15 Q Did you or did you not try to get into the house at
16 about 5:00 in the morning without talking to her first?

17 A Can I answer your question?

18 THE COURT: Sir, you need to answer the question
19 "yes" or "no." And then you may explain your answer.

20 THE WITNESS: Thank you, Your Honor.

21 Yes.

22 BY MS. MUNSON:

23 Q And then you wanted to explain?

24 A Right. I mean, me and Natasha was husband and wife.
25 There was no legal separation, no restraining order, or

1 nothing. So that was my house, too. I had the right. I
2 paid bills there and was paying bills there at the time.
3 So I had a right to come and go as I please.

4 Q All right. Now, you did get served with a notice of
5 a court hearing; correct?

6 A Yes, ma'am.

7 Q And you were due in Greenville County Family Court on
8 July the 13th of 2010; correct?

9 A Yes, ma'am.

10 Q Because Natasha was seeking an order of protection
11 against you, was she not?

12 A Yes, ma'am.

13 Q And she wanted child support?

14 A Yes, ma'am. She was asking for child support.

15 Q That just really rubbed you the wrong way, didn't it?

16 A No.

17 Q It didn't bother you at all?

18 A I've been taking care of my -- Natasha and the kids
19 for almost three years while I was in Iraq. So it
20 wouldn't bother me at all to keep --

21 Q Natasha and the kids?

22 A Yeah, Jakyre and Jadance.

23 Q Okay.

24 THE WITNESS: May I finish answering the question,
25 Your Honor?

1 So it wouldn't bother me at all to keep paying child
2 support. It's my child. I don't have no [sic] problem
3 with that, period. I take care of my own.

4 MS. MUNSON: I beg the Court's indulgence.

5 (Pause.)

6 BY MS. MUNSON:

7 Q From where did -- first of all, do you know who this
8 guy was? Had you ever seen him before?

9 A I had never seen him before.

10 Q Have you ever seen him since?

11 A No, ma'am.

12 Q You didn't see him in the courtroom?

13 A Oh, yes. I seen him yesterday in the courtroom.

14 Q So who was it?

15 A By his testimony asking his name, he said he was
16 Anthony Wilson.

17 Q So Anthony Wilson is the guy that assaulted you?

18 A Yes, ma'am.

19 Q From where did he come?

20 A Actually, out of nowhere. But it appeared from
21 somewhere from the side of the house.

22 Q So if you're standing at the front door of the house,
23 try the door, did he come to your left or did he come -- I
24 shouldn't say "to." Did he come from your left, or did he
25 come from your right?

- 1 A Facing the house, it would be the left.
- 2 Q So he just appeared?
- 3 A He came from that way there, yeah.
- 4 Q Did you hear him saying any -- did you hear him doing
5 anything? No warning at all?
- 6 A No warning at all.
- 7 Q All right. When the first shot went off, you were
8 outside the house?
- 9 A Yes, ma'am.
- 10 Q Did you hear anything other than the gunshot?
- 11 A Kind of like -- it was so close. It was just a pow.
12 Because it rang my ears.
- 13 Q Okay. Did you hear Natasha tell you to get off her
14 porch before the gunshot?
- 15 A No, ma'am.
- 16 Q You did not hear Natasha tell you that?
- 17 A No, ma'am.
- 18 Q Okay. But you did see her move the curtains?
- 19 A I seen the curtain move.
- 20 Q That's all you saw?
- 21 A A movement of the curtain. And I went to look.
- 22 Q All right. When you looked, did you see anything on
23 the inside?
- 24 A No, ma'am. It was dark.
- 25 Q All right. Now --

1 A May I add to that?

2 Q That's up to the Court.

3 THE COURT: Yes, sir, you may.

4 THE WITNESS: That was quite unusual. Because,
5 usually, when you walk up on the porch, it's a
6 motion-detected light that will come on automatic.
7 Actually, if you pull into the driveway, a motion-detector
8 light will come on.

9 Also, out there by the drive, there's another light
10 that you can turn on from the house. And then right by
11 the door, there's two left lights on each side of the
12 door. Normally, somebody comes to the house knocking.
13 That would be the first thing we would do is turn the
14 lights on.

15 BY MS. MUNSON:

16 Q So you didn't see the light come on?

17 A No, ma'am.

18 Q You thought that was odd. During April of 2010, when
19 you told Mr. Jones that you were beginning to have
20 flashbacks -- and I mean no disrespect, I just need to go
21 into that a little bit.

22 A Okay.

23 Q Flashbacks of what?

24 A Events that took place over in Iraq.

25 Q That you were part of?

1 A Yes.

2 Q Were you, actually, in military service at the time?

3 A We lived at the same camp with the military. So any
4 time hostile fire came in, we're subject to the same
5 thing.

6 Q I'll bet. Did -- were you assigned like the military
7 equipment that they wear, like the helmets and flat
8 jackets?

9 A We wore the same thing, helmets and flat jackets.

10 Q You did?

11 A Yes, ma'am.

12 Q When you went out to check on equipment, were you
13 armed?

14 A Yeah. We have to wear our battle gear.

15 Q Okay.

16 A Not armed, by just -- and vest.

17 Q For protection?

18 A For security.

19 Q And was it in July of 2010 that you went to your
20 doctor for a physical because your CDL was running out?

21 A Yes, ma'am.

22 Q And how did you do on the physical?

23 A I had a little problem with my eyesight. And we
24 got -- it's a question that was asked about stress, so.

25 Q Are you okay?

1 A Yeah. I'm okay. There was a few questions you got
2 to ask, you know. And my -- as far as my doctor
3 determined, you know, she said -- actually, she
4 recommended me to see a psychiatrist.

5 Q Okay.

6 A She wouldn't finish my...

7 Q Oh, I thought you weren't finished. She wouldn't
8 finish your?

9 A She wouldn't sign all the way off of it. She wanted
10 me to get that and, also, get my eyes checked.

11 Q I understand. Now, the night you had your date with
12 Cynthia Booker, it's your testimony that you were supposed
13 to go and get your daughter the next morning?

14 A Yes, ma'am.

15 Q Okay. And you told Mr. Jones that you had some beer
16 in a cooler when you were with Ms. Booker?

17 A Yes, ma'am.

18 Q In the car?

19 A Yeah, in the trunk.

20 Q And you drank some, I mean, just going out drinking
21 some?

22 A Yeah.

23 Q How much did you have to drink?

24 A I would not drink over five beers, because I know I
25 would not pass a sobriety test. And me having a CDL, I

1 will not risk my CDL by being drunk.

2 Q Safety first. Those 22-inch rims you talked about
3 that are on your Chrysler, are they expensive?

4 A Yes, ma'am.

5 Q Are the cars expensive that you have?

6 A Yes, ma'am.

7 Q Now, you told Mr. Jones that you were not trying to
8 run from the -- you were not trying to hide anything from
9 law enforcement; is that correct?

10 MR. JONES: Actually, I asked the question, she
11 objected, and you sustained the objection, Your Honor.

12 THE COURT: It was on leading, but you rephrased it.
13 It wasn't on the subject matter of the question, but the
14 way it was phrased.

15 MR. JONES: Yes, Your Honor.

16 THE COURT: And I haven't heard the whole question.

17 BY MS. MUNSON:

18 Q Did you tell Mr. Jones on direct that when you went
19 back to Laurens and got into the Tahoe, you weren't trying
20 to hide from law enforcement, you weren't trying to do
21 anything wrong?

22 A That's correct.

23 Q Okay. Now, where did you put the Chrysler?

24 A I put the Chrysler in the garage. That's where I
25 usually keep it at.

1 Q And in order to put the Chrysler in the garage, did
2 you have to move something else?

3 A I already had a spot for it. I mean, I got
4 everything set where I can just pull right in.

5 (WHEREUPON, State's Exhibit Nos. 60 and 61 were marked
6 for identification only.)

7 BY MS. MUNSON:

8 Q Now, when you got back to your home and you parked
9 the Chrysler, to your knowledge, did anybody go to your
10 house and mess around with any of your stuff, move your
11 cars, or anything like that?

12 A Not to my knowledge did anybody move anything.

13 Q I really asked that badly. What I'm asking you is,
14 once you parked the Chrysler where you parked it, did it
15 move at all after you left?

16 A It did not.

17 Q Okay. Let me show you what's been marked as State's
18 Exhibit Nos. 60 and 61. Do you recognize this?

19 A Yes, ma'am.

20 Q Is this your Chrysler in State's Exhibit Nos. 60 and
21 61?

22 A Yes, ma'am.

23 Q And is that where you left it when you got in the
24 Tahoe and took off?

25 A Yes, ma'am.

1 MS. MUNSON: Your Honor, I move State's Exhibit Nos.
2 60 and 61 into evidence.

3 THE COURT: Please show them to counsel.

4 Any objection to the documents -- pictures, rather?

5 MR. JONES: Well, Judge, she's asked him about it --

6 THE COURT: No speaking objections.

7 MR. JONES: All right. May we approach the bench?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Overruled. Sufficient foundation was
11 laid for admissibility.

12 MS. MUNSON: Yes, ma'am, Your Honor.

13 (WHEREUPON, State's Exhibit Nos. 60 and 61 were
14 admitted into evidence.)

15 THE COURT: You may proceed.

16 BY MS. MUNSON:

17 Q Mr. Williams, this is State's Exhibit No. 61. You
18 just looked at it earlier; correct? Is that what we just
19 looked at up there, me and you?

20 A You asking me?

21 Q Yes, sir.

22 A Yes, ma'am.

23 Q I'm putting the laser pointer -- what is this right
24 here?

25 A That's my motorcycle.

1 Q And what is this right here?

2 A This is the Chrysler 300.

3 Q And that's where you parked it?

4 A Yes, ma'am.

5 Q And, now, State's Exhibit No. 60. And what is this
6 right here?

7 A That's the Chrysler 300.

8 Q And that's your Chrysler 300; correct?

9 A Yes, ma'am.

10 Q And that's where you parked it; correct?

11 A Yes, ma'am.

12 Q Okay. Why did you think that Mr. Williams [sic] was
13 dead -- I mean, Mr. Wilson? I'm sorry. The fellow that
14 attacked you, why did you think he was dead?

15 A Because when he was laying on the floor, there wasn't
16 no movement. So I assumed it.

17 Q Okay. And you didn't see Jakyre anywhere?

18 A No, ma'am.

19 Q You didn't hear him?

20 A No, ma'am.

21 Q Okay. Well, just a little bit more. I know you're
22 tired, Mr. Williams.

23 A That's okay.

24 Q The -- when was the last time you were in the
25 Idlewild house, do you remember, in relation to when

1 Natasha was killed?

2 A In relation to when she was killed?

3 Q Yeah. Was it a few days, a week, a month before she
4 was killed that you were last in that house?

5 A The last I was in that house was June -- the last
6 part of June.

7 Q Okay. Maybe the 28th?

8 A It could be. I'm not really sure of the date.

9 Q Okay. I'm showing you State's Exhibit No. 54,
10 Mr. Williams. Does this look familiar to you?

11 A I mean, the furniture does.

12 Q Okay. Is the furniture always that way, barricading
13 the front door?

14 A No, it's not.

15 Q Do you know how it got there?

16 A No, I do not.

17 Q Okay. So your testimony is that you went over to
18 Idlewild only to check on Natasha; correct?

19 A Are you talking about -- when?

20 Q On the night that she was killed.

21 A Not to check on Natasha. I went over there -- well,
22 actually, there wasn't no [sic] phone calls -- there
23 wasn't no [sic] phone calls. She didn't -- I called the
24 house phone. Nobody answered the house phone. Nobody
25 answered -- she never answered her cell phone. So I went

1 over.

2 Q Okay. Did you tell -- the .38 revolver that you were
3 talking about --

4 A I didn't finish answering the question.

5 Q I am so sorry. I'm sorry. I got distracted. Go
6 ahead.

7 A Actually, I went over to Natasha's house that night,
8 actually, to go over to keep from driving all the way back
9 to Gray Court and turning around the next day and come
10 back up the road. I was going -- if she was there, I was
11 going to, you know, knock on the door, ring the doorbell,
12 whatever. She would come to the door, then I was going to
13 stay.

14 Q Okay.

15 A But her car wasn't there. It was a vehicle I had
16 never seen before. So I did get out and went to the door
17 anyway and knocked.

18 Q Okay. So you didn't go to the front window with a
19 gun in your hand, that .38 that you got for a Father's Day
20 present. You didn't go to Natasha's window with that gun
21 in your hand?

22 A No, ma'am.

23 Q You did not shoot through the glass and shoot her in
24 the head?

25 A No, ma'am.

1 Q You didn't kick out the window and break into the
2 house?

3 A No, ma'am.

4 Q You didn't go down the hallway and shoot Mr. Wilson
5 in the head?

6 A I mean, we wrestled down the hallway. And during the
7 scuffle, the gun went off.

8 Q But you never had control of it?

9 A No, ma'am. I had control of his arms and wrists to
10 keep him from -- a self-defense hold.

11 MS. MUNSON: Thank you very much, Mr. Williams.

12 Nothing further, Your Honor.

13 THE COURT: Any redirect of the witness?

14 MR. JONES: I beg the Court's indulgence one moment,
15 Your Honor.

16 (Pause.)

17 REDIRECT EXAMINATION

18 BY MR. JONES:

19 Q You took your Chrysler and parked it in the garage.
20 Tell the jury what happened when you did that, and how
21 that took place.

22 A How it takes place is that night when I drove it, as
23 you see in the picture -- well, you seen the picture.
24 There's a riding lawn mower behind it. So I have to move
25 the riding lawn mower out of the way to back out. So the

1 riding mower stays out. But when I came back and parked
2 it, I just put the riding lawn mower back behind it and
3 closed the garage.

4 MR. JONES: Judge, I have no additional questions on
5 redirect.

6 THE COURT: Sir, you may step down.

7 Anything further from the Defense?

8 MR. JONES: Your Honor, one moment, please.

9 THE COURT: Okay.

10 (Pause.)

11 MR. JONES: Your Honor, the Defense rests.

12 THE COURT: Would counsel approach for me, please?

13 (WHEREUPON, a bench conference was held.)

14 THE COURT: Mr. Foreman, ladies and gentlemen, the
15 Defense has rested their case. There's some motions and
16 other matters I need to take up with the attorneys. It
17 will probably take us through 5:00. So we're going to
18 take advantage of this break in testimony to take our
19 evening recess. We have probably two additional witnesses
20 in the morning, after which we'll have closing arguments
21 and instruction.

22 During this break, it is absolutely essential that
23 you have no discussion about this case among yourselves or
24 with anyone else. I know it might seem simple to have a
25 conversation with someone about what you've heard. But to

1 do that is by its very nature deliberations. Because that
2 requires you to process what you've heard and to draw
3 conclusions based upon it. So, please, refrain from any
4 discussions regarding the case with anyone.

5 Please don't allow yourselves to be exposed to any
6 media coverage about this case. That includes any media
7 outlet, TV, newspaper, radio, or Internet. And, please,
8 don't do any independent research of any type on the
9 Internet.

10 We'll resume in the morning at 9:30. We're probably
11 going to have the clerk take lunch orders for you. We're
12 probably going to bring lunch in for you. I'm going to
13 sort of play that one by ear, and see how the day is
14 going. So if she comes in in the morning and asks for
15 that, be prepared to fill those forms out for her.

16 If you'll leave your note pads in your seats, we'll
17 secure them during the break. And, please, don't have any
18 contact with anyone in or about the courthouse when you
19 return in the morning.

20 Thank you all for your patience today. Have a
21 wonderful evening. If you'll go with the bailiffs for me,
22 please.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 4:38 p.m.)

25 THE COURT: Okay. The Defense has rested.

1 Are there any motions?

2 MR. JONES: Not at this time, Your Honor. The
3 Defense doesn't...

4 THE COURT: Is there anything else we need to take up
5 before we adjourn for the evening from the State?

6 MS. MUNSON: No, ma'am.

7 THE COURT: From the Defense?

8 MR. JONES: No, Your Honor.

9 THE COURT: Are there any requests to instruct? I
10 would need those before we adjourn. I can give you a
11 brief summary of what I'm going to instruct. I
12 inadvertently left some things in Charleston. So I'm
13 going to have to figure out how I'm going to print in my
14 current digs. But I can tell you preliminarily what the
15 instruction will be. And then you can tell me if there's
16 anything else you want to include that is not included.
17 But we're still going to have a charge conference.

18 I'll give the jury a general instruction regarding
19 their responsibility and my responsibility, how they are
20 to judge witness credibility and believability. I'll,
21 also, give them a general instruction on how they're to
22 judge expert witness testimony. I'll give a general
23 instruction on direct and circumstantial evidence from
24 State v. Grippon. I'll give a general instruction that
25 the charge, the arrest, and the indictment are not

1 evidence, as well as on the presumption of innocence.

2 I'll give a general instruction on reasonable doubt, which
3 is Victor v. Nebraska.

4 I'll then give the elements of murder, which I think
5 we all know what those are without me having to go through
6 them. I'll then instruct on the elements of possession of
7 a weapon during the commission of or attempt to commit a
8 violent crime, which is 16-23-490. I'll then instruct the
9 elements of attempted murder, which is indictment 3239.
10 And then the elements of unlawful conduct towards a child,
11 which is 20-7-0050.

12 Based on the Defendant's testimony, although I'm
13 going to think about it a little bit overnight, I'll
14 probably instruct self-defense. And then I'll give a
15 general instruction on multiple offenses, which is that
16 the State has to prove each element of each indictment
17 beyond a reasonable doubt uninfluenced by their decision
18 on the other indictments. And they'll have to apply the
19 law separately to each offense and write a separate
20 verdict for each offense. And then I'll go over the forms
21 of the verdict. I probably may instruct identification,
22 but I need to think about that a little bit as well.

23 Is there anything that the Court has not covered that
24 would be a request for instruction from the State?

25 MS. MUNSON: No, ma'am.

1 THE COURT: From the Defense?

2 MR. JONES: Yes, Your Honor.

3 We would like the Court to consider charging this
4 jury based on the evidence that the Defense presented the
5 lesser included offense of voluntary manslaughter if the
6 jury doesn't find that malice existed. And under our
7 current law, use of a firearm is not a presumption in and
8 of itself of malice being present. And without malice --

9 THE COURT: Well, it's not -- you don't instruct it
10 where you instruct self-defense, but you still instruct it
11 where there's no self-defense. Belton didn't say that.
12 Belton just said you don't instruct it where there's a
13 defense of self-defense. You don't instruct inferred
14 malice by the use of a weapon.

15 MR. JONES: Right.

16 THE COURT: But we still instruct it where it's just
17 plain murder.

18 MR. JONES: Yes, Your Honor.

19 And we're asking that you instruct voluntary
20 manslaughter. We're, also, asking the Court to consider,
21 based on Willie Williams' testimony, a charge of
22 involuntary manslaughter and accident.

23 MS. MUNSON: I would object to all that --

24 THE COURT: I don't think accident would be
25 applicable. Accident -- you haven't presented any

1 evidence that he was lawfully in possession of the weapon.
2 And, basically, accident -- and give me a moment. I'm not
3 certain whether involuntary manslaughter would be
4 applicable. I'm almost fixed in my opinion that voluntary
5 manslaughter would be absolutely factually inapplicable.

6 Accident, in order to meet those elements, a person
7 may be excused on the defense of accident if it is shown
8 that the act was unintentional, that the Defendant was
9 acting lawfully, and that reasonable care was used by the
10 Defendant in the handling of the weapon. The usual
11 example is if a person is lawfully armed in self-defense
12 and the gun accidentally discharges.

13 MR. JONES: Yes, Your Honor.

14 THE COURT: I'll have to think about that a little
15 bit. Because there are a lot of nuances to that, one of
16 which is -- and that's why I have to think about the whole
17 defense of accident.

18 Because I don't know what the rebuttal testimony is
19 going to show. I don't know if he was lawfully on the
20 property or not. His testimony so far is that they still
21 had a shared residence. But there's conflicting testimony
22 that they had been separated and they no longer shared a
23 residence, and that she was, in fact -- I thought she
24 already had an order of protection, but it appears she did
25 not yet have one, but one had been filed. The State has

1 not called -- I don't know what documents have been filed.
2 I don't know whether an order was filed. I don't know
3 whether it was just a petition. I have no idea.

4 And I don't know whether ex parte there was some --
5 sometimes, of course, my family court background, having
6 done that for five years, sometimes, there's an ex parte
7 order that was issued in advance of the hearing. And I
8 don't know whether that, actually, happened or not. And I
9 don't know if they plan to present that in rebuttal. I
10 have no clue. I don't know who their rebuttal witnesses
11 are.

12 So I don't know if he was lawfully on the property.
13 I don't know if he was trespassing or not. I have no idea
14 at this point. So I'm going to have to wait until all the
15 evidence is in to see whether that would be applicable or
16 not.

17 MR. JONES: Thank you, Your Honor.

18 THE COURT: So I'll take it under advisement.

19 MR. JONES: All right.

20 THE COURT: All right. Is there anything else we
21 need to do before we adjourn for the evening from the
22 State?

23 MS. MUNSON: No, Your Honor.

24 THE COURT: From the Defense?

25 MR. JONES: No, Your Honor.

1 THE COURT: All right. Guys, see you in the morning
2 at 9:30.

3 (WHEREUPON, the proceedings were concluded at
4 approximately 4:51 p.m., to be reconvened on
5 Thursday, May 16, 2013.)
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1 THURSDAY, MAY 16, 2013

2 (WHEREUPON, State's Exhibit No. 62 was marked for
3 identification only.)

4 THE COURT: Is the State ready to proceed?

5 MS. MUNSON: Yes, ma'am.

6 THE COURT: Is the Defense ready to proceed?

7 MR. JONES: Yes, Your Honor.

8 MR. WARDER: Yes, Your Honor.

9 THE COURT: Does the State have its rebuttal
10 witnesses ready?

11 MS. MUNSON: Yes, ma'am.

12 THE COURT: How many do you have?

13 MS. MUNSON: Two.

14 THE COURT: You can go ahead and bring in the jury.

15 MR. JONES: Your Honor, if I might. And it would be
16 a necessity to bring this up. But it's my understanding
17 that state law is that rebuttal witnesses can testify to a
18 new matter that was introduced from the stand --

19 THE COURT: They can address any matters that were
20 brought up in cross-examination, because they have the
21 burden of proof. Anything brought up in your case, they
22 can provide a rebuttal witness in response. Because
23 that's the purpose of rebuttal testimony is to rebut
24 whatever -- because they have the burden of proof.

25 MR. JONES: Yes. But for a witness who has already

1 testified?

2 THE COURT: I don't know. There may be something
3 else to rebut what your client said. I don't know. I'm
4 not to prematurely preclude them from calling a rebuttal
5 witness when I don't know what the scope of the testimony
6 is going to be.

7 MR. JONES: Yes.

8 MS. MUNSON: I don't intend to ask any testimony over
9 again, Your Honor. There's just a couple of issues.

10 THE COURT: I would think the Solicitor knows the
11 rules well enough to know the scope of rebuttal testimony.
12 I would hope so.

13 MR. JONES: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 Please bring in the jury.

16 (WHEREUPON, the jury came into open court at
17 approximately 9:45 a.m.)

18 THE COURT: Good morning, ladies and gentlemen.

19 I hope you all had a pleasant and restful evening.
20 We're now going to resume with trial testimony. I would
21 ask that you give the attorneys your attention.

22 You may proceed.

23 MS. MUNSON: May it please the Court, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. MUNSON: The State calls Anthony Wilson.

1 THE COURT: Mr. Wilson, if you would come forward to
2 be sworn.

3 THE CLERK: Place your left hand on the Bible and
4 raise your right hand.

5 WHEREUPON,

6 ANTHONY BERNARD WILSON,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 You may be seated.

10 DIRECT EXAMINATION

11 BY MS. MUNSON:

12 Q Mr. Wilson, once you, and Natasha, and Jadance went
13 to bed the night -- or the early morning of July 10th,
14 when was the next time you left that house?

15 A I didn't leave the house until the sheriffs got there
16 and the paramedics.

17 Q Was this before or after you had been shot in the head?

18 A This was after.

19 THE COURT: Sir, could you speak -- oh, you are
20 speaking directly in the mic. You just have a deep voice.

21 I'm sorry. You may continue.

22 MS. MUNSON: That's okay.

23 BY MS. MUNSON:

24 Q Now, where in Natasha's house did you encounter the
25 intruder?

1 A In Jakyre's room.

2 Q Where in the house, if at all, did you ever see that
3 person again?

4 A I never saw him again until now.

5 Q Until now?

6 A Yes.

7 MS. MUNSON: Your Honor, I think we have a matter of
8 law to take up.

9 THE COURT: Okay. Mr. Foreman, ladies and gentlemen,
10 I have a brief matter of law. During the break, please,
11 do not discuss the case. And, please, leave your note
12 pads in your seats.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 9:47 a.m.)

15 THE COURT: Yes, ma'am.

16 MS. MUNSON: What I would suggest that I do, Your
17 Honor, is -- I didn't know that Mr. Wilson was going to --
18 it sounds like he's going to be able to identify the
19 Defendant.

20 THE COURT: Okay.

21 MS. MUNSON: I didn't know that. He sort of went
22 there the other day. And I didn't ask him. He's,
23 clearly, gone there today.

24 THE COURT: Okay.

25 MS. MUNSON: So I suggest that I just go ahead and

1 ask him the questions. We didn't have a Biggers hearing.
2 And I would never have -- if I knew he was going to be
3 able to identify him, I would never have not asked for a
4 hearing on identity.

5 THE COURT: Well, actually, it's the Defense's
6 responsibility to request a Biggers hearing.

7 MS. MUNSON: I --

8 THE COURT: I don't think there's any contention --
9 the Defendant has admitted he was in the residence that
10 evening. So I don't think identity as the -- identity as
11 the person in the residence is really not an issue,
12 because he has conceded that. The issue is -- and he
13 really doesn't say he didn't shoot the gun. He says that
14 he has an affirmative defense, that being self-defense or
15 accident.

16 So I don't know that it really is an issue at this
17 point. I don't know that identity even really was an
18 issue, or they would have asked for a Biggers hearing
19 because of Jakyre's identification. But it's their
20 responsibility to request a Biggers hearing.

21 MS. MUNSON: I just wanted to be careful.

22 THE COURT: Okay. Go ahead and ask the questions you
23 were going to ask.

24

25

DIRECT EXAMINATION

BY MS. MUNSON:

Q You just said, Mr. Wilson, that you didn't see the intruder again until now?

A Correct.

Q What does that mean?

A It means since that night, I haven't seen him again until I came to court. That's what I mean.

Q And you recognize him now?

A Yes.

Q Were you ever asked to look at a lineup of him?

A No.

Q Were you ever shown any photographs of him?

A No.

Q Did you see his image anywhere before you came to court?

A The only thing -- I seen his image when I did my research online.

Q Okay. So what is your identification of him today based on?

A The identification is what I remember from what I saw.

Q Well, you testified -- well, how close were you to him when you saw him?

A Pretty close. I mean, the room wasn't so big. And,

1 like I said, he was standing in the doorway of her bedroom
2 long enough to look in barely before coming over to
3 Jakyre's room, and everything.

4 Q And was there any lighting in the area?

5 A Just in her room in the closet.

6 MS. MUNSON: I have nothing further on that issue,
7 Your Honor.

8 THE COURT: What else did you call this witness for?
9 I assume to contradict that there was a struggle?

10 MS. MUNSON: Yes, ma'am.

11 THE COURT: And to contradict that there was a
12 confrontation in the hallway --

13 MS. MUNSON: Yes, ma'am.

14 THE COURT: -- or however the Defense's version is --

15 MS. MUNSON: Yes, ma'am.

16 THE COURT: -- of how the events transpired?

17 MS. MUNSON: Yes, ma'am.

18 THE COURT: Is that the scope of his testimony?

19 MS. MUNSON: And that he didn't know anything about
20 the alarm system.

21 THE COURT: Okay.

22 MS. MUNSON: And that would be the scope of it.

23 THE COURT: Are we ready to proceed?

24 MS. MUNSON: The State is ready.

25 THE COURT: Is the Defense ready?

1 MR. JONES: Yes, Your Honor.

2 THE COURT: Please bring in the jury.

3 (WHEREUPON, the jury came into open court at
4 approximately 9:53 a.m.)

5 THE COURT: You may proceed.

6 MS. MUNSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. MUNSON:

10 Q Mr. Wilson, other than in Jakyre's room, where else
11 during the morning hours of July 10th did you struggle
12 with anybody?

13 A Nowhere.

14 Q Okay. What injuries did you sustain, other than the
15 gunshot wound to your head?

16 A Injuries I sustained?

17 Q Yes.

18 A That's all I recall sustaining, besides they said
19 minor lacerations. And that was it.

20 Q Minor lacerations where?

21 A From powder burns from the gun.

22 Q What about scrapes, or cuts, or things like that?

23 A No.

24 Q Okay. Do you know whether or not Natasha had an
25 alarm system in the house?

1 A No.

2 MS. MUNSON: I have nothing further at this time,
3 Your Honor.

4 MR. WARDER: Your Honor, if it please the Court, I
5 have no questions of this witness.

6 THE COURT: Okay. Any objection to the witness being
7 excused?

8 MS. MUNSON: No, ma'am.

9 THE COURT: Sir, you're excused.

10 You may proceed.

11 MS. MUNSON: The State calls Christie Ellenberg.

12 THE CLERK: Ms. Ellenberg, if you'd come forward to
13 be sworn in.

14 Would you, please, place your left hand on the Bible
15 and raise your right.

16 WHEREUPON,

17 CHRISTIE ELLENBERG,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 Would you, please, state your name for the record.

22 THE WITNESS: Christie Ellenberg.

23 DIRECT EXAMINATION

24 BY MS. MUNSON:

25 Q Ms. Ellenberg, who were you working for back in 2008?

1 A DJ's Jewelry and Pawn.

2 Q And what were your duties?

3 A We buy and sell different goods, jewelry, tools,
4 guns, all types of different items.

5 THE COURT: Ma'am, could you speak directly into the
6 microphone? You're a little soft-spoken.

7 THE WITNESS: Yes. I'm sorry.

8 BY MS. MUNSON:

9 Q What procedures would you go through when you sold a
10 gun?

11 A Well, we would have to get a valid ID, a valid South
12 Carolina driver's license or identification card. And
13 then they fill out a form answering different types of
14 questions. And then we call it in to do the background
15 check. And they give us a receive, delay, or deny.

16 MS. MUNSON: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MS. MUNSON:

19 Q Ms. Ellenberg, I'm showing you State's Exhibit
20 No. 62. If you could just take a look at that.

21 A (Witness complied.)

22 Q Do you recognize that?

23 A Yes, ma'am.

24 Q Is there any writing on there that you recognize in
25 particular?

- 1 A My signature.
- 2 Q And how did State's Exhibit No. 62 get here today?
- 3 A I'm sorry. I don't understand.
- 4 Q How -- who brought --
- 5 A How did this get here?
- 6 Q Yes, ma'am.
- 7 A I'm sorry. I brought it.
- 8 Q From where did you get it?
- 9 A From DJ's Jewelry and Pawn.
- 10 Q And is this an accurate document?
- 11 A Yes, ma'am. It's -- a 4473 is what they call it.
- 12 Q Now, Ms. Ellenberg, why do you fill out this
- 13 particular form when you're selling a gun?
- 14 A Well, you have to go through a background check in
- 15 order to purchase a firearm in the State of South
- 16 Carolina.
- 17 Q Well, this -- you call it a form?
- 18 A 4473, yes, ma'am.
- 19 Q Is that just a policy of the store to use this form?
- 20 A No. That is a requirement from ATF.
- 21 MS. MUNSON: Okay. Thank you.
- 22 Your Honor, at this time, I move State's Exhibit
- 23 No. 62 into evidence.
- 24 MR. WARDER: No objection, Your Honor.
- 25 THE COURT: Marked and admitted without objection.

1 (WHEREUPON, State's Exhibit No. 62 was admitted into
2 evidence.)

3 MS. MUNSON: I have no further questions, Your Honor.

4 THE COURT: Any questions for the witness?

5 MR. WARDER: Yes, Your Honor.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. WARDER:

9 Q From the paperwork that is here, can you tell whether
10 she traded in her other gun on that purchase?

11 A Not from the paperwork, no, sir.

12 Q Okay. Did you deal with her personally?

13 A Yes.

14 Q Okay. And did she trade in her other gun?

15 A I'm not sure. That's been so many years ago. But
16 when we sell a gun, we have to sign the paperwork. So I
17 knew I dealt with her personally.

18 MR. WARDER: Thank you.

19 THE COURT: Any redirect of the witness?

20 MS. MUNSON: No, ma'am.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MS. MUNSON: No, ma'am.

24 THE COURT: From the Defense?

25 MR. WARDER: No, Your Honor.

1 THE COURT: Ma'am, you're excused.

2 The State may proceed.

3 MS. MUNSON: That is the end of the State's case in
4 reply, Your Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen, both
6 the State and the Defense have rested their cases. I have
7 some matters of law I need to take up with the attorneys.
8 It will probably be close to 15 or 20 minutes. After
9 that, we will resume with closing arguments and
10 instruction.

11 During this break, it is absolutely essential that
12 you have no discussion about what you've heard regarding
13 testimony and the evidence that has been presented. If
14 you need to stretch your legs during this process, please,
15 let the bailiffs know. And I'll allow them to let you get
16 some air. Because probably the next part of the process
17 is going to be a couple of hours by the time we do
18 argument and instruction. So if you need to go to the
19 restroom, stretch your legs, let the bailiffs know. We
20 appreciate your patience.

21 If you'll go with the bailiffs.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:00 a.m.)

24 MOTIONS

25 THE COURT: Is the State going to open and close --

1 well, actually, now that the State has rested, are there
2 any motions?

3 MR. JONES: Your Honor, we would like to for the
4 record renew our motions to direct a verdict on the charge
5 of attempted murder. We would, also, like to renew our
6 motion for directed verdict on the charge of unlawful
7 neglect of a child, and renew our motion for directed
8 verdict on the charge of murder and unlawful possession of
9 a weapon during the commission of a violent crime.

10 THE COURT: You never made a motion for murder and
11 possession of a firearm during the commission of a violent
12 crime.

13 MR. JONES: Yes, Your Honor. We would like to do
14 that. Yes, Your Honor.

15 THE COURT: Would the State like to respond?

16 MS. MUNSON: No, ma'am, Your Honor.

17 THE COURT: The motions are denied based on the
18 Court's previous ruling as there is direct and substantial
19 circumstantial evidence reasonably tending to prove the
20 Defendant's guilt of both charges, that being attempted
21 murder and unlawful neglect of a child.

22 If you all will just give me one moment, we'll have a
23 charge conference.

24 Now, I do need to know, does the State plan to open
25 and close?

1 MS. MUNSON: All in one shot -- I mean --

2 THE COURT: Do you plan to open and close?

3 MS. MUNSON: Open on the law?

4 THE COURT: Uh-huh.

5 MS. MUNSON: I would like to, yes.

6 THE COURT: How long will your argument be?

7 MS. MUNSON: The opening on the law will be less than
8 10 minutes.

9 THE COURT: I just need you to give me an overall
10 general -- I'm trying to gauge whether I need to order
11 lunch for my jury. I'm not trying to pin you down. I
12 need to know realistically how long it's going to take.

13 MS. MUNSON: Open on the law, less than 10 minutes.
14 My closing, perhaps, 20.

15 THE COURT: How long will the Defense's closing
16 argument be?

17 MR. WARDER: Your Honor, we'll probably have a
18 closing argument for about 15 minutes.

19 THE COURT: Thank you.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Is the State ready to proceed?

22 MS. MUNSON: Yes, Your Honor.

23 THE COURT: Is the Defense ready to proceed?

24 MR. WARDER: Yes, Your Honor.

25 THE COURT: Did your co-counsel go to the restroom?

1 MR. WARDER: The Defense is not ready to proceed.

2 THE COURT: Okay. We'll be at ease for a minute or
3 two.

4 (Pause.)

5 THE COURT: I will give the jury a general
6 instruction regarding their responsibility and my
7 responsibility, how they're to judge witness credibility
8 and believability. There will be a general instruction on
9 witness credibility and believability, as well as expert
10 witness testimony. I'll give a general instruction on
11 direct and circumstantial evidence and how they're to
12 judge that. I'll give a general instruction that the
13 charge, the arrest, and the indictment are not evidence,
14 as well as the presumption of innocence. I'll charge
15 Victor v. Nebraska on reasonable doubt.

16 And then I'll instruct on the elements of murder,
17 which I think we all know what those are without me
18 belaboring the point. Since there has been the defense of
19 self-defense raised, I will not instruct the inference of
20 a deadly weapon pursuant to State v. Belcher. I will
21 instruct expressed and inferred malice. Out of an
22 abundance of caution, although there is really scant
23 evidence on voluntary manslaughter, I'm going to instruct
24 that as a lesser included defense. I'm not instructing,
25 however, involuntary manslaughter as the record is void of

1 any evidence supporting that instruction.

2 I'll instruct on the elements of possession of a
3 weapon during the commission of a violent crime, which is
4 16-23-490, and attempted murder, which is 16-3-29. Again,
5 I will not use the inferred malice instruction dealing
6 with a deadly weapon. But I will instruct expressed and
7 inferred malice, as well as the rest of the elements of
8 that instruction.

9 I'll instruct unlawful conduct toward a child, which
10 is 20-7-50. The only portion of the statute that is
11 applicable would be Subsection 1, which is placing the
12 child at unreasonable risk of harm, affecting the child's
13 life, mental health, or safety. There's no evidence that
14 bodily harm was done to the child, or that there was a
15 willful abandonment of the child.

16 I'll instruct self-defense, which we all know the
17 elements without fault. I'll instruct on mutual combat
18 since that is the Defendant's testimony, as well as
19 imminent danger, the right to act on appearances and no
20 other way to avoid the danger.

21 Although I really do not believe there's any evidence
22 of accident, but since the Defendant testified the gun
23 went off accidentally, I'll instruct on accident. I will
24 then give them a general instruction that where there are
25 multiple offenses or multiple charges that -- and I'll

1 outline each of those from each indictment that each
2 indictment is a separate and distinct offense for which
3 they're separately indicted. And they must make a
4 decision on each of those indictments uninfluenced by
5 their decision on every other indictment applying the
6 elements of each offense and determining whether the State
7 has met the burden of proof beyond a reasonable doubt on
8 each of those offenses.

9 I'll then instruct on the form of the verdict. And
10 if you all would like to approach to review the verdict
11 forms, I will do that in just a moment.

12 Are there any exceptions to the instruction as
13 proposed from the State?

14 MS. MUNSON: Yes, Your Honor. If the jury accepts
15 what the Defendant said on the stand, he didn't take any
16 intentional action at all.

17 THE COURT: I'm sorry. You lost me.

18 MS. MUNSON: He didn't take any intentional action at
19 all. He was attacked, and everything was Wilson's fault.

20 THE COURT: I agree.

21 MS. MUNSON: So I'm not sure how he could have an
22 accident when he never said he shot the gun. He did not
23 take any action to harm.

24 THE COURT: Well, based on the interaction or the
25 role play he had with his attorney, he said the gun went

1 off accidentally, didn't he, or did I miss something?

2 MS. MUNSON: But that wasn't him doing it.

3 MR. JONES: Your Honor --

4 THE COURT: Maybe I misunderstood his testimony.

5 MS. MUNSON: I'm just putting stuff on the record.

6 That's okay. I know how you're going to rule. There's
7 absolutely no evidence in this record from which this jury
8 could find that this Defendant acted in sudden heat and
9 passion after sufficient legal provocation. I, certainly,
10 object to that.

11 THE COURT: I'll note your exception for the record.

12 MS. MUNSON: Everything else --

13 THE COURT: Anything from the Defense?

14 MR. JONES: Your Honor, just a question to gain
15 knowledge. No exception to your decision about your
16 charges. But does your charge on murder and manslaughter
17 include a distinction that would include premeditation,
18 and would you --

19 THE COURT: There is nothing in our law that has an
20 instruction on premeditation and murder. What you
21 presented to the Court is a lynching. And it's dicta.
22 And it deals with a motion for directed verdict in a case.
23 And it's totally inapplicable factually to this case. But
24 I'll have your request marked as a Court's Exhibit.

25 MR. JONES: Thank you, Your Honor.

1 THE COURT: But I'm not going to instruct it. It's
2 not factually applicable to this case. And our law does
3 not have any -- what we require as malice aforethought,
4 which can be shown by acts of preparation. But there's no
5 requirement in South Carolina law that murder require
6 premeditation.

7 Now, there's some dicta in the case you presented
8 that deals with a lynching charge that deals with
9 something that had to do with factually what was presented
10 in that case. And, therefore, the Court addressed
11 premeditation. But it is not factually applicable to this
12 case, nor can I discern any case law that would support
13 such an instruction.

14 MR. JONES: Yes, Your Honor.

15 And the reason I presented it today was yesterday, we
16 had some conversation about premeditation. And I wasn't
17 sure --

18 THE COURT: I don't know what -- I don't recall that
19 conversation.

20 MR. JONES: -- whether or not Your Honor's charge on
21 murder included any language concerning premeditation.

22 THE COURT: My charge on murder includes what the
23 case law says in South Carolina about what the elements of
24 murder are, which is malice aforethought, which can be
25 expressed or inferred.

1 Because our case law does not require that there be
2 any time frame of malice. It could happen a split second
3 before you do it. But it doesn't have to be that you
4 waited 10 days and decided you were going to kill
5 somebody. Our case law says you could wait three minutes
6 before, 10 seconds before. It doesn't have to be a
7 specific time period you decide that that malice be
8 manifest.

9 So I think that what you've given me, basically, is
10 a -- it would be very confusing to a jury to instruct
11 that, coupled with the fact that it's just not supported
12 by case law. And the case that you provided to the Court
13 is not within the context of a murder instruction.

14 MR. JONES: It is not, Your Honor.

15 But my reason for doing so was that if our courts in
16 South Carolina have decided that the specific intent
17 necessary to do injury or to hurt, or harm, or kill
18 someone in a lynching case requires premeditation, then,
19 surely, logic would dictate that murder --

20 THE COURT: I have never tried to read the Supreme
21 Court's mind. And I have found that they are articulate
22 when they want us to do something, and they tell us. And
23 if they wanted us to instruct premeditation, I think we
24 would have known that by now. And they have not told us
25 that. So I'm going to stick to what they've said is the

1 applicable law on murder.

2 Now, if they had given us -- I don't try to
3 extrapolate. I don't try to read their minds. I think
4 they're pretty articular about what they mean, and what
5 they want us to do. I don't know if the law may change.
6 I don't know. We never expected that the law would change
7 with Belcher regarding expressed and inferred -- the
8 inferred intent with a weapon. I don't know. And I don't
9 want to pretend that I could anticipate what may happen,
10 or what changes may happen.

11 But I have to make a decision based on what the law
12 is right now. And there's absolutely no support for an
13 instruction of that type. I can't extrapolate that from a
14 lynching instruction, especially factually where the case
15 is not in the same posture as this case is. And it's
16 really not even a holding. It's just a discussion that
17 deals with whether or not a directed verdict should have
18 been granted based on the facts in that case.

19 So I can't find any factual support to give that
20 instruction. But I'll mark your instruction as a Court's
21 Exhibit, and note your exception for the record.

22 MR. JONES: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 Do you all want to approach and look at the verdict
25 form?

1 (Pause.)

2 (WHEREUPON, Court's Exhibit No. 2 was marked for
3 identification and admitted into evidence.)

4 THE COURT: Are there any exceptions to the form of
5 the verdict from the State?

6 MS. MUNSON: No, ma'am.

7 THE COURT: Forms of the verdict. I don't know. I
8 guess it's form of the verdict, yeah.

9 From the Defense?

10 MR. JONES: No, Your Honor.

11 THE COURT: All right. Are we ready to proceed with
12 closing arguments and instruction from the State, or do
13 you need more time to collect yourselves?

14 MS. MUNSON: We're ready, Your Honor.

15 THE COURT: Is the Defense ready to proceed?

16 MR. WARDER: Yes, Your Honor.

17 THE COURT: Please bring in the jury.

18 (WHEREUPON, the jury came into open court at
19 approximately 10:45 a.m.)

20 THE COURT: Ladies and gentlemen, both the State and
21 the Defense have rested their cases. We have now reached
22 the stage of the trial where you will hear closing
23 arguments, and the Court's instructions on the law. You
24 will hear from the State followed by the Defense. And you
25 will then hear again from the State before hearing the

1 Court's instructions.

2 The State has the right under our rules procedurally
3 to what we call open and close. They get the last word,
4 so to speak, because they have the burden of proof in this
5 case. I would ask that you give the attorneys your
6 undivided attention. We have ordered your lunch. And we
7 anticipate it will arrive around noon.

8 Madam Solicitor, you may proceed when you're ready.

9 MS. MUNSON: May it please the Court, Your Honor.

10 THE COURT: Yes, ma'am.

11 CLOSING ARGUMENTS

12 MS. MUNSON: You might have some idea in your head
13 right now what you think murder is, or what you think
14 manslaughter is, or possession of a weapon during a
15 violent crime, or attempted murder. I'm going to ask you
16 to just dump that from your mind. Because the only
17 definitions of those things that matter in this case and
18 in this courtroom is what Judge Jefferson is going to tell
19 you when she addresses you.

20 One thing that the Defense and the State both agree
21 on is y'all, so we know that you're going to do that. We
22 know if you have -- or if you disagree with the law of
23 murder or manslaughter, we know you're going to take the
24 Judge's instruction and do it that way. She's going to
25 give you a lot of instructions. And I'm, certainly, not

1 going to try to go over it. I might get it wrong. And if
2 I do get it wrong, the Judge is the only one that matters.

3 There's just a couple of things I do want to bring to
4 your attention before we go any further. The Judge is
5 going to charge you on the law of circumstantial evidence.
6 Did you ever hear those cop shows where people are saying,
7 oh, that case is no good, it's purely circumstantial?
8 Well, that's probably how it is in the cop shows. That's
9 not how it is in this courtroom. And that's not how it's
10 going to be in your jury room. Judge Jefferson is going
11 to tell you that circumstantial evidence is just as good
12 as direct evidence, if you find the facts true.

13 One analogy that you may have heard about
14 circumstantial evidence is it's a chain. Each little
15 piece of evidence is a link in the chain. And altogether
16 that chain is the circumstantial evidence. Well, I would
17 submit to you that the problem with that analogy is this.
18 If one link in a chain breaks, you lose the whole thing.

19 I would respectfully say to you that the better way
20 to look at circumstantial evidence is like a rope. Each
21 piece of evidence, each fact that you find to be true is
22 like a string. And each one of the strings bind together
23 to make a rope. The question is, is that rope strong
24 enough to bear the burden of proof beyond a reasonable
25 doubt? And I submit to you that you will be firmly

1 convinced that it does.

2 The Judge will, also, talk to you about credibility,
3 believability. And this is something that is common
4 sense. When you're talking to somebody, you can kind of
5 figure out whether or not to believe them, not just from
6 what they say, but how they act and the circumstances
7 under which they tell you what they're telling you.

8 The Judge is, also, going to tell you something
9 interesting, that you can believe all of what a witness
10 tells you and disregard the rest. You can believe some of
11 what a witness tells you and disregard the rest. And the
12 reason I think that's important is because -- I mean,
13 let's think about Jakyre. He, certainly, had the sequence
14 of events wrong. So you may disregard the fact that
15 Jakyre said Wilson was shot first and then mom. But
16 there's things that support the rest of his testimony. So
17 I would, certainly, ask you to keep those things in mind
18 as well.

19 Thank you.

20 THE COURT: The Defense may proceed.

21 MR. WARDER: Good morning, ladies and gentlemen.

22 I want to start off by talking about the 800-pound
23 elephant in the room -- or the 800-pound elephant in the
24 case. And that's that my client left the scene, that he
25 ran, that he didn't stay there. And that brings us to

1 deal with, does that mean that he's guilty?

2 And I want to talk to you, first of all, about flight
3 in general. Flight is, generally, what you've always
4 heard, the fight or flight response. And that applies to
5 most everything. Flight from law enforcement is not that
6 uncommon. One only has to have seen or been around a prom
7 party when the police show up and there's alcohol there.
8 You can nearly get stampeded in the way of people leaving.
9 And not all of them possessed alcohol. But everybody is a
10 little unsure at just how the law would perceive them as
11 being there, and just what the ramifications of being at a
12 party with alcohol are. And they know it's better off not
13 to be there or, at least, talk to their parents before
14 they talk to the police.

15 Well, it doesn't just happen at prom parties with
16 alcohol. It happened at Chappaquiddick with Ted Kennedy.
17 It happens to smart people. He was a Harvard-educated
18 man. People get scared, and they act irrationally. And
19 it isn't always the best thing.

20 But people seek friends, lawyers. Many times, people
21 want to get money for a lawyer, talk to a lawyer, talk to
22 a family member, get advice from a family member. And
23 that comes from the fear. And it comes from a fear that
24 may not be completely reality based. It comes from a fear
25 that people perceive the legal system in a way it's not,

1 perceive it operates in a way it doesn't, have an
2 unreasonable fear of it, or they see the legal system as
3 irrational in giving results that are not right or not
4 fair. And, oftentimes, before they come into police
5 custody, they want to talk to a lawyer. They want to talk
6 to a family member. And that's what happened in this
7 case.

8 In this case, the testimony is that he wanted to talk
9 to his brother, Burley, a man that counseled him in
10 religious matters, a man that had given him advice. And
11 that was where he had always sought advice.

12 And so I don't think that flight in this case is the
13 only issue. But I think it's a big issue that you've got
14 to deal with. Because people will say, well, he ran, he's
15 guilty. And I submit to you, that's not the law. That's
16 not the way you should consider it. You should look at
17 the whole context of him not remaining there.

18 And, in doing that, you've got to understand what the
19 context was. The context was that he had been there. He
20 had been in a fight, and two people had got shot. Was it
21 logical that he needed to talk to somebody, that he needed
22 advice, that he needed, at least, a family member, and
23 probably much more than that, a lawyer? And this is where
24 my client was. And this is the decision he made.

25 Now, running and leaving the scene is much like many

1 other things, political cover-ups, and things. Usually,
2 things get worse because you don't stay put and fess up.
3 But he left out of concern. Would he be believed? Would
4 he be taken into custody? Would he be mistreated? All
5 the fears that occur when somebody realizes that something
6 terrible has happened and they're involved in it.

7 Now, outside of that, then we need to look at the
8 case. We need to look at, what has the evidence really
9 shown? And I confess to you, my case rests primarily on
10 the testimony of my client. It rests on what happened and
11 what he told you about it. Because the State wants to
12 take the same facts and paint a different version.

13 My case rests on my client's credibility. I think
14 the most important issue in this case is the issue of
15 whether or not there was a struggle at that house for that
16 gun. And I submit to you that how you find that issue
17 will be determinant of what you decide in the whole case.

18 Now, the only people at the house were the one that
19 is dead, one was Mr. Wilson, and the two children. Only
20 one of the children could come in here and testify, I take
21 it, because of age, memory, or what they saw.

22 And we have one son come -- or one child come in.
23 And I submit to you to testify -- and, certainly, I have
24 great sympathy, and I think everybody does for a child
25 that had a parent killed. But look at the evidence he

1 gave. And I agree, I think even the State is telling you
2 that it's just wrong. It just doesn't add up. And it
3 just isn't possible that that could have happened. It --
4 that guy wasn't a bodyguard. He wasn't standing in the
5 hall. He wasn't the first person that came in contact
6 with my client.

7 And my client didn't stand in the living room in
8 front of the young child and shoot his mother, I think he
9 said between four and nine times, or whatever. That just
10 wasn't happening. It doesn't take away the feelings of
11 trauma for the child that a terrible thing happened. But
12 it didn't happen that way.

13 And so the real testimony comes between my client and
14 Anthony Wilson. What happened? And that's what you're
15 really going to have to decide. And you have to use
16 memory. You saw my client. You saw my client testify.
17 You have to judge his credibility. You have to judge his
18 believability. You have to decide whether he's telling
19 you the truth. That's what the case is about.

20 Now, you can't decide this case by saying it couldn't
21 happen, that just couldn't happen. You've got to analyze
22 whether considering all the circumstances and events that
23 have been told and brought into evidence if it's
24 reasonable, and it's possible, even though it's unusual.
25 The unusual is not the impossible. And that's what this

1 is about.

2 An unusual event happened to my client. And it
3 happened. And it resulted in one person getting shot
4 fatally, and one person getting shot. And it was a fight.
5 It was a fight both in and out of the house. Two people
6 fell through a window. And the evidence is there on
7 State's Exhibit No. 10. You can see that it is pushed out
8 on the fence. It shows the window that they went through.

9 Now, my client said he was in a fight. And the
10 police said there were no marks on him. He told you he
11 went down a hall, struggled in the hallway, rubbed on the
12 side of the hall on both of his elbows -- it might have
13 been the same elbow twice. I'm not sure. There were
14 marks where they rubbed down the hallway, where he was in
15 a fight. There was hair pulled out of his head. That
16 hair is apparent in one of the photographs, State's
17 Exhibit No. 28, laying on the floor. This is a case that
18 the worst possible result happened for my client. But it
19 doesn't make him guilty of murder.

20 And I ask you to consider the hour of the night.
21 Consider the size of the gentleman he fought with and he
22 struggled with. Consider the training he had. He said
23 that he used military training he had to help him gain, at
24 least, partial control of that guy -- that gun. And that
25 gun went off while both of them were struggling.

1 I submit to you, this is not a case of murder. This
2 is a case of a terrible accident that resulted out of a
3 fight. And it was a fight that started outside when he
4 was attacked and continued into the house until Anthony
5 Wilson was shot. And, in that struggle, his wife was
6 fatally shot.

7 Now, I'm not going to recite all the testimony.
8 You've all taken notes. You've all listened very
9 carefully. The most important thing in this case will be
10 the Judge's charge on the law. That will come to you in a
11 few minutes, or after the State finishes its closing
12 argument. And she will tell you all the law that applies
13 to this set of facts. And you remember in the beginning,
14 we started off by saying you would be the judges of the
15 facts. That your job throughout the trial has been to
16 listen and to remember. Some of you took notes that will
17 help you remember things that were important, things that
18 stood out, things that were said.

19 In a few minutes, you'll have a chance to apply those
20 things to the law and be able to reach a legal decision --
21 or a legal verdict. And when you do that, there will be
22 12 mini-verdicts. If they're all alike, your job is done.

23 If they're not all alike, you'll deliberate, discuss,
24 think about things, and use the collective memory of each
25 of you. And in those discussions, part of your memories

1 will be refreshed. And you'll remember things that you
2 hadn't took as important, or things you hadn't remembered.
3 And you'll consider them as to whether they should make
4 you change your opinion, or your belief. And together at
5 some time during those deliberations, you'll all come to
6 one total agreement that will be your joint verdict -- or
7 the jury's verdict.

8 And in that process, of course, you should always
9 listen to your fellow jurors and deliberate. But you
10 should never give up a position that is a well-founded
11 belief. You should never violate your conscience just to
12 be a majority.

13 In other words, you should do what's right and what
14 you believe the evidence shows. And you should listen and
15 see if that changes. But we never reach jury verdicts by
16 going along with the majority because you no longer want
17 to state your view, or you're tired, or you're hungry, or
18 you've got something else to do. So I ask you to
19 carefully consider all of the evidence.

20 Now, Her Honor will tell you not only does your jury
21 verdict have to be unanimous, but that it has to be beyond
22 a reasonable doubt. And she will define that word for
23 you, a reasonable doubt. And I submit to you that every
24 element of every crime will have to be proven beyond a
25 reasonable doubt. And that's a reasonable doubt that

1 would extinguish any real possibility of any other facts
2 but the way you find them.

3 So it would be so powerful that any other
4 possibility -- any other real possibility would not exist.
5 And not only that, but it would make you firmly convinced,
6 not wavering, but firmly convinced that there's no real
7 possibility. It's been defined at other times by our
8 Supreme Court as the type of doubt that might make one
9 hesitate to act. And that's how convinced you have to be,
10 you know.

11 There's a variety of standards in the law for a
12 policeman to stop and talk to you, or question you on the
13 street called articulable suspicion, a suspicion you could
14 articulate for why he did it, for him to do anything else,
15 for him to search you. It might be probable cause. To
16 sue you in court and take your money, you might need
17 preponderance of the evidence. To sue you for fraud where
18 you would get punitive damages and a verdict for not just
19 damages you suffered, but for something else where you
20 could prove some sinister intent, you would need clear and
21 convincing evidence. And to convict a citizen of a crime,
22 you need proof beyond a probable cause, the highest
23 requirement of proof in the law, the most important and
24 positive which requires jurors to be, and that's this
25 case.

1 So I ask you to consider whether or not on each and
2 every element that proof exists. I ask you in this case
3 to return the right verdict. In this case, I submit that
4 that verdict is the verdict of not guilty. Because it's
5 the right, and fair, and the correct verdict, and the
6 verdict shown by the evidence.

7 You know, in the American system, we return a verdict
8 of guilty or not guilty. In the English system from where
9 our law comes from, they did it a little different. They
10 find a case to be proven or unproven. A proven case is
11 simply one where the State carried the burden beyond a
12 reasonable doubt on every single element. In an unproven
13 case, the State failed to prove each and every element of
14 the case.

15 I submit to you that just those words, proven and
16 unproven, make it easier to analyze what your job is.
17 You're to weigh and measure the evidence. And you're to
18 decide on each element. Is there enough evidence here
19 that this is proven beyond a reasonable doubt? And I
20 submit to you, when you do that, you have to consider all
21 the evidence.

22 You should consider the evidence for and the evidence
23 against each proposition that there's controversial
24 evidence on. And you'll see that each element that Her
25 Honor will give you is proven beyond a reasonable doubt.

1 A proven case, of course, is a case where you return a
2 verdict of guilty. A non-proven case is the verdict of
3 not guilty. And not guilty, I submit to you, is the
4 correct verdict in this case.

5 I thank you very much. You paid attention to all the
6 testimony. You came here and gave up your time. And I
7 ask you to be patient with more of your time and to
8 deliberate and reach a just verdict.

9 Thank you very much.

10 THE COURT: You may proceed.

11 MS. MUNSON: May it please the Court, Your Honor.

12 THE COURT: Yes, ma'am.

13 MS. MUNSON: That's my story and I'm sticking to it.
14 Have you ever heard that phrase? That's what the
15 Defendant is doing. And the most powerful piece of
16 evidence we have of that is this. We talked about this
17 gun. This gun, State's Exhibit No. 58, that Natasha Kerns
18 armed herself with when she went to the window because she
19 was afraid of him. We asked him, Are you sure that's the
20 gun that you had -- that she had when you met her in 2004?

21 Yes.

22 Would it surprise you to know that she bought it in
23 2008?

24 That's the gun she had when we met.

25 I even asked him after seeing the document and seeing

1 the gun, Now, Mr. Williams, do you want to change your
2 testimony?

3 No.

4 That's his story and he's sticking to it. He went
5 over -- he tells us that he went over to Natasha's house
6 just to check on the kids, and maybe he would spend the
7 night there. He had no evil intent. He had no wickedness
8 in his heart, just going to check on the kids. He was
9 already mad. He was mad because he couldn't get Natasha
10 on the phone. He was mad because his potential new
11 girlfriend was out there flirting with some other guys,
12 and he had a little bit to drink.

13 To top all of that off, she had the nerve to go to
14 Family Court and ask for an order of protection from him.
15 Admittedly, he told you his actions put her in fear. She
16 had the nerve to go to Family Court and ask for an order
17 of protection, and then ask for child support. But he
18 only went over there with calm, tender, lovingness in his
19 heart. He had no evil intent, but he pulls over and
20 changes clothes. He keeps a change of clothes in his car.
21 In the heat of summer, he changes into a leather jacket
22 and jeans. He had no bad intentions when he went over
23 there at all.

24 Everything started with Wilson outside the house.
25 That's his story and he's sticking to it. The alarm

1 didn't go off, no other doors were open. There was no --
2 when officers got there minutes, minutes after Natasha
3 Kerns lay dead, the only open door, the only entrance, the
4 only access into that house was that window. But he --
5 Wilson must have somehow snuck out of the house and come
6 around the front. I don't know. That's his story and
7 he's sticking to it.

8 These two big old guys had a struggle outside and
9 together busted through this little window. The window
10 just fell out. And there is no -- you'll see State's
11 Exhibit No. 30. You saw the size of him, and you saw the
12 size of Mr. Wilson. But this couch didn't move. It's
13 right where it was. But these are big old guys busting
14 around in the house, a hell of a struggle. Mr. Williams
15 is banging up and down the hallway. They go through the
16 beads, nothing here is disturbed. They start banging
17 around each other, struggling, struggling going down the
18 hall.

19 Why is this thing not disturbed in State's Exhibit
20 No. 32? Why is the only furniture that's disturbed a
21 lamp? And they're going down the hallway. And he's
22 banging his elbows. Funny how the pictures didn't come
23 off the wall. And isn't that amazing that they can fight
24 from the window through the one room, through the room
25 where Natasha lay dead, all the way down the hall into the

1 kids room. The only thing that's disturbed is where that
2 window was knocked out.

3 And what's even more interesting is how come you
4 don't hear it on the 911 tape? These are two big guys.
5 And you saw the demonstration. Two big, strong guys are
6 fighting, struggling, scrapping. You don't hear a thing.
7 You hear Natasha tell him to get off the porch. You hear
8 him shoot. You hear her drop dead. You hear him kick the
9 window in. You hear him shoot at Mr. Wilson. But you
10 don't hear this big argument that goes on, a physical
11 confrontation with these two guys.

12 And he doesn't call 911. And he doesn't look around
13 for his kid. He left the house with, in his version, an
14 armed gunman in the house. He didn't even look around for
15 his kid. He just took off. His story is he loved those
16 kids. He loved them both. He spent all his money on
17 them. Well, you have these photographs. You know who he
18 spent his money on. That motorcycle, the Chrysler, the
19 Mustang, and the rims. And then he's going to be asked to
20 pay child support.

21 And if you'll remember, early in his testimony, when
22 we were talking about -- when he was talking about Natasha
23 got pregnant in 2007, what did he say? I wanted a
24 paternity test to see if it was mine. I wasn't going to
25 support it if it wasn't mine. But he loves her. He had

1 done no wrong at all. That's his story. He had done no
2 wrong at all at that house on Idlewild.

3 Yet, he tore out of there. He starts talking on the
4 phone to friends and family. He tells one of his friends,
5 Mr. Irby, something that Mr. Irby refuses to tell the
6 police because he doesn't want to get his friend,
7 Mr. Williams, in trouble. But he had done nothing wrong.

8 We have to examine Jakyre's testimony. And I submit
9 to you, like I said before, he, certainly, got the
10 sequence of events wrong. He did. But did he get the
11 substance wrong? When he told you that he saw this
12 Defendant standing over his mother, did he get that wrong?
13 The Defendant told you he was standing over her. Did he
14 get it wrong when he said that the Defendant ran out of
15 bullets? Believing the Defendant's testimony, it was a
16 five-shot revolver. All five shots are on that tape. Did
17 he get it wrong when he told you that he saw the Defendant
18 there in his Chrysler 300? Nope. He didn't get that
19 wrong either, did he? Did he get it wrong when he said
20 that he saw Mr. Wilson lying unconscious? He didn't get
21 that wrong either.

22 Ladies and gentlemen, a reasonable conclusion that
23 you can draw from the facts is this case. Number one,
24 this was not the worst possible outcome for him. He
25 didn't get shot in the head. He's not dead. His mother

1 didn't die in the living room in the same house that he
2 was in. So no, no, no, he didn't get the worst possible
3 outcome.

4 A reasonable conclusion you can draw from the facts
5 is that sometime around May of 2010, things reached the
6 height of badness in their relationship. He started doing
7 things that scared her. He started doing things with a
8 gun that scared her.

9 Sometime in June, he was over at the Idlewild house
10 for the last time. He was over there picking up some
11 things. A reasonable conclusion you can draw is that he,
12 also, picked up that five-shot revolver that was a
13 Father's Day present. And he leaves.

14 Natasha is scared now. She barricades the front
15 door, makes sure the alarm system is on. Then she has her
16 friend come down, Mr. Wilson, the bodyguard. That's kind
17 of amusing that Jakyre would call that man the bodyguard.
18 I mean, we all know he wasn't her bodyguard. Have you
19 ever seen the movie The Bodyguard? Do you think Whitney
20 Houston told her little kids she was having an affair with
21 Kevin Costner?

22 In late June, after the Defendant had been over there
23 picking up the gun, Natasha tries to get an order of
24 protection. She's doing the best she can.

25 The Defendant goes out with Cynthia Booker the night

1 of July 9th. Natasha is with Mr. Wilson with the kids out
2 doing things. Natasha, Mr. Wilson, and the kids go home
3 to Idlewild. They settle in for the night. The Defendant
4 is out with Ms. Booker, getting a little irritated because
5 she's not behaving like a lady is, I believe, what he
6 said. The kids are settled down. And the Defendant is
7 roaming around. Child support, an order of protection.

8 And, remember, Her Honor is going to charge you on
9 the law of voluntary manslaughter. She's going to tell
10 you that if you are satisfied that there was sufficient
11 legal provocation that Natasha did something so bad that
12 he just lost his mind for a minute that you can reduce it
13 from murder to voluntary manslaughter. You have to
14 examine what did Natasha do wrong. They had an open
15 relationship. He's out on a date with another woman. He
16 admits she was afraid of him. So what did Natasha do
17 wrong?

18 They settle in for the night. The Defendant is
19 upset, starts to call Natasha. How dare her not answer
20 the phone. So he goes over there.

21 Now, he knows that the only way to get into that
22 house without setting off the alarm is through that front
23 door. The storm door is locked. First, what he did is he
24 goes around the back of the house. And I submit to you
25 that it's reasonable, that you can conclude from the facts

1 that you have that he was trying to look in the window to
2 see what Natasha was up to. That's why the dogs were
3 barking out back. That's why Mr. Wilson heard a ruckus.
4 That's why Mr. Wilson said, Natasha, I hear something.
5 She jumps up, grabs the gun, takes off, and calls 911.
6 Mr. Wilson grabs the baby, takes her into Jakyre's room,
7 and is laying her down.

8 By this time the Defendant has come back around the
9 front of the house. Natasha moves the curtains.
10 Actually, she probably moved them this way. She peeps out
11 the window. He saw that. And while her eyes are open, he
12 shot her in the head. He shot her in the face through the
13 glass. We know that her eyes were open because Dr. Ward
14 told you she had marks even on her eyeballs. And then she
15 drops. She's dead. You hear it on the tape. But before
16 he shoots her in the head, she tells him, Get off my
17 porch. Mr. Wilson told you that he heard Natasha say
18 something. You'll hear it on the tape.

19 That's not enough for him. He's got a problem now.
20 He's got a problem. So he's got to get in the house. He
21 can't go in through the front door. He can't set off the
22 alarm. Oh, yeah, that's right, we put that stick in the
23 sliding glass door. There's no way for me to get into
24 this house.

25 He kicks out the window. We hear it on the tape.

1 And then he comes in through the house. And he goes
2 through the room that he broke into. And he goes into the
3 room where Natasha is dead. He's creeping down the hall,
4 not making a lot of noise. He didn't run in that house
5 going, oh, my God, where are my babies? Is everybody
6 okay? He crept. He snuck.

7 There was just enough light in Natasha's closet for
8 Mr. Wilson to turn and see him coming at him with a gun.
9 Mr. Wilson didn't even hardly have a chance, pow, pow,
10 pow, pow, four more shots. One of them hits Mr. Wilson in
11 the head. And then what does he do? He goes back out.
12 He takes a peek at Natasha. And then, oh, no, here comes
13 Jakyre from around the couch. Oh, no. There's another
14 witness. And he took a shot at Jakyre. But he ran out of
15 bullets. Remember Jakyre telling you the sound that it
16 made? It clicked, or whatever he said. Y'all's memory
17 matters more than mine.

18 And then he left and he went back to Laurens. I
19 guess he had to move the lawn mower. I'm not sure if he
20 had to move the lawn mower before he put the Chrysler in.
21 But, in any event, he puts the Chrysler in the garage,
22 moves the lawn mower back behind the Chrysler. And then
23 he goes back to see what kind of damage he had done.
24 That's when he really knew that he had a problem. That's
25 when he knew that he was caught.

1 So he tears off. He goes back to Laurens. He's
2 talking to people on the phone, okay, I'm going to turn
3 myself in. Did he? Who did he tell? Who did he tell,
4 oh, my God, I'm so sorry? I didn't mean for this to
5 happen. Who did he tell? Nobody.

6 If you believe what he's saying, he didn't do
7 anything. He was just creeping up to the house at almost
8 5:00 in the morning just to see if he could spend the
9 night. Why not tell the police if some guy jumps on you?
10 You're going to run and endanger other people in a 26-mile
11 chase, high speeds, stop sticks. And then what does he
12 do? This man who did nothing wrong, who was attacked,
13 brutalized, what did he do? He stabbed himself in the
14 chest. There you go. He's got the worst possible
15 outcome.

16 He's guilty. It's not because I say it. It's
17 because the evidence says it, and because Natasha says it.

18 (WHEREUPON, State's Exhibit No. 1 was played in open
19 court.)

20 MS. MUNSON: There are a few things we can know in
21 this life with absolute certainty. And while the State's
22 burden is heavy, it is not required that we prove it to an
23 absolute certainty. If, after looking at all the facts
24 and circumstances, you are firmly convinced of the
25 Defendant's guilt, then you must find him guilty.

1 It's been said that the presumption of innocence that
2 is with the Defendant is like a robe of righteousness that
3 is about his shoulders. And it stays with him the whole
4 time, even to the jury room. And that's good. That's how
5 we do things in South Carolina, and in America. His robe
6 of righteousness, he's innocent right now.

7 But when y'all go back there and start examining that
8 evidence, each piece of that evidence is just like a
9 little razor. It's cutting away the threads of that robe
10 of righteousness. And after careful deliberation and
11 without hesitation, you will remove that robe from him.
12 And you'll come back in here and tell him that he's
13 guilty. On behalf of the people of Greenville County,
14 please, find him guilty.

15 THE COURT: Mr. Foreman, ladies and gentlemen, does
16 anybody need to use the restroom before we begin
17 instructions? Is everybody comfortable?

18 (WHEREUPON, there was no response.)

19 THE COURT: Does anybody want to stand up and
20 stretch? Because this is a lot to be sitting.

21 (WHEREUPON, there was no response.)

22 CHARGE ON THE LAW

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

1 of this case. I, also, have the duty to rule upon or pass
2 upon the admission of the evidence offered during this
3 trial.

4 You are to consider only the competent evidence
5 before you in this case. You are to consider only the
6 testimony which has been presented from the witness stand
7 together with any exhibits which have been made a part of
8 the record in this case, and any stipulations of counsel
9 made into the record. And just so that you all are aware,
10 a stipulation is an agreement between the parties. And it
11 requires no further proof.

12 I have the additional duty to charge or instruct you
13 on the law applicable to this case. As the presiding
14 judge, I'm the sole judge of the law of this case. And
15 it's your duty as jurors to accept and apply the law as I
16 now state it to you. If you have a preconceived idea as
17 to what the law is or what the law ought to be in a
18 case -- or in this case and it should not agree with what
19 I now tell you the law is, you are obligated under the
20 oath you've taken to abandon this preconception. Because
21 you are sworn to accept the law and apply the law
22 precisely as I now state it to you.

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

1 This Court is the judge of the law.

2 The Constitution of our state has declared that a
3 trial judge shall not intimate, state, comment upon, or
4 make any statement to a trial jury about the facts in a
5 case. Since you, the jury, are the sole judges of the
6 facts in this case, you are not to infer anything from
7 what I have said during the progress of this trial and
8 ruling upon the admissibility of evidence, or otherwise
9 anything that I say now to you during the course of this
10 instruction that I have any opinion about the facts. The
11 law does not allow me to have an opinion about the facts.
12 This is a matter solely for you, the jury, to determine.

13 As jurors then, it is your duty, as I have instructed
14 you, to determine the effect, the value, the weight, and
15 the truth of the evidence presented during this trial.
16 Necessarily, you must assess the credibility of the
17 witnesses who have testified in this case. Credibility
18 is, simply, a legalistic term meaning the believability of
19 each witness who has testified. It becomes your duty as
20 jurors to analyze and to evaluate the evidence and
21 determine if that evidence convinces you of its truth.

22 Some of the things that you may consider as you
23 decide whether or not to believe a witness's testimony
24 about a particular matter include, what was the manner and
25 appearance of the witness who testified? Was he or she

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

10 I further instruct you that in determining the
11 question of the credibility or believability of witnesses
12 who have testified, you may believe one witness as against
13 several witnesses, or several witnesses as against one
14 witness. You may believe a part of the testimony of a
15 witness and reject the remaining part of the testimony of
16 that same witness.

17 If you have a good and sound reason, you may believe
18 the testimony of a witness in its entirety, or reject the
19 testimony of a witness in its entirety. And, as I've
20 instructed, you may consider whether any witness has
21 exhibited to you any interest, any bias, any prejudice, or
22 other motive in the case. You can believe as much or as
23 little of each witness's testimony as you think proper.

24 Of course, you do not determine the truth merely by
25 counting witnesses. Throughout this process, ladies and

1 gentlemen, you have but one objective, to seek the truth
2 regardless of its source. You may consider the demeanor
3 of a witness, that is the appearance and manner of the
4 witness from the witness stand.

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

14 You should consider any expert opinion received in
15 this case like any other evidence, give it the weight you
16 think it deserves. If you decide that the opinion of an
17 expert witness is not based on sufficient education and
18 experience, or if you conclude that the reasons given in
19 support of the opinion are not sound, or that the opinion
20 is outweighed by other evidence, you may disregard the
21 opinion entirely.

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

1 contradicted.

2 Ladies and gentlemen, there are two types of evidence
3 which are, generally, presented during a trial, direct
4 evidence and circumstantial evidence. Direct evidence is
5 the testimony of a witness who asserts or claims to have
6 actual knowledge of a fact, such as an eyewitness.
7 Circumstantial evidence is proof of a chain of facts and
8 circumstances indicating the existence of a fact. The law
9 makes absolutely no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence. Nor is a greater degree of certainty required
12 of circumstantial evidence than of direct evidence.

13 You should weigh all of the evidence in this case.
14 After weighing all the evidence, if you are not convinced
15 of the guilt of the Defendant beyond a reasonable doubt,
16 you must find the Defendant not guilty. Conversely, if
17 you are convinced of the guilt of the Defendant beyond a
18 reasonable doubt, then you must find him guilty.

19 I instruct you, ladies and gentlemen, that the fact
20 that the Defendant was arrested, charged, and indicted is
21 not evidence in this case and cannot be considered by you
22 as evidence of guilt in this case. Nor does it create any
23 presumption or inference of guilt.

24 This documentation is simply the formal written
25 instruments which contain the charge or charges made

1 against a defendant. They serve as the formal
2 documentation by which the case is processed or brought
3 into this court.

4 The Defendant has pled not guilty to the indictments.
5 And that plea casts the burden on the State to prove the
6 Defendant guilty. Because a person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself innocent. I instruct you,
9 ladies and gentlemen, that it is a cardinal and important
10 rule of the law of evidence that a defendant in a criminal
11 trial, no matter what the seriousness of the charge or
12 charges against him may be, will always be presumed to be
13 innocent of the crimes for which he is indicted, unless
14 his guilt has been proven by evidence satisfying you of
15 that guilt beyond a reasonable doubt. This presumption of
16 innocence does not cease when you retire to deliberate,
17 but it accompanies the Defendant from the time of his
18 appearance throughout the trial until you reach a verdict
19 in this case.

20 Our Supreme Court has said the presumption of
21 innocence is like a robe of righteousness placed about the
22 shoulders of the Defendant. And it remains with him and
23 assigns him to that class, the innocent, until that
24 presumptive robe of righteousness has been stripped from
25 his person by evidence satisfying you of that guilt beyond

1 a reasonable doubt.

2 Mr. Foreman, and, ladies and gentlemen, the
3 presumption of innocence is not mere legal theory. It is
4 not just a legal phrase. It is a substantial right to
5 which every defendant is entitled, unless you, the jury,
6 are satisfied from the evidence of his guilt beyond a
7 reasonable doubt.

8 The State has the burden of proving the Defendant
9 guilty beyond a reasonable doubt. Some of you may have
10 served as jurors in civil cases where you were told that
11 it is only necessary to prove that a fact is more likely
12 true than not true, such as by the greater weight or
13 preponderance of the evidence. In criminal case cases,
14 the State's proof must be more powerful than that. It
15 must be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the Defendant's guilt. There are
18 very few things in this world that we know with absolute
19 certainty. And, in criminal cases, the law does not
20 require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence, you are
22 firmly convinced that the Defendant is guilty of the crime
23 charged, you must find the Defendant guilty. If, on the
24 other hand, you think there is a real possibility that the
25 Defendant is not guilty, you must give the Defendant the

1 benefit of that doubt and find him not guilty.

2 The Defendant is charged with murder. The State must
3 prove beyond a reasonable doubt that the Defendant killed
4 another person with malice aforethought. Malice is
5 hatred, ill will, or hostility towards another person. It
6 is the intentional doing of a wrongful act without just
7 cause or excuse, and with an intent to inflict an injury,
8 or under the circumstances the law will infer an evil
9 intent.

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

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

22 Expressed malice is shown when a person speaks words
23 which express hatred or ill will for another, or when the
24 person prepared beforehand to do the act which was later
25 accomplished. For example, lying in wait for a person or

1 any other acts of preparation going to show that the deed
2 was within the Defendant's mind would be expressed malice.
3 Malice may be inferred from conduct showing a total
4 disregard for human life.

5 If you find, ladies and gentlemen, that the State has
6 failed to prove beyond a reasonable doubt that the
7 Defendant committed murder, you may consider whether the
8 State has proven beyond a reasonable doubt that the
9 Defendant committed voluntary manslaughter.

10 To prove voluntary manslaughter, the State must prove
11 beyond a reasonable doubt that the Defendant took the life
12 of another in the sudden heat of passion based on
13 sufficient legal provocation. Both heat of passion and
14 sufficient legal provocation must be present at the time
15 of the killing to constitute voluntary manslaughter.
16 Sudden heat of passion may for a time effect a person's
17 self-control and temporarily disturb a person's reason.

18 The sudden heat of passion must be the type that
19 would make an ordinary person unable to coolly reflect on
20 his actions and would produce an uncontrollable impulse to
21 do violence. Sufficient legal provocation must be the
22 type that would make a person of ordinary reason and
23 caution become enraged and to lose control temporarily.

24 The provocation needed for voluntary manslaughter
25 must come from some act of or related to the victim.

1 Words alone, however vulgar or insulting, are not enough
2 to be legal provocation. Where death is caused by the use
3 of a deadly weapon, the words must be accompanied by some
4 overt act, threatening act, which could have produced the
5 heat of passion. The exercise of a legal right, no matter
6 how offensive it is to another is never sufficient legal
7 provocation for voluntary manslaughter. If the heat of
8 passion had cooled or there was enough time between the
9 provocation, if any, and the killing for the passion of a
10 reasonable person to cool, the killing would not be
11 voluntary manslaughter.

12 In deciding whether a reasonable person would have
13 had enough time to cool off, you should consider all the
14 circumstances surrounding the killing. You may consider
15 the nature of the provocation, if any, the Defendant's
16 mental and physical state, and the circumstances and
17 relationships between the parties.

18 The Defendant is charged with possession of a weapon
19 during the commission of or attempt to commit a violent
20 crime. The State must prove beyond a reasonable doubt
21 that the Defendant was in possession of a firearm or
22 visibly displayed what appeared to be a firearm during the
23 commission of a violent crime.

24 A firearm means any machine gun, automatic rifle,
25 revolver, pistol, or any weapon which will or is designed

1 to or may be readily converted to expel a projectile. I
2 instruct you, ladies and gentlemen, that in order to find
3 the Defendant guilty of possession of a weapon during the
4 commission of a violent crime, you must, first, find the
5 Defendant guilty of either committing a violent crime or
6 attempting to commit a violent crime.

7 I instruct you that murder and voluntary manslaughter
8 as specified by Code Section 16-1-60 and are defined as
9 violent crimes.

10 Bear me just one moment, ladies and gentlemen.

11 (Pause.)

12 THE COURT: The Defendant is charged with attempted
13 murder. In order to prove this crime, the State must
14 prove the Defendant attempted to kill another person with
15 malice aforethought, either expressed or implied.

16 Malice, as I've instructed, is hatred, ill will, or
17 hostility towards another person. It is the intentional
18 doing of a wrongful act without just cause or excuse and
19 with an intent to inflict an injury, or under
20 circumstances the law will infer an evil intent. Malice
21 aforethought does not require that malice exist for any
22 particular time before the act is committed. But malice
23 must exist in the mind of the Defendant just before and at
24 the time the act is committed.

25 Therefore, there must be a combination of the

1 previous evil intent and the act. As I've instructed,
2 malice aforethought may be expressed or inferred. These
3 terms expressed and inferred do not mean different kinds
4 of malice, but merely the manner in which malice may be
5 shown to exist. That is either by direct evidence or by
6 inference from the facts and circumstances which are
7 proven.

8 Expressed malice is shown when a person speaks words
9 which express hatred and ill will for another, or when the
10 person prepared beforehand to do the act which was later
11 accomplished. Using my earlier example, lying in wait for
12 a person or any other acts of preparation going to show
13 that the deed was in the Defendant's mind would be
14 expressed malice. Malice may, also, be inferred from
15 conduct showing a total disregard for human life.

16 I instruct you that a specific intent to kill is not
17 an element of attempted murder. But there must be a
18 general intent to commit serious bodily injury. Intent
19 means intending the result which, actually, occurs, not
20 accidentally or involuntarily. Intent must be shown --
21 intent may be shown by acts and conduct of the Defendant
22 and other circumstances from which you may naturally and
23 reasonably infer intent.

24 Evidence of the character of the act, the character
25 of the instrument used, the manner in which it was used,

1 the purpose to be accomplished, and the resulting words or
2 injuries may be considered in determining the intent with
3 which the act was committed. Intent may, also, be
4 inferred when it is demonstrated that the Defendant
5 voluntarily and willfully commits an act the natural
6 tendency of which is to destroy another life.

7 The Defendant is charged with unlawful conduct
8 towards a child. The State must, first, prove beyond a
9 reasonable doubt that the Defendant had charge or custody
10 of the child, was the parent or guardian of the child, or
11 was responsible for the care and support of the child.

12 A person responsible for a child's welfare includes
13 the child's parent, guardian, or foster parent, an
14 operator, employee or caregiver of a public or private
15 residential home, institution, agency, or child day care
16 center facility, or an adult who has assumed the role or
17 responsibility of a parent or guardian of a child, but
18 does not necessarily have legal custody of the child.
19 This does not include a person whose only role is as a
20 caregiver and whose contact is only incidental with the
21 child, such as a baby-sitter.

22 The State must, also, prove beyond a reasonable doubt
23 that the Defendant placed the child at unreasonable risk
24 of harm affecting the child's life, physical or mental
25 health or safety. A child means a person under the age of

1 18.

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

14 The following elements are required to establish
15 self-defense. First, the Defendant must be without fault
16 in bringing on the difficulty. If the Defendant's conduct
17 was the type which was reasonably calculated to and did
18 provoke a deadly assault, the Defendant would be at fault
19 in bringing on the difficulty and would not be entitled to
20 an acquittal based on self-defense.

21 Self-defense is not available to a person who uses
22 language which is so contemptuous that a reasonable person
23 would expect it to bring on a physical encounter and which
24 did, actually, contribute to the physical encounter. If
25 the Defendant voluntarily participated in mutual combat

1 for purposes other than protection, the killing of the
2 victim would not be self-defense. This is true if even
3 during the combat the Defendant feared death or serious
4 bodily injury. However, if before the killing is
5 committed, the Defendant withdraws and tried in good faith
6 to avoid further conflict and either by word or act makes
7 the fact known to the victim, he would be without fault in
8 bringing on the difficulty.

9 For mutual combat, there must be a mutual intent and
10 willingness to fight. This intent may be shown by the
11 acts and conduct of the parties and the circumstances
12 surrounding the combat. In addition, it must be shown
13 that both parties were armed with a deadly weapon.

14 The second element of self-defense is that the
15 Defendant was, actually, in imminent danger of death or
16 serious bodily injury, or that the Defendant, actually,
17 believed he was in imminent danger of death or serious
18 bodily injury. If the Defendant was, actually, in
19 imminent danger, it must be shown that the circumstances
20 would have warranted a person of ordinary firmness and
21 courage to strike the fatal blow to prevent death or
22 serious bodily injury. If the Defendant believed he was
23 in imminent danger of death or serious bodily injury, it
24 must be shown that a reasonably prudent person of ordinary
25 firmness and courage would have had the same belief.

1 In deciding whether the Defendant was or believed he
2 was in imminent danger of death or serious bodily injury,
3 you should consider all the facts and circumstances
4 surrounding the crime, including the physical condition
5 and characteristics of the Defendant and the victim. The
6 Defendant does not have to show that he was, actually, in
7 danger. It is enough if the Defendant believed he was in
8 imminent danger and a reasonably prudent person of
9 ordinary firmness and courage would have had the same
10 belief.

11 The Defendant has the right to act on appearances,
12 even though the Defendant's beliefs may have been
13 mistaken. It is for you, the jury, to decide whether the
14 Defendant's fear of immediate danger of death or serious
15 bodily injury was reasonable and would have been felt by
16 an ordinary person in the same situation.

17 Once the right to act in self-defense arises, a
18 defendant is not required to act -- to wait until his
19 adversary is on equal terms or until he has fired or armed
20 his weapon in order to act. Similarly, the Defendant does
21 not have to wait until his assailant gets the drop on him.
22 He has the right to act under the law of self-preservation
23 and prevent his assailant from getting the drop on him.
24 You may consider the relative sizes, ages, and weights of
25 the Defendant and the victim in deciding the apparent or

1 actual need for force in self-defense and the amount of
2 force needed.

3 The final element of self-defense is that the
4 Defendant had no other probable way to avoid the danger of
5 death or serious bodily injury than to act as the
6 Defendant did in this particular instance. The Defendant
7 has no duty to retreat if by doing so the danger of being
8 killed or suffering serious bodily injury would increase.
9 A person cannot be required to make an exact calculation
10 as to the degree or amount of force which may be needed to
11 avoid death or serious bodily harm.

12 Therefore, in self-defense, the Defendant has the
13 right to use the force needed to avoid death or serious
14 bodily harm. The force used in self-defense does not have
15 to be limited to the degree or amount of force used by the
16 victim. The Defendant has the right to use so much force
17 as appeared to be necessary for complete self-protection,
18 and which a person of ordinary reason and firmness would
19 have believed to be needed to prevent death or serious
20 bodily harm.

21 The Defendant has, also, raised the defense of
22 accident. An act may be excluded on the ground of
23 accident if it was shown that the act was unintentional,
24 that the Defendant was acting lawfully and that reasonable
25 care was used by the Defendant in the handling of the

1 weapon. For example, if a person is lawfully armed in
2 self-defense and the gun accidentally discharges, the
3 defense of accident would apply.

4 The burden is on the State to prove beyond a
5 reasonable doubt that the act was not an accident, but was
6 caused by the negligence or carelessness on the part of
7 the Defendant in the handling of a dangerous
8 instrumentality.

9 Ladies and gentlemen, there are several indictments
10 in this case, each of which indict the Defendant with a
11 different offense -- criminal offense. Those charges are
12 as follows: Indictment 2013-GS-23-3240 -- and, actually,
13 I went in opposite order. I apologize. 3238, murder and
14 possession of a firearm during the commission of a violent
15 crime, counts one and two respectively. 3239, attempted
16 murder. And 3240, unlawful conduct towards a child.

17 Each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on
19 the evidence and the law applicable to it uninfluenced by
20 your decision as to any of the other indictments. The
21 Defendant may be convicted or acquitted on any or all of
22 the offenses charged.

23 You will be asked to write a separate verdict of
24 guilty or not guilty for each indictment. In this
25 instance, there are two counts on one indictment. So

1 you'll be asked to write a separate verdict on count one
2 and two, and then a separate verdict on the other two
3 indictments. You don't have to try to write that down,
4 because all of this will go into the jury room with you.

5 Ladies and gentlemen, there are several potential
6 verdicts on each indictment. There's no significance
7 whatsoever to the order in which I state these potential
8 verdicts. It is simply that one must be stated first.
9 And, again, you don't have to try to write this down,
10 because each of the verdict forms and the indictments will
11 go into the jury room with you.

12 And those options are as follows: As to indictment
13 2013-3238, count one, we, the jury, by unanimous consent
14 find the Defendant guilty of murder, or as to the lesser
15 included offense, guilty of voluntary manslaughter, or not
16 guilty. As to count two, we, the jury, by unanimous
17 consent find the Defendant guilty of possession of a
18 firearm during the commission of a violent crime, or not
19 guilty. And as to indictment 3239, we, the jury, by
20 unanimous consent find the Defendant guilty of attempted
21 murder, or not guilty. And as to indictment 3240, we, the
22 jury, by unanimous consent find the Defendant guilty of
23 unlawful conduct towards a child, or not guilty. Again,
24 there's absolutely no significance whatsoever to the order
25 in which I state these potential verdicts. It is simply

1 one must be stated first.

2 Ladies and gentlemen, your verdict must be a
3 unanimous one, which means that all 12 of you must agree
4 in order to reach a verdict.

5 Mr. Foreman, it is your responsibility to fill out
6 the verdict forms, and to sign and date the forms. It is,
7 also, your responsibility to knock on the door and advise
8 the bailiffs once the jury has reached a verdict. It is,
9 also, your responsibility to write out any questions the
10 jury may have during deliberations and to follow the same
11 procedure, knock on the door and advise the bailiffs that
12 the jury has a question once you have written it out.

13 Ladies and gentlemen, I will tell you that if you
14 have any questions during deliberations, there will be a
15 delay in us responding to any of your questions. And
16 that's because we have to follow procedure in answering
17 any questions you may have. So if you have a question,
18 just know that there will be a delay because we're
19 following that procedure.

20 Again, I instruct you that your verdict must be
21 unanimous, which means all 12 of you must agree in order
22 to reach a verdict.

23 Ladies and gentlemen, I'm going to ask that you
24 return to your jury room. But do not yet begin your
25 deliberations. I have some matters of law that I need to

1 take up with the attorneys that may require further
2 instruction or clarification of an instruction.

3 However, if there's no further instruction, we will
4 send in the verdict forms, as well as the evidence. And,
5 at that time, we will dismiss the alternate. And you will
6 be advised that you can begin your deliberations. If you
7 would leave your note pads in your seats and go with the
8 bailiffs. And, again, do not yet begin your
9 deliberations.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 12:01 a.m.)

12 THE COURT: Are there any exceptions to the
13 instructions from the State?

14 MS. MUNSON: Nothing that wasn't already stated, Your
15 Honor.

16 THE COURT: Okay. Anything further from the Defense
17 that was not already stated?

18 MR. JONES: No, Your Honor.

19 THE COURT: Okay. If you all could make sure all the
20 evidence is in place for me before we send it back to the
21 jury room. I know you all may have used some in your
22 argument.

23 (Pause.)

24 (WHEREUPON, Juror #43, Matthew Cottrell, entered the
25 courtroom.)

1 THE COURT: Sir, we want to thank you for your time
2 and your attention during this case. I've watched you and
3 you've been timely, you've been diligent. Being an
4 alternate is often a thankless job. It's like getting
5 dressed for the dance that you don't get to go to.

6 I wanted to tell you that we ordered lunch for you as
7 well. So you're welcome to stay and eat it if you would
8 like, or you're welcome to leave. If you want to stay and
9 wait to see how the deliberations turn out, you're welcome
10 to do that. We'll make you comfortable and we'll find a
11 place for you to sit.

12 JUROR #43, MATTHEW COTTRELL: Okay.

13 THE COURT: We'll find a comfortable place for you.
14 You're welcome to discuss this case if you would like.
15 But I would ask you not to do that until the conclusion of
16 the entire process, until we release you for the week as a
17 juror. If someone should persist in trying to talk to you
18 that exceeds your comfort level, please, let us know so we
19 can protect your privacy.

20 I just wanted to thank you on behalf of the Court and
21 on behalf of counsel. And thank you for your diligent
22 service. And I know jury service is thankless. And to be
23 here for a whole week with us, we truly appreciate it.

24 JUROR #43, MATTHEW COTTRELL: Thank you.

25 THE COURT: Thank you so much.

1 If you would go with the bailiff for me.

2 (WHEREUPON, Juror #43, Matthew Cottrell, exited the
3 courtroom.)

4 THE COURT: Okay. So the record should reflect that
5 the jury began deliberations at 12:10.

6 You all might want to try to find you a sandwich,
7 because I think their lunch is here and they're eating.

8 So we will await further instructions from the jury.

9 (WHEREUPON, the proceedings were recessed at
10 approximately 12:11.)

11 THE COURT: The jury has sent a note, We would like
12 to listen to the 911 tape.

13 What I've just inquired with the Solicitor is what
14 equipment -- because sometimes some 911 tapes -- I know
15 the one in Charleston requires special software, so it
16 can't just be played on a regular laptop. It has to have
17 a laptop with that particular software on it. But they
18 have informed me that it simply can be played on a laptop,
19 and it has external speakers. And it can be set up in the
20 jury room.

21 So I'm going to have them set that up in the jury
22 room, show them how to stop and start it. I'm going to
23 have a bailiff in there while that's being done. And
24 they're going to be instructed not to have any
25 deliberations while that's being set up. And then the

1 bailiff and whomever sets it up will leave, and then the
2 jury can listen to the 911 tape at their pleasure.

3 I'll have the note marked as a Court's Exhibit.

4 Any exceptions from the State?

5 MS. MUNSON: No, ma'am, Your Honor.

6 THE COURT: From the Defense?

7 MR. JONES: Your Honor, could we have one of
8 us accompany whatever representative from the State
9 goes --

10 THE COURT: I'm going to have a bailiff in there.
11 I'm not letting the State's attorney go in there. I'm
12 going to have a bailiff. I trust my bailiffs. They are
13 objective.

14 The door will be open, and the jury will be
15 instructed not to deliberate. I don't have any reason to
16 believe something nefarious will take place.

17 Any exceptions to the equipment being taken in there
18 and them listening to the 911 tape from the State?

19 MS. MUNSON: No, ma'am.

20 THE COURT: From the Defense?

21 MR. JONES: No, Your Honor.

22 THE COURT: Okay. We'll await further instructions
23 from the jury.

24 (WHEREUPON, Court's Exhibit No. 3 was marked for
25 identification and admitted into evidence.)

1 (WHEREUPON, the proceedings were recessed at
2 approximately 12:40 p.m.)

3 QUESTION FROM THE JURY

4 THE COURT: We have a note from the jury. And it
5 reads as follows, Legal definition between murder and
6 manslaughter, signed by the Foreperson.

7 I will have that marked as a Court's Exhibit. And I
8 will reinstruct the jury on the elements of murder and
9 manslaughter.

10 Is there an exception from the State?

11 MS. MUNSON: No, ma'am.

12 THE COURT: From the Defense?

13 MR. WARDER: No, Your Honor.

14 THE COURT: Okay. Please bring the jury in.

15 (WHEREUPON, the jury came into open court at
16 approximately 2:08 p.m.)

17 THE COURT: Ladies and gentlemen, I received your
18 note, which is, Legal definition between murder and
19 manslaughter. And I am going to reinstruct you on the
20 elements of murder and manslaughter in response to that
21 question.

22 The Defendant is charged with murder. The State must
23 prove beyond a reasonable doubt that the Defendant killed
24 another person with malice aforethought. Malice is
25 hatred, ill will, or hostility toward another person. It

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

4 Malice aforethought does not require that malice
5 exist for any particular time before the act is committed.
6 But malice must exist in the mind of the Defendant just
7 before and at the time the act is committed. Therefore,
8 there must be a combination of the previous evil intent
9 and the act.

10 Malice aforethought may be expressed or inferred.
11 These terms expressed and inferred do not mean different
12 kinds of malice, but merely the manner in which malice may
13 be shown to exist. That is either by direct evidence or
14 by inference from the facts or circumstances which are
15 proven. Expressed malice is shown when a person speaks
16 words which express hatred or ill will for another, or
17 when a person prepared beforehand to do the act which was
18 later accomplished. For example, lying in wait for a
19 person or any other acts of preparation going to show that
20 the deed was within the Defendant's mind would be
21 expressed malice. Malice may be inferred from conduct
22 showing a total disregard for human life.

23 If you find that the State has failed to prove beyond
24 a reasonable doubt that the Defendant committed murder,
25 you may consider whether the State has proven beyond a

1 reasonable doubt that the Defendant committed voluntary
2 manslaughter. To prove voluntary manslaughter, the State
3 must prove beyond a reasonable doubt that the Defendant
4 took the life of another in the sudden heat of passion
5 based on sufficient legal provocation. Both heat of
6 passion and sufficient legal provocation must be present
7 at the time of the killing to constitute voluntary
8 manslaughter.

9 Sudden heat of passion may for a time affect a
10 person's self-control and temporarily disturb a person's
11 reason. The sudden heat of passion must be the type that
12 would make an ordinary person unable to coolly reflect on
13 his actions and would produce an uncontrollable impulse to
14 do violence. Sufficient legal provocation must be the
15 type that would make a person of ordinary reason and
16 caution to become enraged and to lose control temporarily.

17 The provocation needed for voluntary manslaughter
18 must come from some act of or related to the victim.
19 Words alone, however vulgar or insulting, are not enough
20 to be legal provocation. Where death is caused by the use
21 of a deadly weapon, the words must be accompanied by some
22 overt threatening act which could have produced the heat
23 of passion.

24 The exercise of a legal right, no matter how
25 offensive it is to another person, is never sufficient

1 legal provocation for voluntary manslaughter. If the heat
2 of passion had cooled, or if there was enough time between
3 the provocation, if any, and the killing for the passion
4 of a reasonable person to cool, the killing would not be
5 voluntary manslaughter.

6 In deciding whether a reasonable person would have
7 had enough time to cool off, you should consider all the
8 circumstances surrounding the killing. You may consider
9 the nature of the provocation, if any, the Defendant's
10 mental and physical state, and the circumstances and
11 relationship between the parties.

12 Ladies and gentlemen, that will conclude the
13 additional instruction in response to your note. If you
14 need anything further, please, do not hesitate to let us
15 know.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 4:13 p.m.)

18 THE COURT: Any exceptions from the State?

19 MS. MUNSON: No, ma'am.

20 THE COURT: From the Defense?

21 MR. WARDER: No, Your Honor.

22 THE COURT: We'll await further instructions from the
23 jury.

24 (WHEREUPON, Court's Exhibit No. 4 was marked for
25 identification and admitted into evidence.)

1 (WHEREUPON, the proceedings were recessed at
2 approximately 4:14 p.m.)

3 THE COURT: The jury has reached a verdict.
4 Anything from the State?

5 MS. MUNSON: No, ma'am.

6 THE COURT: From the Defense?

7 MR. WARDER: No, Your Honor.

8 THE COURT: You can go ahead and bring in the jury.

9 MR. JONES: Your Honor, one quick question out of
10 ignorance with regard to the way you run your court. Is
11 it your practice to poll the jury?

12 THE COURT: I ask if there's any request to poll the
13 jury.

14 If anybody has any cell phones on, you need to turn
15 it off, not on vibrate, but off.

16 And, also, I know this has been a highly-charged
17 situation, but I do not expect there to be any reaction
18 from the gallery.

19 (WHEREUPON, the jury came into open court at
20 approximately 4:38 p.m.)

21 THE COURT: Mr. Foreman, is it correct that the jury
22 has reached a verdict?

23 JUROR #181, BRIAN WOLFE: Yes, Your Honor.

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

1 Thank you, sir.

2 Madam Clerk, if you would, publish the verdict.

3 THE CLERK: Yes, ma'am.

4 THE COURT: Sir, if you would, stand for publication
5 of the verdicts.

6 VERDICT

7 THE CLERK: Your Honor, this is the State of South
8 Carolina v. Willie Marvin Williams. As to indictment
9 number 2013-GS-23-3238, count one, we, the jury, by
10 unanimous consent, find the Defendant guilty of murder.
11 As to indictment number 2013-GS-23-3238, we, the jury,
12 unanimous -- by unanimous consent find the Defendant
13 guilty of possession of a firearm during the commission of
14 a violent crime.

15 As to indictment number 2013-GS-23-3239, we, the
16 jury, by unanimous consent, find the Defendant guilty of
17 attempted murder.

18 As to indictment number 2013-GS-23-3240, we, the
19 jury, by unanimous consent, find the Defendant guilty of
20 unlawful conduct towards a child.

21 And all of these have been signed by the Foreperson,
22 Brian Wolfe.

23 If this was your verdict in the jury room and is your
24 verdict now, please, raise your right hand.

25 (WHEREUPON, all of the jurors raised their hand.)

1 THE CLERK: Thank you.

2 THE COURT: You may put your right hand down.

3 Sir, you may be seated.

4 Is there any request to poll the jury from the State?

5 MS. MUNSON: No, ma'am.

6 THE COURT: From the Defense?

7 (WHEREUPON, there was no response.)

8 THE COURT: Is there any request to poll the jury?

9 MR. JONES: Your Honor, we would ask that you poll
10 the jury.

11 THE COURT: Madam Clerk, if you would, proceed.

12 Ladies and gentlemen, if you would, give the Clerk
13 your attention.

14 THE CLERK: Ladies and gentlemen, the verdict that I
15 have just published was the verdict you reached in the
16 jury room. I ask you, was that your verdict then and is
17 it your verdict now?

18 As I call your name, please, answer "yes" or "no."

19 Brian Wolfe?

20 JUROR #181, BRIAN WOLFE: Yes.

21 THE CLERK: Lisa Bratten?

22 JUROR #18, LISA BRATTEN: Yes.

23 THE CLERK: Harold Breazeale, Jr.?

24 JUROR #19, HAROLD BREAZEALE, JR.: Yes.

25 THE CLERK: Bentley Bowling?

1 JUROR #15, BENTLEY BOWLING: Yes.

2 THE CLERK: Brent Noblitt?

3 JUROR #114, BRENT NOBLITT: Yes.

4 THE CLERK: Robert Shalvoy?

5 JUROR #139, ROBERT SHALVOY: Yes.

6 THE CLERK: Leslie Norris?

7 JUROR #116, LESLIE NORRIS: Yes.

8 THE CLERK: Jacqueline Krysh?

9 JUROR #84, JACQUELINE KRYSH: Yes.

10 THE CLERK: William Allgood?

11 JUROR #3, WILLIAM ALLGOOD: Yes.

12 THE CLERK: Charles McKinney?

13 JUROR #100, CHARLES MCKINNEY: Yes.

14 THE CLERK: Robert Bishop?

15 JUROR #12, ROBERT BISHOP: Yes.

16 THE CLERK: Virginia Burgess?

17 JUROR #23, VIRGINIA BURGESS: Yes.

18 THE CLERK: Thank you.

19 THE COURT: The jury has been polled and the verdict
20 stands.

21 Mr. Foreman, and, ladies and gentlemen, you are
22 excused for the remainder of the week.

23 Can they get work excuses before they leave?

24 THE CLERK: Yes.

25 THE COURT: If you need a work excuse, we can get you

1 one before you leave today. If not, they will be mailed
2 to you along with your checks.

3 Just so you know, South Carolina has one of the
4 highest case files per capita per judge in the nation. We
5 are only -- we're second to last. And last count, I think
6 at our judicial conference, Justice Toal told us about
7 5,500 case files per judge in this state. We have 49
8 circuit judges that hear cases throughout the State of
9 South Carolina.

10 And just to give you some point of reference, as
11 judges, we go to school outside of the state. Sometimes,
12 I've facilitated courses at the National Judicial College.
13 And as a result, you make friends with other judges. And
14 I've made friends with some judges in Philadelphia. And
15 they have nine judges in the City of Philadelphia that
16 only hear murder cases. So that's all they do every day
17 all year long. They hear murder cases and capital cases.
18 And that's all they do in the City of Philadelphia. We
19 have 49 judges throughout South Carolina that hear civil
20 and criminal court.

21 So that gives you some idea of the case load that we
22 handle. And even with that case load, we still dispose of
23 cases faster than most states. Most states take about
24 four years to dispose of a case. Our average is about 18
25 months.

1 So I tell you that to let you know, I don't know how
2 many weeks of court we have here in Greenville, but I know
3 in Charleston, we hold criminal and civil court. We hold
4 jury trials 47 out of the 52 weeks of the year. And we
5 normally have two courts operating, two civil and two
6 criminal courts hearing jury trials. So that gives you
7 some idea of just how much court is held.

8 And I tell you that to let you know that we couldn't
9 do that without you all being willing, really, to donate
10 your time to us. There are some instances where the
11 judges act as fact finders in a non-jury context. But
12 probably 90 percent of what we do, we require a jury to
13 act as the fact finders. Our system is the only system of
14 its kind in the world where ordinary citizens listen to a
15 case, determine what the facts are, and then apply a very
16 complicated set of laws to those facts to render verdicts.

17 So I just tell you that antidotal information so you
18 can know how very valuable you are to us, how valuable
19 your service is. And that what we pay you is absolutely
20 no indication of the service you render to the citizens of
21 this state.

22 You are welcome to discuss this case if you would
23 like. Sometimes, lawyers contact jurors because they want
24 to get feedback on how they can do things better. As
25 lawyers, sometimes, we lack a little common sense. And

1 so, sometimes, talking to jurors helps us see what we
2 can't see. And, sometimes, you know, what is it you say?
3 You can't see the forest for the trees. And, sometimes,
4 it helps lawyers to get feedback from jurors to help them
5 do their job a little bit better. So you may hear from
6 the attorneys in this case. They may want to ask you just
7 your opinion and your feedback about the case. So that is
8 not unusual.

9 You are welcome to discuss it with them if you'd
10 like, but if you don't want to, you, certainly, don't have
11 to. If anyone should contact you and their conversation
12 regarding any aspect of this case should exceed your
13 comfort level, please, let us know so we can take the
14 appropriate action to protect your privacy.

15 Again, your checks and your excuses will be mailed to
16 you. But if you need an excuse before you leave today,
17 let the bailiffs know so we can take care of that before
18 you leave the courthouse.

19 Also, I will need the Foreperson, if you could stay
20 with us. Because I'm going to need you to sign the
21 indictments prior to leaving today.

22 Ladies and gentlemen, you're excused with the Court's
23 profound thanks.

24 I will hear post-trial motions and sentencing in just
25 a moment.

1 (WHEREUPON, the jury exited the courtroom at
2 approximately 4:46 p.m.)

3 (Pause.)

4 THE COURT: Are there any post-trial motions?

5 MR. JONES: Your Honor, we've discussed it with
6 Mr. Williams, and the Defense does not have any post-trial
7 motions.

8 THE COURT: Okay. So we'll then move to sentencing.
9 Do we need to prepare sentencing sheets?

10 THE CLERK: I've got them, Your Honor.

11 THE COURT: You are so efficient.

12 Thank you very much.

13 THE CLERK: You're welcome.

14 THE COURT: And, Madam Solicitor, if I'm correct, his
15 only record was an arson from 1990, 10 years suspended to
16 three years and five years probation; and a 1989 malicious
17 injury to personal property, which was a magistrate-level
18 offense; correct?

19 MS. MUNSON: Correct.

20 MR. JONES: If it please the Court, Your Honor --

21 THE COURT: Give me one second.

22 MR. JONES: Yes.

23 (Pause.)

24 THE COURT: Yes, sir.

25 You were going to say something.

1 MR. JONES: I was just going to inquire if the Court
2 was going to allow either party to present -- the Defense
3 to present any mitigation?

4 THE COURT: Oh, absolutely.

5 I'll be glad to hear from the State.

6 MS. MUNSON: Your Honor, there's several members of
7 Ms. Kerns's family here. And I believe there are two of
8 them who would like to address the Court, if you would
9 indulge them.

10 THE COURT: Certainly. I just need them to tell us
11 their name for the record, and spell their last name for
12 the benefit of the court reporter.

13 MR. WILLIE ROBINSON: I'm Willie Robinson, Natasha
14 Kerns's daddy.

15 THE COURT: Yes, sir.

16 MR. WILLIE ROBINSON: I think justice was served.
17 And I really appreciate that. I do miss my baby. I
18 raised her from a little girl by myself. And I saw her to
19 college and stuff. And I really miss her. And I love
20 her.

21 And her kids really miss her, especially Jakyre and
22 Jadance. And Jakyre, he really misses her. He asks about
23 her all the time. And I tell him -- and those kids, right
24 now, they don't really understand what's going on. So
25 we've got them going through a program to see a

1 psychiatrist, because they need to get it out.

2 And I think justice was served today. And I'm glad
3 that this thing is finally over.

4 So thank you, Judge.

5 THE COURT: You're welcome, sir.

6 Is there another family member that --

7 MS. MUNSON: Yes, ma'am.

8 THE COURT: You may proceed.

9 MS. TRACI FANT: My name is Traci Fant.

10 THE COURT: Could you spell your last name for me?

11 MS. TRACI FANT: F-A-N-T.

12 THE COURT: Is it T-R-A-C-I OR C-Y?

13 MS. TRACI FANT: It's T-R-A-C-I.

14 And I'm joined by Natasha's brother.

15 MR. KENATE KERNS: Kenate [phonetic] Kerns.

16 THE COURT: Say that for me one more time.

17 MS. TRACI FANT: The family asked me to speak on
18 their behalf.

19 THE COURT: Yes, ma'am.

20 MS. TRACI FANT: It's been a rough week. As we sat
21 this week and listened to testimony, we recall hearing
22 several witnesses say they forgot about some of the things
23 that happened on July the 10th. July 10th was a day we'll
24 never forget.

25 In fact, we will never forget the three weeks leading

1 up to July 10th when Natasha repeatedly cried out for
2 help. She went to a women's shelter and was put on a
3 waiting list, filed restraining orders, fled to North
4 Carolina. She even wrote on Facebook, If you find my body
5 dead, my husband, Willie Williams, did it. But what did
6 he do? Instead of leaving her alone, he hunted her down
7 like an animal and executed her.

8 We want to tell you about the Natasha Kerns that has
9 not been mentioned in this courtroom. She was a mother,
10 of course, the type of mother who worked several jobs to
11 provide for her children. She taught her children to
12 treat people the way they would want to be treated. She
13 taught them about God. She was a student, but not just an
14 ordinary student. Natasha graduated college several
15 times. In fact, she had four degrees. She was talented.
16 So talented that she made it to American Idol and
17 performed in front of Simon Cowell. She was a sister, a
18 cousin, a friend, the type of person who would give you
19 the shirt off her back. She was a daughter, the only
20 daughter of Willie Robinson and the late Geneva Kerns, who
21 died 15 months after Natasha's murder of what some say was
22 a broken heart.

23 She was a fighter, a fighter who got back up after
24 being repeatedly knocked down, bruised and battered, a
25 fighter who got fed up and said enough, a fighter who

1 Willie Williams knew that the only way to stop her was
2 with a bullet.

3 We pray that while Willie Williams sat there sipping
4 on cups of water, laughing, and talking to his family and
5 friends that he thought about what he did to Natasha, at
6 least, once. But it's sad to say the family honestly
7 doesn't think he has an ounce of remorse in his body for
8 what he did. He may have taken away her voice, but he'll
9 never take away our memories of her.

10 THE COURT: Thank you very much.

11 MS. MUNSON: Your Honor, Mr. Wilson is still in the
12 courtroom, but he does not wish to address the Court.

13 The State has nothing further.

14 THE COURT: Does the State take any position on
15 sentence?

16 MS. MUNSON: Yes, Your Honor. I, certainly, do.

17 THE COURT: I think you need to state it for the
18 record.

19 MS. MUNSON: He has -- he sentenced Jadance and
20 Jakyre and these people -- he sentenced -- he's given them
21 a life sentence. It's the State's firm position that he
22 deserves nothing less than life.

23 Thank you, Your Honor.

24 THE COURT: You're welcome.

25 I'll be glad to hear from the Defense.

1 MR. JONES: From here, or at the podium, Your Honor?

2 THE COURT: Where you are.

3 MR. WARDER: Your Honor, we have a psychologist that
4 Willie has been seeing. We would like for him to give you
5 some information.

6 THE COURT: Sure.

7 MR. DAVID PRICE: Your Honor, I'm Dr. David Price.

8 THE COURT: Yes, sir.

9 MR. DAVID PRICE: I've evaluated Mr. Williams on a
10 number of occasions over the past year. He's, also, been
11 seen by two psychiatrists, Mr. Martin, who is a
12 psychiatrist -- he's, actually, from Anderson that treats
13 the inmates here -- and Dr. Donna Schwartz-Watts, who is
14 in Columbia with the USC Medical School.

15 Mr. Williams was a contractor in Iraq between 2005
16 and 2010 where he lived in a compound that was attacked at
17 night. One time, he did some damage to the exterior of
18 his skull running into a bunker because of the attack. He
19 began to deteriorate in 2010. He didn't go back to Iraq.

20 He applied to the VA for treatment. And they made
21 him eligible through the VA for benefits to pay for
22 treatment, but not for disability benefits for
23 posttraumatic disorder. He applied to social security for
24 disability benefits for posttraumatic stress disorder.
25 They sent him to a neurologist in the Laurens area, who

1 diagnosed him with posttraumatic stress disorder. But
2 they determined he didn't meet their eligibility
3 requirements because of income.

4 He has a posttraumatic stress disorder and a major
5 depressive disorder that's been well treated by Dr. Martin
6 in the LEC. He's on three medications. He's on
7 Trazodone, Depakote, and Xanax. And I would expect him to
8 continue to function the way he is now pretty well on that
9 medication while he's incarcerated. He has done pretty
10 well at the LEC on that medication.

11 THE COURT: Anything further you'd like to share with
12 the Court?

13 MR. DAVID PRICE: No.

14 THE COURT: You said major depressive disorder?

15 MR. DAVID PRICE: Yes, ma'am.

16 THE COURT: Anything further from the Defense?

17 MR. JONES: Your Honor, I'd like briefly to make a
18 few remarks.

19 THE COURT: Sure.

20 MR. JONES: And then Mr. Williams may want to address
21 the Court, if that's all right.

22 THE COURT: Absolutely.

23 MR. JONES: Judge, obviously, you have on a couple of
24 occasions inquired about Mr. Williams previous criminal
25 history. And except for that arson charge back in 1990 --

1 it arose out of a 1989 incident, 23 years ago -- he's,
2 lived, as he said he has from the witness stand,
3 hardworking job after job after job over the course of his
4 life, as well as, you know, joining the National Guard in
5 that regard, finding what work and betterment he could.

6 Judge, he's going to speak to you in a minute. But
7 before he does, I'd like you to take into consideration
8 the fact that he has no prior criminal history. And, yes,
9 the tragedy of Natasha Kerns's death, you know, will be
10 with everybody, most particularly, her family for the rest
11 of their lives. But everybody in this courtroom is going
12 to have a void that they will feel any time her name comes
13 up, or memory of her. And it's a tragedy that they've
14 endured with strength, and courage, and admirable reserve.

15 But this was a domestic matter. And although there
16 are feelings that Willie was not treating her fairly, or
17 properly, or abusively, except for, you know, the claims,
18 there's no actual conviction, no actual record of that
19 taking place. As he testified from the stand, you know,
20 he was interested in trying to care for her and their
21 children.

22 And, Judge, I think that in spite of what happened on
23 July 10th, 2010, it was undisputed that from the time they
24 were married in 2009, and the time that Jadance was born
25 earlier in 2009 that he did try to do that, and tried to

1 work as a good husband and father. And I think that . Is
2 the truth.

3 I think that it was a combination of things that came
4 together that resulted in this tragedy. And in spite of
5 how it might appear and in spite of the jury's verdict,
6 I'm asking you to consider a measured sentence in this
7 case, based on his prior record, and based on the
8 relationship, and based on his condition at the time of
9 the crime that you consider a 30-year sentence for murder,
10 and a 30-year sentence for attempted murder, and whatever
11 sentence you feel appropriate for the other crime.

12 He's 47 as we sit before you today. And if you
13 sentence him to 30 years for murder, he would serve every
14 day of that 30 years making him not eligible for release
15 until he's 77. The men in his family have a history of
16 aneurisms, stroke, diabetes, and heart disease. But there
17 are we hope some of his family, including his daughter,
18 that will possibly in the future want to be able to talk
19 to her daddy about life, about her momma. And it's an
20 ongoing issue. But he is a human being. And I think
21 because of the way he lived his life up until this day
22 deserves consideration of mitigation in the sentence, Your
23 Honor. We'd ask you to consider it.

24 Thank you.

25 THE COURT: You're welcome.

1 Does Mr. Williams wish to address the Court? You
2 indicated -- I'm not taking a position, but you indicated
3 he may want to address the Court. So I wanted to give him
4 that opportunity, if he so desires.

5 MR. JONES: Briefly, Your Honor.

6 (Pause.)

7 MR. JONES: He'd like to address the Court, Your
8 Honor.

9 THE COURT: Sure.

10 Sir, I'll be glad to hear from you.

11 DEFENDANT WILLIAMS: Your Honor, this wasn't my first
12 marriage. I was married right out of high school to my
13 first wife. We got married young. She was 17. I was 19.
14 And we was married for 13 years. I never hit my wife. I
15 took care of my wife. I worked continued jobs. I worked
16 long hours to provide.

17 Also, when I met Natasha, I did the same. I never --
18 we had our ups and downs, our problems. And I made -- we
19 had domestic disputes. I never laid a hand on her. I
20 only talked to her. I feel like I'm a good husband. I
21 was a good husband. And I want you to take into
22 consideration that I've got a daughter, my first and only
23 child at 44 years old, that I love very much that means
24 the world to me. I know I testified and I said what I
25 said. And I'm going to leave it at that. I just want the

1 Court to look back on my history and my life at that time.

2 I would like to thank my family for their support.

3 Special thanks to Ms. Kenyatta for supporting me, my
4 lawyers. And it's no hard feelings to the Kerns family,
5 to the Robinson family. I apologize. But things
6 happened. It's life.

7 Thank you, Your Honor.

8 THE COURT: You're welcome, sir.

9 Anything further from the Defense?

10 MR. JONES: No, Your Honor.

11 THE COURT: Anything further from the State?

12 MS. MUNSON: No, ma'am.

13 THE COURT: How long did your client serve
14 pre-detention?

15 MR. JONES: Your Honor, he's been incarcerated since
16 July the 10th of 2010.

17 THE COURT: So how long is that?

18 That's just shy of three years -- no.

19 MR. JONES: Yes, Your Honor.

20 THE COURT: In a few months, it will be three years.

21 MR. JONES: Yes, Your Honor.

22 If it please the Court, I'm horrible at math.

23 THE COURT: I am, too. That's why I asked.

24 MR. JONES: 1,040 days.

25 THE COURT: Say that again.

1 MR. JONES: 1,041 if you give a year -- 365 days. I
2 think that's what I came up with.

3 THE COURT: That sounds about -- yeah. They'll
4 calculate it, but I just wanted to know for the record.
5 It's always good to know how much pre-detention time a
6 person has served.

7 Sir, if you would stand for imposition of sentence.

8 SENTENCING

9 THE COURT: On indictment -- count two of indictment
10 2013-3238, five years is imposed. However, it's suspended
11 to the 1,041 days time served that you've already expended
12 because pursuant to the statute under certain
13 circumstances, the possession of a firearm charge is
14 inapplicable and, in essence, void. So you would have
15 already served any time applicable on that sentence.

16 On indictment 2013-3240, which is unlawful neglect of
17 a child, sir, you are sentenced to the State Department of
18 Corrections for a period of 10 years.

19 On the charge of two -- on indictment 2013-3239,
20 which is attempted murder, sir, you are sentenced to the
21 State Department of Corrections for a period of 30 years.

22 On indictment 2013-3238, which is murder, sir, you
23 are sentenced to the State Department of Corrections for a
24 period of life.

25 You will get credit for any time that you served.

1 These sentences will be concurrent. And that time will be
2 calculated and applied by the Department of Corrections.

3 Thank you very much.

4 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

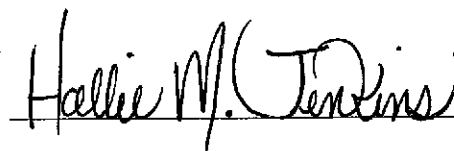
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 13th, 14th, 15th, and 16th days of May, 2013.

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

November 7, 2013

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

DOCKET NO. 2013-GS-23-
JMM 003238

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2013

THE STATE

vs.

WILLIE MARVIN WILLIAMS

ARREST WARRANT NUMBER

1481327

1481329

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0116
0549

MURDER

VIOLATION § 16-03-0010
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
VIOLATION § 16-23-0480

WITNESSES

Eric Whaley

Greenville County Sheriffs Office

7/11/2010

Foreperson of Petit Jury
Date: 5/14/13

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
COUNT ONE - MURDERCOUNT TWO - POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

APR 23 2013

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE - MURDER

That WILLIE MARVIN WILLIAMS did in Greenville County, on or about the 10th day of July, 2010, unlawfully and with malice aforethought kill NATASHA KERNS by means of shooting her, and that NATASHA KERNS died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME

That WILLIE MARVIN WILLIAMS did in Greenville County, on or about the 10th day of July, 2010, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

WITNESSES

Eric Whaley *EW*

Greenville County Sheriffs Office

7/11/2010

DOCKET NO. 2013-GS-23-
JMM

003239

✓ The State of South Carolina
County of GreenvilleCOURT OF GENERAL SESSIONS
April

TERM 2013

THE STATE

vs.

ARREST WARRANT NUMBER
1481328

WILLIE MARVIN WILLIAMS

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Hentley✓
3410

Indictment for

ATTEMPTED MURDER

VIOLATION § 16-03-0029

Brian Wolf
Foreperson of Petit Jury
Date:

5/16/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on **APR 23 2013** the Grand Jurors of Greenville
County present upon their oath:

That WILLIE MARVIN WILLIAMS did in Greenville County, on or about the 10th day of July 2010,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Anthony Wilson. This is
in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

DOCKET NO. 2013-GS-23- 003240

JMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2013

THE STATE

vs.

WILLIE MARVIN WILLIAMS

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: 1965 B/M

SSN# 247-17-3552

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

2481

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION § 20-7-0050

WITNESSES

Eric Whaley

Greenville County Sheriffs Office

7/11/2010

Brian White 5/14/13
 Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on
County present upon their oath:

APR 23 2013

the Grand Jurors of Greenville

That WILLIE MARVIN WILLIAMS did in Greenville County, on or about the 10th day of July, 2010, while being the legal custodian, parent, or guardian, place the child, J.K., (1) at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or (2) unlawfully or maliciously do or cause to be done any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or (3) willfully abandon the child. This is in violation of § 63-05-0070 of South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.

Willie Marvin Williams

AKA:

Race: BLACK Sex: M Age: 47

DOB: [REDACTED]-1965 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gray court, SC 296450000

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303238

A/W#: 1481327

Date of Offense: 7/10/2010

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET 304-116

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Munson, Judy

SC Bar# 64040

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed - _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-23-3239 / 3240A and 3238
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied Count 1
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128

Sentence Date: 5-16-2013

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Willie Marvin Williams

AKA:

Race: BLACK Sex: M Age: 47

DOB: [REDACTED]-1965 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gray court, SC 296450000

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Munson, [REDACTED]

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of CTS days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

as he is receiving time
not applicable
of 1041 days.

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128

Sentence Date: 5-16-2013

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.

Willie Marvin Williams

AKA:

Race: BLACK Sex: M Age: 47

DOB: [REDACTED]-1965 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gray court, SC 296450000

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2303239

A/W#: 1481328

Date of Offense: 7/10/2010

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Munson, [REDACTED]

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-23-3238; 32404☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-1-286 (DUI Breath Test)	\$25	
Proviso 47.9 (Public Def/Prob)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	
TOTAL	\$	

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Judge: s Jenkins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128

Sentence Date: 5-16-2013

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Willie Marvin Williams

AKA:

Race: BLACK Sex: M Age: 47

DOB: [REDACTED]-1965 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Gray Court, SC 29645

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Munson, Judy

SC Bar# 64040

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-23-3238, 3239

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
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§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128

Sentence Date: 5-16-2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE M. WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2013-001152

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

In a case where both voluntary manslaughter and self-defense were charged to the jury, did the trial court err by excluding as hearsay a threat made by the alleged victim while holding a gun on the appellant?

2.

Did the trial court err by failing to charge involuntary manslaughter because appellant testified that the gun went off during a struggle with one of the alleged victims?

STATEMENT OF THE CASE

On April 23, 2013, a Greenville County grand jury indicted appellant for murder, attempted murder, unlawful conduct towards a child, and a related weapons charge. R. 482. On May 13, 2013, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Judith M. Munson represented the State. R. 1. Richard H. Warder and W. Townes Jones, IV represented appellant. R. 1. The jury convicted appellant on all charges. R. 463, ll. 6 – 22. Judge Jefferson sentenced appellant to concurrent terms of life imprisonment for murder, thirty years' imprisonment for attempted murder, ten years' imprisonment for unlawful conduct towards a child, and five years' imprisonment on the weapons charge suspended to time served. R. 480, l. 8 – 481, l. 2. After timely service and filing of a notice of appeal, this appeal follows.

STATEMENT OF FACTS

The Family Background

Appellant Willie Marvin Williams (“Williams”) was forty-seven years old at the time of trial. R. 279, ll. 2 – 3. He graduated from high school in Laurens and joined the National Guard. R. 279, ll. 10 – 24. He was employed for many years as a machinist, working in a textile mill, and working in an automobile plant. R. 281, ll. 6 – 282, l. 23. In 2005, Williams went to work for Kellogg Brown & Root in Iraq. R. 283, ll. 16 – 284, l. 8. Williams did several stints in Iraq and endured shelling and indirect fire. R. 289, l. 1 – 296, l. 15.

Just before getting the job in Iraq, Williams met Natasha Kerns (“Kerns”). R. 283, ll. 1 – 3. They began dating. R. 283, ll. 6 – 15. They continued their relationship during Williams’ employment in Iraq. R. 285, l. 20 – 286, l. 21. While Williams was home between Iraq contracts, Kerns became pregnant. R. 287, ll. 6 – 11. Williams maintained his own residence, but moved in with Kerns and began supporting her financially. R. 287, ll. 12 – 19. Kerns already had a son (“Son”) and then gave birth to Williams’ daughter (“Daughter”). R. 287, l. 20 – 289, l. 6. Because of the excellent pay, Williams signed another one-year contract for Iraq. R. 289, ll. 7 – 24. In 2009, during a trip home, Williams and Kerns married. R. 295, ll. 8 – 15. Williams went back to Iraq. R. 295, ll. 21 – 23.

When he got back to Iraq, Williams “started having problems with all the bombing, and shelling, and the killing, and stuff.” R. 296, ll. 6 – 15. His employer moved him to another military camp, but by this point Williams developed problems due to the constant stress and difficulty sleeping. R. 296, ll. 16 – 297, l. 24. He eventually resigned to return home to his family. R. 296, ll. 16 – 297, l. 24. His employer told him he was welcome to

return once he got better. R. 297, ll. 16 – 21. Williams returned to Greenville in February 2010. R. 297, ll. 22 – 24.

Williams had trouble adjusting to life back in Greenville. R. 306, l. 22 – 311, l. 1. He had trouble sleeping, nightmares, and flashbacks. R. 306, l. 22 – 311, l. 1. Complicating matters, his wife was pursuing a nascent performing career and would go to clubs and sing at open mic events until 3:00 AM. R. 311, l. 15 – 312, l. 2. In May 2010, Kerns returned home late one night and Williams thought someone was trying to break into their house. R. 312, ll. 1 – 12. He took a firearm from their closet and went to the door. R. 312, ll. 1 – 12. When Kerns entered, the sight of Williams with a gun frightened her and, as a result, the couple soon grew distant. R. 312, ll. 13 – 24. Later in May 2010, the couple got into an argument which resulted in Kerns calling 911, pulling a knife on Williams, and ultimately throwing his belongings in the front yard. R. 358, l. 12 – 361, l. 2. Williams moved back to his house in Laurens County. R. 313, ll. 2 – 4.

The Shooting

In the wee hours of Saturday morning July 10, 2010, Kerns died from a gunshot wound. Son and another man, Anthony Wilson (“Wilson”) testified for the State and gave very different versions about the shooting. Son’s story was physically impossible based on the forensic evidence. R. 44, l. 16 – 45, l. 18. R. 149, l. 15 – 150, l. 19. Both Son and Wilson’s stories differed dramatically from Williams’ testimony, who did not deny that he was at the scene, but said that he was attacked by an armed Wilson and that Wilson’s gun went off during the ensuing struggle. R. 333, l. 12 – 342, l. 20.

Son was the second witness to testify. R. 31, ll. 7 – 15. He was twelve years old at the time of trial. R. 31, ll. 22 – 23. According to Son, Wilson was his mother’s

“bodyguard.” R. 33, ll. 21 – 25. He had never seen Wilson before the night of the shooting. R. 34, ll. 3 – 5. Son was asleep in his room when he was awakened by a gunshot. R. 35, ll. 2 – 15. He turned on the lights. R. 35, ll. 18 – 23. The “bodyguard” told him to turn them off. R. 36, ll. 1 – 3. He looked out the window and saw Williams’ car. R. 36, ll. 4 – 19.

Son crawled out of his room and down the hall. R. 36, ll. 19 – 23. He saw his mother on the ground and Williams standing over her firing. R. 37, ll. 15 – 25. Son watched Williams fire “four or five” shots into Kerns. R. 45, ll. 6 – 9. He saw Williams shoot Kerns in the right shoulder and in the center of her chest. R. 45, ll. 6 – 18. Williams left “[a]fter he ran out of bullets” and jumped out a window. R. 46, l. 1 – 47, l. 2.

Son’s version of the shooting could not have happened. The State’s pathologist, Dr. Michael Ward (“Ward”) testified that Kerns died from a single gunshot wound to the head. R. 149, l. 15 – 150, l. 23. He found superficial scratches around the gunshot wound “meaning that the bullet passed through something else before it struck Ms. Kerns in the face.” R. 150, ll. 1 – 10. Dr. Ward testified that “Examination of the chest and abdomen revealed no relevant findings as to her death.” R. 150, ll. 14 – 15.

The State played a 911 recording from the night of the incident. R. 24, ll. 7 – 14. State’s Ex. 1. Kerns called 911. State’s Ex. 1. She tells the operator that she and her husband were going through a divorce, that an order of protection was in progress, and that Williams was not supposed to be around her house. State’s Ex. 1. The operator asks if she has seen Williams. State’s Ex. 1. Kerns says she heard a noise. State’s Ex. 1. Kerns tells the operator she has a .380 firearm with her. State’s Ex. 1. After some silence, Kerns whispers, “There is somebody out there.” State’s Ex. 1. She then says Williams is on her front porch. State’s Ex. 1. After another period of silence, someone yells and there is a loud

crash or bang. State's Ex. 1. The operator tries to get Kerns to answer, but she does not. State's Ex. 1. During the intervals when the operator is not speaking, indistinct noises can be heard in the background. State's Ex. 1. Four loud bangs follow another quiet period. State's Ex. 1. The remainder of the recording has long periods of quiet, the operator saying "Ma'am? Hello?" and more indistinct background noises. State's Ex. 1.

"Bodyguard" Wilson met Kerns at a night club in Charlotte. R. 166, ll. 1 – 11. Wilson was thirty-six years old at the time of trial (eleven years younger than Williams¹). R. 166, ll. 5 – 6. Wilson and Kerns began talking on the phone. R. 166, ll. 12 – 15. Wilson came to visit Kerns in Greenville on a Thursday night. R. 166, ll. 16 – 24. On Friday night, Wilson and Kerns "were out with the kids." R. 167, l. 23 – 168, l. 1. They returned to Kerns' house at approximately 12:00-1:00 AM. R. 168, ll. 5 – 6. Despite the lateness of the hour, Wilson claimed he and Kerns continued to play with the kids until eventually Son went to his room. R. 168, ll. 12 – 21. Daughter, who was approximately two years old, supposedly fell asleep in the bed beside Wilson and Kerns at approximately 3:00 AM. R. 168, ll. 19 – 25.

Wilson claimed he was awakened by a dog barking and "some ruckus going on around outside of the house." R. 169, l. 23 – 170, l. 10. He awakened Kerns. R. 170, ll. 11 – 19. Kerns "immediately hopped up. She grabbed her weapon and ran toward the front." R. 170, ll. 20 – 23. Wilson took Daughter to Son's room. R. 171, ll. 1 – 3.

¹ Williams testified that he and Kerns had "a difference in ages. So I was older than her." R. 287, ll. 2 -3.

Wilson claimed he could hear Kerns talking and heard her “say something about get away from my property, get away from my house.” R. 171, ll. 18 – 25. Still in Son’s room, he saw the “silhouette of a human being come down the hallway” that he knew was not Kerns. R. 172, ll. 11 – 22. The person “came into the kids room.” R. 173, ll. 10 – 20. Wilson tripped over a video game then heard gunshots. R. 175, ll. 2 – 8. He believed the first shot hit him. R. 175, ll. 2 – 8. He claimed it knocked him unconscious. R. 175, ll. 2 – 13.

The EMT said Wilson “had a superficial laceration noted to the right side of his head.” R. 98, ll. 15 – 20. Wilson also complained to the EMT that “he was kicked in the chest.” R. 98, ll. 21 – 22. At trial, Wilson never mentioned anything about being kicked in the chest.

The Defendant’s Testimony

Williams testified that Wilson attacked him outside of Kerns’ house. R. 332, l. 10 – 342, l. 20. Earlier that evening, Williams traveled to Greenville for a date that ended when the woman abandoned him to hang out with her aunt and cousins. R. 326, ll. 18 – 23. Williams went to another club by himself and left at approximately 4:15 AM. R. 328, l. 4 – 329, l. 8. He called Kerns’ cell phone and house phone. R. 329, ll. 9 – 14. Williams was supposed to pick up Daughter in a few hours. R. 327, ll. 4 – 6. He decided that instead of driving fifty miles home only to turn right around and return to Greenville, he would go to Kerns’ house. R. 329, ll. 15 – 18.

When Williams got to Kerns’ house he saw an unfamiliar vehicle with North Carolina plates. R. 329, ll. 21 – 25. He did not see Kerns’ car. R. 329, ll. 21 – 25. He parked and went to the front door. R. 330, l. 25 – 333, l. 2. He knocked. R. 332, l. 18 –

333, l. 2. The dogs barked. R. 332, l. 18 – 333, l. 5. As Williams turned to leave the porch, he saw the curtain move. R. 333, ll. 5 – 14. He turned back to “peep in through the window.” R. 333, ll. 5 – 14.

Williams then heard a noise behind him. R. 333, ll. 9 – 11. He turned and saw a man who turned out to be Wilson pointing a handgun at him. R. 333, ll. 12 – 14. R. 338, l. 25 – 339, l. 1. R. 368, ll. 12 – 18. Wilson told Williams, “I, finally, get to meet the man whose money I’ve been spending.”² R. 334, l. 17 – 18. Williams then demonstrated for the jury how he and Wilson struggled over the gun. R. 339, ll. 13 – 25. During the struggle, Williams said, “Then the gun went off, pow.” R. 339, ll. 13 – 25.

After the gun “went off,” the men continued to wrestle and both crashed through a window into the house. R. 340, ll. 1 – 17. The fight continued through the house and to the door of Son’s bedroom. R. 340, l. 18 – 342, l. 6. Williams described another struggle over the gun and said “that’s when the gun went off, pow, pow, pow.”³ R. 342, ll. 8 – 16. Wilson went to the floor and did not move. R. 342, ll. 15 – 20. Williams did not see Son or Daughter. R. 342, l. 21 – 343, l. 5. He then saw Kerns and “blood everywhere.” R. 343, ll. 6 – 13. When Williams found Kerns had no pulse, he began crying and had “an anxiety attack.” R. 343, ll. 2 – 13.

² Judge Jefferson did not allow the jury to hear what Wilson said to Williams. The State objected that Wilson’s statement was hearsay. The trial judge sustained the objection over argument from defense counsel. R. 333, l. 12 – 336, l. 1. This ruling is Williams’ first issue on appeal.

³ Williams’ second issue on appeal is the trial judge’s refusal to charge involuntary manslaughter. R. 403, l. 24 – 404, l. 1.

Williams “flipped out.” R. 343, ll. 14 – 25. He saw “911” on the face of Kerns’ cell phone. R. 343, ll. 22 – 25. He left. R. 343, ll. 22 – 25. Williams drove around for hours. R. 345, l. 5 – 351, l. 11. Williams eventually led the police on a high-speed chase that ended when a police cruiser struck Williams’ car “to spin him out of control.” R. 78, l. 3 – 81, l. 19. When the officers approached the car, they found Williams with a knife sticking out of his chest. R. 81, l. 24 – 82, l. 4. Williams testified that he tried to kill himself because he “decided [he] didn’t want to live any more.” R. 353, ll. 11 – 21. After four hours of deliberation and a question on the difference between murder and voluntary manslaughter, the jury convicted Williams. R. 456, ll. 4 – 5. R. 458, ll. 4 – 6. R. 462, ll. 1 – 3.

ARGUMENT

1.

In a case where both voluntary manslaughter and self-defense were charged to the jury, the trial court erred by excluding as hearsay a threat made by the alleged victim while holding a gun on the appellant.

The trial court erred in excluding Wilson’s threat as hearsay. Williams described the crucial moments before the shooting:

A. And so I turned to walk off the porch. I see the curtain move. And once I see the curtain move, I stopped to turn facing the house in the window to kind of peep in through the curtain, peep in through the window. As I did that, I heard – it was in the grass – it was on the grass there, maybe hit the concrete. I hear some noise.

And so I turned. When I turned, I see a guy, an individual⁴ approaching me. And they pulled out a weapon and pointed it at me and said–

⁴ Williams later identified the man with the gun as Wilson. R. 368, ll. 12 – 18.

Q. Hold on a minute. Hold on a minute. Let me – go ahead. What was said? Go ahead. I'm sorry. Tell the jury what was said.

MS. MUNSON: Objection, hearsay.

R. 333, ll. 6 – 17. The trial court then excused the jury. R. 333, l. 24 – 334, l. 2.

Defense counsel then proffered Williams' testimony. Wilson told Williams, "I, finally, get to meet the man whose money I've been spending." R. 334, ll. 17 – 18. Defense counsel then told the court he planned to question Williams about his reaction. The following colloquy occurred:

THE COURT: He can testify that a gun was pointed at him. But the words that were spoken are not really relevant to state of mind. I thought he was going to say – originally, he was going to say something about – I thought it was something that was provocation. And I'm not hearing that.

MR. JONES: Well, you know, in Willie's mind, it kind of could have been – I mean, he would have to testify to it.

THE COURT: Well, words, no matter how – don't justify self-defense. It would have to be something that is life threatening. You just taunting me is not enough for self-defense. And that would be in the nature of a taunt, if I were to take it in the light most favorable as you're advancing it.

MR. JONES: Yes, Your Honor.

THE COURT: But I don't think it falls within the exception.

MR. JONES: He's, also, testifying that the declarant had a gun pointed at him.

THE COURT: Well, he can testify to that. But the words do not rise to the level of provocation. So that would be excluded. But he can testify that someone pointed a gun at him.

Get the jury back in.

R. 335, 1. 3 – 336, 1. 2. Judge Jefferson allowed no further argument.

The trial judge erred in excluding this statement for multiple reasons. The State objected solely on the ground of hearsay, but Wilson's statement does not meet the definition of hearsay. To be hearsay, the statement must be offered into evidence for the truth of the matter asserted. SCRE 801(c). "If the out-of-court statement is being offered for a purpose other than proving the truth of the matter asserted, it is not hearsay." 29 Am. Jur. 2d Evidence § 671. "In other words, an out-of-court statement is not hearsay unless the party offering the statement is attempting to prove the statement is true." *Id.* Wilson's statement was not offered to prove that he was finally getting to meet Williams or that Wilson was spending Williams' money. It was offered to prove that Wilson was threatening—or, even as the trial judge minimized it—taunting Williams. "Words offered to prove the effect on the hearer are admissible when they are offered to show their effect on one whose conduct is at issue." 29 Am. Jur. 2d Evidence § 676. Even if the trial judge recognized it correctly as a taunt, the statement simply cannot qualify as hearsay because if it was a taunt, it was not offered for the truth of the matter asserted.

Defendants' threats are almost always admitted and in a self-defense case, since the roles are reversed, the victim's threats are also properly admitted. These kinds of statements made by alleged victims are routinely admitted into evidence in manslaughter and self-defense cases admitted without controversy. See *State v. Santiago*, 370 S.C. 153, 157-58, 634 S.E.2d 23, 26 (Ct. App. 2006) (decedent told defendant to "stay the f-away from my daughter" and "don't be f-ing stupid" in a self-defense case); *State v. Locklair*, 341 S.C. 352, 361-62, 535 S.E.2d 420, 424-25 (2000) (admitting multiple statements of the victim in a manslaughter case); *State v. Wiggins*, 330 S.C. 538, 543-44, 500 S.E.2d 489, 492 (1998)

(victim told defendant “Yeah, we’ve got problems” then pulled out a pistol in a self-defense case); State v. Lowry, 315 S.C. 396, 398, 434 S.E.2d 272, 273 (1993) (decedent told defendant “You think you are a big man because you got a gun.”); State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951) (wife told husband she would “put him in the penitentiary” in a manslaughter case).

Even if Wilson’s threat somehow could be hearsay, it would fall under one of several exceptions. Wilson’s threat would be an excited utterance. SCRE 803(2). Holding a gun on someone qualifies the declarant as “under the stress of excitement caused by the event.” SCRE 803(2). Wilson’s threat would be a “statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). SCRE 803(3). Wilson’s threat shows his motive and intent to harm Williams and explains Williams’ actions in response to that statement.

Wilson’s threat is also admissible as *res gestae*. It was part of the fabric of the event. In State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000), evidence of the defendant’s drug use was admissible under the theory of *res gestae*, citing State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996):

Here...the temporal proximity of the cocaine use to the robbery and murder is so close that one cannot deny that the cocaine use was so much a part of the “environment” of the crime that omitting the evidence of it would unnecessarily fragmentize the State’s case...The use of the cocaine here was inextricably intertwined with the robbery and murder. Under these circumstances, such evidence was properly admitted as part of the *res gestae* of the crime.

In this case, excising Wilson's threat which was inextricably intertwined with the fight and the shooting violated the principle of *res gestae* and prevented the jury from hearing the full nature of the events of the shooting.

Williams' inability to tell the jury that Wilson threatened him prejudiced his self-defense and voluntary manslaughter theories. Williams received both of these jury charges and Wilson's threat was highly probative on both issues. Wilson's statement was relevant to whether Williams was without fault in bringing on the difficulty, whether he reasonably believed he was in imminent danger of losing his life, and whether he had a way to avoid the difficulty. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Without hearing Wilson's threat, the jury simply knew that Wilson stood there holding a gun on Williams and said nothing. Without hearing Wilson's threat, they could have believed that Williams' actions were unreasonable. Knowing that Wilson taunted and threatened Williams makes Williams' subsequent actions more reasonable.

Keeping Wilson's threat from the jury prejudiced Williams' case for voluntary manslaughter. In order to reduce the crime from murder to voluntary manslaughter, Williams must have acted under a sudden heat of passion upon sufficient legal provocation. State v. Niles, 400 S.C. 527, 534, 735 S.E.2d 240, 243 (Ct. App. 2012). An overt, threatening act can generate the sudden heat of passion and constitute legal provocation. Gardner at 105, 64 S.E.2d at 134-35. Knowing of the threat and taunt (combined with pointing a gun) would have further mitigated the alleged crime from murder to manslaughter. The jury asked for the difference between murder and manslaughter and deliberated for over four hours. R. 456, ll. 4 – 5. R. 458, ll. 4 – 6. R. 462, ll. 1 – 3. Failure

to allow the statement prejudiced Williams' ability to fully present his defense and this Court should reverse.

2.

The trial court erred by failing to charge involuntary manslaughter because appellant testified that the gun went off during a struggle with one of the alleged victims.

Williams' testimony about the struggle over the weapon required the trial judge to charge involuntary manslaughter. Defense counsel asked for an involuntary manslaughter charge "based on Willie Williams' testimony." R. 384, ll. 19 – 22. Judge Jefferson took the matter under advisement overnight. R. 385, ll. 2 – 4. The next day, Judge Jefferson ruled, "I'm not instructing, however, involuntary manslaughter as the record is void of any evidence supporting that instruction." R. 403, l. 24 – 404, l. 1.

A defendant's testimony that he struggled over the weapon supports a charge of involuntary manslaughter. State v. Battle, ___ S.C. ___, ___ S.E.2d ___ 2014 WL 1614741, Shearouse Adv. Sheet No. 16 (Ct. App. Apr. 23, 2014). Tisdale v. State, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991).

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a

defendant when determining whether to charge involuntary manslaughter).

“Importantly, our courts have long emphasized that to warrant a court’s eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); *see also* State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). Thus, a request to charge a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Involuntary manslaughter is the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

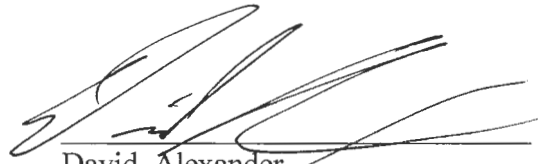
State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008) is particularly instructive. In Light, the defendant gave inconsistent versions of the victim’s death, but repeatedly maintained that the gun unintentionally discharged after a struggle. Despite expert testimony contradicting the defendant’s story, the Supreme Court ruled that defendant’s testimony, by itself, was sufficient to require an involuntary manslaughter charge. Id. at 648-49, 664 S.E.2d at 469. The Court stated, “[T]he fact petitioner and [the victim] were struggling over the weapon is sufficient evidence to support an involuntary manslaughter charge to the jury. Id.

Burriss is similar to the facts of this case. As an attacker advanced on the defendant, the defendant reached for his gun and “it went off,” killing another man who had earlier participated in the attack. Burriss at 258-59, 513 S.E.2d at 105-06. Also similar is Battle, in which the defendant and the decedent struggled over a gun and it fired. Williams testified that “the gun went off” during his struggle with Wilson. R. 339, ll. 13 – 25. R. 342, ll. 5 – 14. At no point did Williams testify that he intentionally pulled the trigger. The State admitted that Williams took no intentional action. The solicitor stated, “He didn’t take any intentional action at all. He was attacked, and everything was Wilson’s fault.” R. 405, ll. 18 – 19. Viewing the evidence in the light most favorable to Williams, the judge erred in refusing to charge involuntary manslaughter and the case should be reversed.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

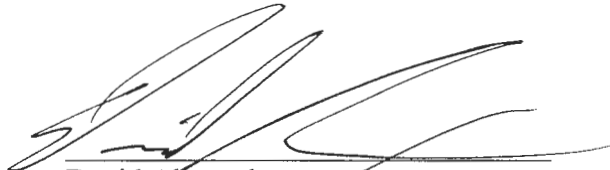
ATTORNEY FOR APPELLANT

This 26th day of January, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

January 26th, 2015


David Alexander
Appellate Defender

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

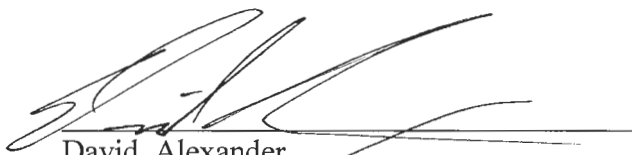
V.

WILLIE M. WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Anthony Mabry, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of January, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of January, 2015.

Maica Mendon (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Greenville County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIE MARVIN WILLIAMS,

Appellant.

Appellate Case No. 2013-001152

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

WILLIAM W. WILKINS, III.
Solicitor, 13th Judicial Circuit
305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. In a case where both voluntary manslaughter and self-defense were charged to the jury, did the trial court err by excluding as hearsay a threat made by the alleged victim while holding a gun on the appellant?
- II. Did the trial court err by failing to charge involuntary manslaughter because appellant testified that the gun went off during a struggle with one of the alleged victims?

STATEMENT OF THE CASE

During the early morning hours of July 10, 2010, Natasha Kerns was murdered by appellant Willie M. Williams (“Williams”) with a handgun. (R. pp. 12-27, 463-64). Williams also shot Anthony B. Wilson just a few moments later. (R. p. 175, ll. 1-8, 463-64). Williams also endangered the life of the deceased victim’s minor children. (R. p. 463-64). All of the crimes occurred in Greenville County. Later that same day, Williams was arrested near Gray Court, in Laurens County. (R. p. 80, ll. 8-21; p. 81, ll. 15-19). On April 23, 2013, the Greenville County grand jury indicted Williams for murder, attempted murder, possession of a weapon during the commission of a violent crime, and unlawful conduct towards a child. (*Indictment numbers 2013-GS-23-3238, -3239, -3240*). (R. p. 1). Williams was represented on the charges by Richard Warder and Townes Jones, Esquires. The State was represented by Assistant Solicitor Judy Munson. (R. p. 1). Williams proceeded to a jury trial on May 13-14, 2013 before Circuit Court Judge Deadra L. Jefferson. (R. p. 1). At the trial’s conclusion, the jury found Williams guilty as charged. (R. p. 463-64). Judge Jefferson sentenced Williams to life imprisonment for the murder, thirty (30) years for attempted murder, ten (10) years for the unlawful neglect of a child, and five (5) years for the gun charge, suspended to time served (1,041 days). All sentences were ordered to run concurrently. (R. pp. 480-81).¹ This appeal followed.

¹ At sentencing, Williams’s prior record was provided to Judge Jefferson. Williams was convicted in 1990 of arson and sentenced to ten (10) years suspended to three (3) years and three (3) years probation to follow. Williams was also convicted in 1989 of malicious injury to personal property. (R. p. 469).

RESPONDENT'S STATEMENT OF THE FACTS

Natasha Kerns ("*Natasha*"), the deceased victim, was an aspiring singer who had appeared on the television show *American Idol*. She was estranged from her husband, appellant Willie Marvin Williams ("*Williams*") at the time of her death. Several months before the murder, *Natasha* had met Anthony B. Wilson ("*Anthony*"), her new boyfriend, at a night club in Charlotte, N.C. On July 8, 2010, *Anthony* drove down from Charlotte, and spent the night at *Natasha's* residence. That night was the first occasion *Anthony* had spent the night at *Natasha's* residence in Greenville, S.C. *Anthony* parked his vehicle in front of *Natasha's* residence in the driveway. The following night, July 9, 2010, *Anthony*, *Natasha*, and her children went out to eat in *Natasha's* car and returned to *Natasha's* home. *Natasha* parked her car behind her home. (R. pp. 12-27, 165-67, 180-81, 308, 472).

Natasha lived in the "Idlewild" subdivision in a ranch style home. *Natasha* was afraid of her estranged husband appellant Williams. Prior to her murder, there had been two (2) domestic incidents at her residence involving Williams including one (1) in which the police were called, and Williams moved out of *Natasha's* home and into his own residence in Gray Court. Williams appeared at *Natasha's* residence again on June 25, 2010. At the time of *Natasha's* murder, she had just filed for a restraining order from Williams and for child support. Williams had been served with the papers. Williams was upset about having to pay child support, and Williams was due in Greenville County Family Court on these matters the week following *Natasha's* murder [July 13, 2000]. At the time of her death, *Natasha* had also barricaded her front door with her living room furniture. The back door was equipped with a burglar alarm. (State's Ex. 54, R. 12-27, 54, 187-94, 220, 316, 357-61, 367, 377).

Defendant's movements the night of the murder

Appellant Williams picked up Cynthia Booker, a date, and her aunt on the night of July 9, 2010 and drove them to a “biker clubhouse” in Greenville in his black Chrysler 300. (R. p. 140, ll. 5-19; R. p. 321, ll. 3-25). They stayed from approximately 1:30 AM to 3:45 AM when Williams suddenly left without Ms. Booker or her aunt. (R. p. 140, ll. 23-25; p. 143, ll. 8-14; R. p. 327, ll. 10-17). Ms. Booker testified Williams left the parking lot of the club hurriedly peeling his tires. As a result, she and her aunt had to find another ride home. Williams left the biker club, changed clothes at another location, and then drove to *Natasha's* home. (R. pp. 328-29, ll. 10-18). Williams had been drinking alcohol before arriving at *Natasha's* residence. (R. p. 372, ll. 15-25). There, at *Natasha's* home, Williams found *Anthony's* car parked outside *Natasha's* residence in the driveway. (R. p. 209).

What the victims saw and heard

After midnight, July 10, 2010, during the early morning hours before her murder, *Natasha* was in her home with *Anthony*. (R. p. 166, ll. 1-21; p. 167, ll. 24-24; p. 165, l. 1). After returning from going out to eat, *Natasha* and *Anthony* interacted with the children and talked and then went to bed. (R. p. 168). The two (2) were lying in bed in *Natasha's* room. Also in the home were the victim's two (2) small children, a son “*J*” (age 9) and his baby sister (age 2). (R. p. 31, ll. 22-23; p. 33, ll. 21-25; p. 34, ll. 8-9). “*J*” had his own bedroom where he slept, and his baby sister slept in her crib in *Natasha's* bedroom.

At trial, “*J*” testified that he knew something was wrong that morning when he “heard the first fire” [gunshot]. (R. p. 35, ll. 1-10). After hearing the shot, *J.* woke up, cut on the lights, cut

them off, then looked out the window and saw a Chrysler 300 [Williams' car] parked outside the house. (R. p. 35, ll. 14-23; p. 36, ll. 1-14). *J.* was able to identify this car as *his sister's dad's* car.² (R. p. 36, lines 17-18).

Anthony testified at trial about the moments before the murder when Williams showed up at *Natasha's* home. *Anthony* testified *Natasha's* son, *J.*, was in his bed; and, around 3:00 AM, he [*Anthony*], *Natasha* and her daughter went to bed in *Natasha's* bedroom. Later on, *Anthony* was awakened by dogs barking and "some ruckus going on around the outside of the house." (R. p. 168, ll. 5-6, 19-25; p. 169, l. 25; p. 170, ll. 1-3). *Anthony* testified that when he woke *Natasha* about the noise, she grabbed her gun from under the bed and went towards the front of her home. *Anthony* took *Natasha's* daughter towards her son *J.'s* bedroom. (R. p. 170, ll. 21-25; p. 171, ll. 1-3).

Natasha called 911 on her cell-phone. *Natasha* tells the operator there is someone outside her home, that her dogs are barking, and that she has her pistol for her own protection. *Natasha* also tells the operator that she and her husband are going through a divorce and an order of protection is pending. She then tells the operator that Williams is on her front porch. On the 911 tape, one can hear *Natasha* telling Williams to get away from her home. Then one can immediately hear a loud bang [the gunshot], and then *Natasha* dropped her cell-phone, and one can hear her collapse to the floor of her living room in front of a picture window where her body was later found by police. (State's Ex. 1 [911 call], R. pp. 12-27, 343). Williams shot *Natasha* through the front living room window. (R. pp. 53-54, 65-67, State's Ex. 7, 8, 10, 11, & 26).

²*J.'s* biological father had no involvement in the case or the trial. (R. p. 32, ll. 12-21). Williams is the biological father of *J.'s* half-sister, the baby girl.

Anthony testified that before the first shot was fired, he heard *Natasha* near the front door say something about “get away from my property, get away from my house.” (R. p. 171, ll. 23-25). Then *Anthony* heard “banging on the outside” and *Natasha* shouting. Right after that, “it went like straight silent.” (R. p. 172, l. 25; p. 173, ll. 1-2).

Natasha’s cell-phone remained on after she collapsed to the floor dead from the gunshot wound. (State’s Ex. 1 [911 tape], 67-82, 540). Appellant Williams kicked or forced out an entire lower front pane of a window in a garage converted into a den. This window pane did not break, but came completely dislodged from the window, where police later found it propped against the inside den wall. (State’s Ex. 29, 30, R. pp. 54, 219, 247). Williams then entered the home through this opening in the window armed with his handgun. (R. pp. 98-99, State’s Ex. 1, 911 tape).

Anthony testified after it got quiet, a male entered the room *Anthony* was in [*J*’s room where *Anthony* had carried the baby girl and placed her in *J*’s bunk-bed], and the male [Williams] fired three (3) shots.³ *Anthony* tripped over a video-game system on the floor right before Williams fired the shots, and *Anthony* was “pretty close to the weapon when it fired. (R. p. 295). “The first one—I guess the first one hit me, or whatever. That took me to the ground.” (R. p. 99, ll. 1-8). *Anthony* eventually went unconscious. *Anthony* eventually regained consciousness as a result of *J*. shaking him. *Anthony* found a towel and wrapped it around his head. Then he made his way down the hallway, and “I see her [*Natasha*] laying on the floor by the [front living room] window on her back. I went over there to check her pulse. Before I could even make an exit out of the house and everything, the sheriff was coming in through the back

³ *Anthony* is actually mistaken about the number of shots Williams fired in *J*.’s bedroom. On the 911 tape, one can hear Williams fire four (4) shots in rapid succession. (State’s Ex. 1, 911 tape).

door.” (R. p. 177, ll. 1-15). *Anthony* had suffered a grazing gunshot wound to the head. (R. pp. 63, 71, 98, 111-12, 178-80, State’s Ex. 44 & 45). He was later told he had “powder burns and stuff like that on my face and over my clothing.” (R. p. 175).

J. testified at trial that after he heard the first shot and saw Williams’ car outside, he left his room crawling down the hallway and found his mom lying on the living room floor. (R. p. 37, ll. 4-6, 330, ll. 7-12). *J.* stated he saw Williams standing over his mom shooting her. (R. p. 37, ll. 15-25).⁴ When asked how many shots did he hear, *J.* responded “[n]ine or four, one of those two.” (R. p. 38, ll. 11-12). *J.* testified Williams left “[a]fter he ran out of bullets.” (R. p. 46, ll. 1-3). *J.* explained that he knew Williams ran out of bullets because “he faced it at me” and “he shot it. He shot it at me. And then he ran out of bullets. You know how a gun says—when the bullet goes out of bullets, and then it says pssh [phonetic] and it’s out of bullets. And then he left.” (R. p. 49, ll. 9-17). *J.* testified Williams left out of the window in the den.

After committing the crimes, Williams left the residence, got into his Chrysler 300, and drove back to his home in Laurens County. Williams parked the Chrysler 300 in his garage, pushed a lawn mower behind the car, and then closed the garage door. (R. pp. 364, 379-80).

Police Investigation

The police arrived at *Natasha’s* around 5:00 AM after the 911 call which was placed around 4:50 AM by the deceased before she was shot. (R. pp. 12-27; R. p. 52, ll. 12-18). Upon arrival, Deputy Laura Campbell of the Greenville County Sheriff’s Office, along with two (2) other deputies, approached and entered the home through the kicked out window frame. (R. p.

⁴ *J.* is obviously confused as he was 9 years old at the time and witnessed his mother’s death and the shooting of *Anthony*. *Natasha* was found dead on her back in front of the living room window of her home. She had only one (1) gunshot wound; however, her shirt was covered in blood. In *J.’s* bedroom at the other end of the house, police found at least three (3) bullet holes, including in *J.’s* bunk bed. *Anthony* collapsed in *J.’s* bedroom after he was shot.

54, l. 25; p. 110, ll. 1-15). Deputy Campbell described a “young boy in a pair of boxer shorts holding a very young girl that looked to be less than two (2) in a pair of pink-footed pajamas.” (R. p. 55, ll. 22-25; p. 56, ll. 1-2). “The little boy was holding his sister. They were both screaming hysterically, staring at their mother on the floor. Both were crying, screaming, Help us, and He killed my mommy.” (R. p. 62, ll. 20-25; p. 63, l. 1). Deputy Campbell testified there was also an adult black male in the living room [*Anthony*] that appeared to be injured with a towel around his head soaked in blood. (R. p. 63, ll. 4-7). As Deputy Campbell got the children out of the house, through the same window frame hole, the little boy spontaneously stated: “Willie Marvin killed my mom.” (R. p. 63, ll. 14-19). Williams full name is *Willie Marvin Williams*. (R. p. 1)

Police found *Natasha* lying on her back in the living room of her home with a gunshot wound to her head. Her cell-phone was nearby. Police also found a bullet hole in the living room front window between where the curtains opened. *Natasha* was lying below these curtains with her feet toward the window near the far right of the front window if one is standing in the living room of the home looking out. (R. pp. 53-54, 65-67, State’s Ex. 7, 8, 10, 11, & 26).

In the den, which was a converted garage, and is at the far right of the home if standing inside the residence, police found a bottom four (4) square window pane that had been forced out and into the den, and then placed upright against a wall behind a couch. This window faces the driveway of the residence. The glass in the window pane was not broken. The frame had been forced out and into the den by someone outside the home. The hole made by the missing four-square pane was large enough for one (1) person to crawl through and enter the home. (R. pp. 54, 55, 65, ll. 14-16, State’s Ex. 6, 9, 10).

At the other end of the ranch style home from the den, at the end of a hallway, to the right, in *J.*'s bedroom, police found several bullet holes. One (1) bullet hole was in the child's bunk-bed, and two (2) were in the ceiling. A fired bullet was collected from a wall. Also found on the carpet of this room was blood where *Anthony* had collapsed. No shell casings were found inside or outside the home, i.e. Williams either picked up the casings or was using a revolver. (State's Ex. 32-42, R. pp. 40. 248-57). The murder weapon was not found either.

When crime scene specialists entered the residence, they entered by breaking in the back sliding glass door to the home. When they opened this door, an audible, loud, piercing, screeching burglar alarm went off. (R. pp. 106-07). No alarm was triggered when Williams entered earlier through the front garage/den window. Williams had formerly lived at the residence before he and *Natasha*'s separation.

After interviewing *Anthony* and "*J.*", investigators determined Williams had committed the crime. Police also interviewed members of Williams' family.⁵ Police determined Williams was a resident of Gray Court, in Laurens County. (R. pp. 63, 195-97, 203-05, 211-13, 217, 231-35).

Sometime that morning, the Greenville County Sheriff's Office requested assistance from Laurens County police in searching for the suspect vehicle in reference to this case. (R. p. 78, ll. 7-16, 20-24). Deputy Joshua Garrison of the Laurens County Sheriff's Office observed Williams

⁵ Two (2) of Williams' family members and one (1) friend were called as witnesses at trial by the State. They were anything but cooperative and what little testimony they gave was obtained with much difficulty. A friend of Williams denied he related an incriminating statement to police regarding what Williams told him. His testimony was impeached by several officers who interviewed him. Williams' sister first denied that she told police Williams had been served with legal papers shortly before the murder and that Williams was angry about the possibility of having to pay child support; however, after questioning by the Court *in camera* and continued examination by the Solicitor she admitted to the same. (R. pp. 114-18, 119-133, 160-62, 214-17, 187-94).

driving a champagne Chevy Tahoe, just after noon on July 10th. Williams had switched vehicles. (R. p. 79, ll. 1-6, 16-20).⁶

Deputy Garrison activated his blue lights to initiate a stop of Williams' vehicle; however, Williams "sped off at a high rate of speed." (R. p. 180, ll. 15-19). Garrison chased Williams for approximately twenty-six (26) miles at speeds in excess of one hundred and ten (110) miles per hour. (R. p. 80, ll. 20-21). The car chase ended when Deputy Garrison disabled Williams' vehicle by ramming it with his patrol car. Williams was found inside the vehicle with a "knife sticking out of his chest." (R. p. 81, ll. 6-10, 15-19; p. 82, ll. 2-4). Williams had tried to kill himself. The knife was removed from William' chest, and he was apprehended. (R. p. 82, ll. 14-17). Williams was airlifted to the hospital. (R. p. 207, ll. 15-21).

Autopsy and forensics

An autopsy was performed on *Natasha's* body on July 12, 2010 by Dr. Michael Ward, Chief Medical Examiner for Greenville County. (R. p. 145, ll. 23-25; p. 148, ll. 17-18). The autopsy showed *Natasha* suffered a gunshot wound to her face, which entered just inside of the victim's right eye, i.e. she was shot between the eyes. Further, the wound was surrounded by irregularly-sized superficial scratches described as intermediate target defect. This occurs when the bullet passes through another object before it strikes the person. This was consistent with the fact the front window to *Natasha's* residence had a bullet hole in it. *Natasha* also suffered superficial scratches on the inside portion of her eyes which means "her eyes were open when

⁶ Officer Greg Hawkins with the Greenville County Sheriff's Office warrants division testified he went to Laurens to Williams' home to find out if any of the five (5) vehicles that Williams had registered in his name were there. Officer Hawkins discovered a Chrysler 300 in Williams' garage when he arrived. The garage was closed and a riding lawn mower was parked behind the Chrysler 300, i.e. Williams hid the car in his garage and attempted to make it look like he had not been anywhere in the Chrysler. (R. p. 200, ll. 1-10, 231-32, 379-80).

the bullet impacted her face.” (R. p. 149, ll. 18-25; p. 150, ll. 1-12). Dr. Ward testified at trial *Natasha* would have dropped virtually immediately after the gunshot wound. (R. p. 151, ll. 3-11). The manner of death was homicide because *Natasha* “..died as a result of a gunshot wound to the head.” (R. p. 155, ll. 15-25).

Forensic examination determined *Natasha* was killed with a .38/9mm caliber bullet. She *was not* shot with her own handgun, which was found next to her body. When police searched Williams’ residence in Gray Court, they found a box of five (5) federal .38 caliber bullets. These bullets were consistent in caliber and design with the fired bullet from the autopsy and the bullet recovered from the wall of *J*’s room.⁷ The .38 pistol that went with the .38 caliber bullets was never recovered. It was not in Williams’ residence in Gray Court, and it was not in his car when he was arrested after the long police chase. (R. pp. 221, 231-35, 260-73).

⁷ The transcript mistakenly states a disassembled bullet found at Williams’ home is “to assist with” caliber and design as State’s Exhibits Nos. 43 and 48 bullet specimens. (See R. p. 273, ll. 4-6). This is clearly a typographical error. Based on the questioning before and after this typographical error, it is clear the firearm and toolmark expert testified a bullet found at Williams’ home was disassembled by him and “is consistent with” *not* “to assist with” State’s Ex. 43 and 48, the bullet from the deceased victim and the bullet recovered from *J*’s bedroom wall. (R. pp. 272-73).

ARGUMENT I.

Judge Jefferson did not err in excluding the evidence of what someone allegedly said because it was not relevant; and, if offered for the truth of the matter asserted was hearsay and prejudicial to one of the victims' character; further, Williams was not prejudiced by the exclusion of what someone said because it was not a threat and cannot be considered a threat.

What Occurred Below

During the trial, Williams testified that he arrived at the victim's home after 4:30 AM, which was after he left a motorcycle club and bar. (R. p. 329, lines 7-8, 10-18). While dark, Williams attempted to open the front door but was unable to get into the house. He then began to knock. (R. p. 332, lines 10-25). Williams stated he saw someone inside the home move an inside curtain; and, he looked in but could not see anyone. He denied that he heard Natasha yell: "get off my porch; get away from my house[.]" even though this is on the 911 tape. Williams testified he was walking off of the porch when he heard something in the grass next to the house and turned towards the noise. Williams testified that he saw a guy, "an individual approaching me. And they pulled out a weapon and pointed it at me and said--." (R. p. 333, lines 6-14). Defense counsel interrupted Williams and then asked him again what did the man say. At this point in the trial, a hearsay objection was raised by the State; the jury was excused, and Williams was allowed to finish his testimony regarding what was said to him *as a proffer*. (R. p. 333, lines 18-23).

Williams testified outside the jury that the man who approached him [*Anthony*] stated: "I, finally, get to meet the man whose money I've been spending." (R. p. 334, ll. 17-18). Nothing else was said by the man. Judge Jefferson ruled:

He can testify that a gun was pointed at him. But the words that were spoken are not really relevant to state of mind. I thought he was going to say - - originally,

he was going to say something about - - I thought it was something that was provocation. And I'm not hearing that.

(R. p. 335, ll. 3-8). Defense counsel responded:

Well, you know, in Willie's mind, it kind of could have been - - I mean, he would have to testify to it.

The Court responded:

Well, words, no matter how – don't justify self-defense. It would have to be something that is life threatening. You just taunting me is not enough for self-defense. And that would be in the nature of a taunt, if I were to take it in the light most favorable as you're advancing.

Counsel responded: "Yes, Your Honor. (R. p. 337, ln. 18).

To which the Court responded: "But I don't think it falls within the exception." (R. p. 335, ll. 19-20). To which counsel responded:

He's, also, testifying that the declarant had a gun pointed at him.

(R. p. 335). To which the Court responded:

Well he can testify to that. But the words do not rise to the level of provocation. So that would be excluded. But he can testify that someone pointed a gun at him.

(R. p. 335, ln. 23 – 336, ln. 1).

Once the jury returned, Williams testified that the man approached him, said something, and pointed a weapon that appeared to be a handgun at Williams. Williams testified he then engaged in a defensive maneuver in self-defense to protect himself, which resulted in the gun going off in *Anthony's* hand outside the house. (R. p. 338, 17-24; p. 339, line 1). Williams testified he and the man then fell through a window to the home, and then struggled throughout the house, until the gun fired three (3) times in *J.'s bedroom* striking *Anthony*. Williams testified he did not have control of the gun only *Anthony's* arms and wrists. (R. pp. 379, ll. 4-11).

Standard of Review

Whether evidence is relevant in a criminal case is an issue within the trial judge's discretion. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996). A trial judge's determination of admissibility of evidence will not be disturbed absent a showing of an abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989). Great deference is given to a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence, with the judgment of the trial judge only being reversed in exceptional circumstances. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004); State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 S.E.2d 785 (Ct. App. 2003).

The Lack of Merit of this Issue

Williams repeatedly refers throughout his brief [including in his statement of issue on appeal] to the alleged statement of the person who approached Williams [*Anthony*] as *a threat* in order to justify reversal of his convictions and sentences. (See BOA). The plain fact of the matter is the statement is not a threat. And, Williams repeated characterizations of the statement in his brief as a threat will never make it so.

The only thing Williams testified at trial was the man said: "I, finally, get to meet the man whose money I have been spending." As Judge Jefferson properly ruled, **it was not a threat** and did not constitute legal provocation.

Further, Williams did not testify *in camera* or before the jury that the statement or the statement combined with the gun being pointed at him caused him to fly into a rage, to lose control or volition, or created an uncontrollable impulse to do violence. State v. Starnes, 388

S.C. 590, 698 S.E.2d 604 (2010). Williams merely testified he acted in self-defense employing a defensive maneuver he had received in prior training. (R. pp. 338-42, 379, ll. 4-11).

Because of what the alleged statement of the man was, as testified to by Williams, the statement was irrelevant to Williams' state of mind. Rule 402, SCRE ("Evidence that is not relevant is not admissible."). Because the statement was not a threat and was irrelevant to Williams' state of mind, it could only be offered for the truth of the matter asserted, which was an attempt to disparage the male victim, *Anthony*, as a free-loader, i.e. an attack on the male victim's character. See State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)(holding character evidence of the victim and witness offered by the defendant in murder case was irrelevant and could only unfairly impugn the character of the victim or witness and its prejudice outweighed any probative value). Therefore, the prejudice of the offered statement here outweighed any probative value of the statement. *Id.*; Rule 403, SCRCF. Judge Jefferson did not err in excluding the statement as irrelevant.

Furthermore, even assuming *arguendo*, error in the exclusion of this statement, it was harmless. In fact, Williams was better off without the statement because it was not a threat. Without the statement, the jury could only infer, if it believed Williams' testimony, that the man with the gun approached Williams threateningly, said something that was threatening but which the jury could not hear because it was hearsay, and Williams acted accordingly. If the statement had been admitted, the jury would have heard there was no threat at all: "I, finally, get to meet the man whose money I have been spending." With the statement, if the jury believed Williams, it would easily have determined he *overreacted* in acting in self-defense, and *was not* acting under the heat of passion upon adequate legal provocation. Furthermore, Williams did not testify that he flew into a rage or the statement caused an uncontrollable impulse to do violence or kill.

Starnes. Williams testified he merely acted in self-defense. Even if the trial court erred, Williams has failed to show any resulting prejudice. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989)(a trial judge's determination of the admissibility of evidence will not be disturbed absent a showing of an abuse of discretion that has resulted in prejudice to the complaining party); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000)(To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof). As a result, this appellate ground has no merit and must be dismissed.

ARGUMENT II.

This issue is not preserved for appellate review because Williams waived and abandoned any request to instruct on involuntary manslaughter and acquiesced to Judge Jefferson not charging involuntary manslaughter; further, Judge Jefferson did not err in declining to instruct on involuntary manslaughter on this record; and, even if the failure to instruct on involuntary manslaughter was error, it was harmless.

What occurred below

At the close of the defense' case, but before the State's reply, Judge Jefferson asked for any requests to charge but informed counsel there would be a charge conference. Judge Jefferson also indicated preliminarily what she planned to charge given the testimony and evidence which had been presented thus far in the trial, which included murder and probably self-defense. The State did not have any additional requests. Williams also requested that Judge Jefferson instruct the jury on the lesser included offense of voluntary manslaughter, the defense of accident, the lesser included offense of involuntary manslaughter, and requested that the Court not instruct on the inference of malice from a deadly weapon. The State objected to the requests to instruct on voluntary manslaughter, accident, and involuntary manslaughter. Judge Jefferson stated she would have to consider the requests overnight. (R. pp. 382-87).

The following day, after the State concluded its reply or rebuttal testimony and evidence, and motions for a directed verdict were made and denied, Judge Jefferson held a charge conference. She informed the parties she would instruct the jury on murder, voluntary manslaughter, self-defense, mutual combat, and accident. She informed the parties she would not instruct the jury on involuntary manslaughter as the record was void of any evidence supporting that instruction. (R. p. 403-04). The State objected to the instruction on voluntary manslaughter and accident. (R. pp. 403-04). When asked if he had any objections to the Court's

decision regarding jury instructions, Williams did not object to Judge Jefferson's decision regarding jury charges, specifically stating: "No objection to your decision about your charges." (R. p. 406, ll. 15-16). Nor did Williams object to the forms of the verdict which *did not* include a verdict of guilty of involuntary manslaughter. (R. p. 410). At this point, Williams did request a jury charge *on premeditation*, regarding *murder*, which Judge Jefferson declined, and Williams *excepted* to the failure to charge premeditation only. (R. p. 406-09).

The Lack of Preservation of this Issue

Williams argues on appeal that Judge Jefferson erred in not instructing the jury on the lesser included offense of involuntary manslaughter. However, he did not argue this below, but **waived and abandoned** this issue and **acquiesced** to Judge Jefferson's decision not to instruct on involuntary manslaughter. This ground is not preserved for appellate review.

While Williams initially requested the Court instruct the jury on several different legal matters, including voluntary manslaughter, self-defense, accident, and involuntary manslaughter, when Judge Jefferson returned the following day after considering the requests overnight and informed counsel and Williams she would instruct the jury on voluntary manslaughter, self-defense, and accident, but would not be instructing the jury on involuntary manslaughter, Williams raised no objection and in fact **waived and abandoned** this issue, and **acquiesced** to the Court's decision on this issue stating **he had no objection to the Court's decision regarding jury instructions**. (R. pp. 403-09). The trial transcript is illuminating:

Court: Are there any exceptions to the instruction as proposed from the State?

[Whereupon the State objected to voluntary manslaughter and accident]

Court: Anything from the Defense?

Mr. Jones: Your Honor, just a question to gain knowledge. No exception to your decision about charges. [Counsel then discusses whether the Court will instruct *pre-meditation* as it relates to murder and voluntary manslaughter and the Court stated it would not charge premeditation based on South Carolina law].

Mr. Jones. Thank you, Your Honor.

(R. pp. 405-06). (See also 407-09). Williams only objection to the jury instructions was the failure to charge premeditation to prove murder. (R. pp. 405-09). Further, when the Court allowed counsel for both sides to view the forms of the verdict, which did not include a verdict for guilty of involuntary manslaughter, there was no objection by the Defendant.

The Court: Are there any exceptions to the form of the verdict from the State?

Ms. Munson: No, ma'am.

The Court: Forms of the verdict. ... From the Defense?

Mr. Jones: No. Your Honor.

(R. p. 410, ll. 4-10). After the charge was read to the jury, there were no additional exceptions. (R. p. 454, ll. 12-18). During the deliberations, when the jury requested to be re-instructed on the difference between murder and voluntary manslaughter and the trial court did so, there was no objection to the failure to instruct the jury previously or at that time on involuntary manslaughter. (R. pp. 458-61). After the jury returned the verdicts of guilty, there were no post-trial motions or objections at all. (R. p. 469).

As a result, this issue is not preserved for appellate review. State v. Rios, 388 S.C. 335, 696 S.E.2d 608 (Ct. App. 2010)(defendant waived appellate issue of request for involuntary manslaughter instruction because he acquiesced and an issue conceded in the trial court cannot be argued on appeal); *See e.g.* State v. Jackson, 364 S.C. 329, 336 613 S.E.2d 374, 377 (2005)(appellant waived any issue when he acquiesced); State v. Benton, 338 S.C. 151, 526

S.E.2d 228 (2000)(an issue is not preserved for appellate review if it has been conceded in the trial court); *Cf. State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998)(when appellant acquiesces to the trial court's limitation of cross-examination, he cannot complain on appeal); *Ex Parte McMillan*, 319 S.C. 331, 461 S.E.2d 43, 45 (1995)(a party cannot acquiesce to an issue at trial and then complain on appeal); *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)(issue conceded in the trial court cannot be argued on appeal); *Hollins v. Wal-Mart Stores, Inc.*, 381 S.C. 245, 251, 672 S.E.2d 805, 808 (Ct. App. 2008). See also *J. Hoefer Toal, et. al, Appellate Practice in South Carolina*, 2nd ed., S.C. Bar, 2002, p. 58.

Williams also failed to make a contemporaneous objection to the jury charges. *Rios*, 388 S.C. at 342, 696 S.E.2d 608, referencing *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005)(holding a contemporaneous objection must be made to preserve an issue for appellate review). In *Rios*, this Court specifically held;

Rios did not object at any point to the trial court's decision not to charge involuntary manslaughter and self-defense. Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, "None." By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal. Thus we affirm the trial court's decision not to charge the jury on involuntary manslaughter and self-defense.

Rios, 388 S.C. at 342, 696 S.E.2d at 612. As a result, this appellate ground was waived and abandoned and is not preserved for appellate review and must be dismissed. Rule 20(a), SCRCrimP; *J. Hoefer Toal, et. al, Appellate Practice in South Carolina*, 2nd Ed., p. 71 ("Further, notwithstanding any request for legal instructions, the parties must be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection must state distinctly the matter objected to and the grounds for

objection. Failure to object in accordance with this rule will constitute waiver of objection. Rule 20(b), SCRCrimP.”).

The Lack of Merit of this Issue

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the petitioner were prejudiced. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court’s factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In criminal cases, the appellate court sits to review errors of law only. Id. A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side’s requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 452, 529 S.E.2, 721, 728 (2000).

Jury Charges

“The law to be charged must be determined from the evidence presented at trial.” State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). In determining whether the evidence requires a charge of manslaughter, the Court views the facts in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008). However, “[a]n instruction should not be given unless it is justified by the evidence.” State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). “Only the law applicable to

the case should be charged to the jury.” State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). “If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury.” Id. Furthermore, a trial judge must be cautious in charging a lesser included offense. If a trial judge improperly charges the jury on a lesser included offense that is not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction of the lesser included offense, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing fact that prosecution on retrial of greater offense than that for which defendant was convicted would constitute a violation of the Double Jeopardy Clause); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(finding trial counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and succeeded in vacating his manslaughter conviction). This Court will not reverse the trial court’s ruling 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). When the record contains no evidence to support a lesser included offense, a charge on the lesser included offense should not be given. *See* State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005), *referencing* State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-69 (2000).

Analysis

At trial, there were two (2) versions of what occurred. The State’s version was Williams stalked the victim Natasha; shot her between the eyes when she peered out the window, then broke into the victim’s home and shot *Anthony* and endangered the life of the deceased victim’s children. Williams’ version was *Anthony* came out of the house with a gun, and Williams used a defensive move he had been trained to use resulting in *Anthony* firing the weapon and

accidentally striking the deceased victim inside the residence. In the State's version of how the crime occurred, Williams had the gun and shot the victim intentionally with it. In Williams' version of what occurred, *Anthony* always had the gun, and *Anthony* fired the gun outside the residence. As a result, Williams was not entitled to a charge of involuntary manslaughter.

While self-defense and involuntary manslaughter are not mutually exclusive, as Judge Jefferson correctly found, the facts of this case did not entitle Williams to an instruction on involuntary manslaughter. According to the State's evidence, Williams was guilty of murder. According to Williams's version of events, he was entitled to an acquittal under the theory of self-defense or possibly accident. However, under neither version of events was Williams entitled to an instruction on involuntary manslaughter.

These facts would not entitle Williams to an instruction on involuntary manslaughter under South Carolina law. State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009); State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900-01 (2006), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); State v. Cabrera-Pena, 361 S.C. 372, 381, 605 S.E.2d 522, 526-27 (2004)(finding defendant is not entitled to a charge on involuntary manslaughter where no evidence exists to support the charge). Under South Carolina law, involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) *an unlawful act* not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with *reckless disregard* for the safety of others. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). There is nothing in the record which would have entitled Williams to an instruction on involuntary manslaughter because he does not fit in either of these two (2) categories.

Williams was not entitled to an involuntary manslaughter instruction under the State's case

First, under the State's version, Williams intentionally shot the victim between the eyes with the gun he had in his possession when the victim peered out her living room window. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)(defendant not entitled to involuntary manslaughter instruction where after altercation with his grandfather he obtained shotgun, returned to grandparents room and intentionally shot them); Cabrera-Pena, 361 S.C. at 381, 605 S.E.2d at 526 (involuntary manslaughter instruction not warranted where accused was "engaged in unlawful, felonious and harmful conduct" at the time of incident);⁸ State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)(court did not err in refusing to instruct involuntary manslaughter **where defendant wielded knife in an intentional manner, because the intentional use of a dangerous instrumentality does not support the allegation of mere criminal negligence**); Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992)(no evidence of mere criminal negligence in use of a dangerous instrumentality because the defendant intentionally fired his weapon);⁹ Gibson v. State, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010)("the essence of involuntary manslaughter is the involuntary nature of the killing" and because co-defendant admitted he voluntarily and intentionally fired his gun, court properly denied the instruction on

⁸See also State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995)(no error in refusal to charge involuntary manslaughter when the defendant intentionally fired his gun); Harris v. State, 354 S.C. 382, 581 S.E.2d 154 (2003)(defendant was not entitled to involuntary manslaughter instruction where he intentionally fired gun); State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (involuntary manslaughter charge not warranted where defendant intentionally fired his shotgun); Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998)(involuntary manslaughter charge not warranted where defendant admitted he intentionally fired gun into a crowd in self-defense).

⁹Under South Carolina law, a deadly weapon is generally defined as any article, instrument, or substance which is likely to produce death or great bodily harm. State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007), *referencing* State v. Bennett, 328 S.C. 251, 262, 493 S.E.2d 845, 850-51 (1997). A gun is obviously a deadly weapon or dangerous instrumentality.

involuntary manslaughter to accomplice); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996)(where defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct. App. 1991)(noting under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun); State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding defendant had lawfully armed himself in self-defense and was entitled to instruction on involuntary manslaughter where there was evidence the gun *unintentionally* discharged); State v. Brayboy, 387 S.C. 174, 181-82, 691 S.E.2d 482, 486 (Ct. App. 2010)(holding although unlawful to point and present a firearm, when defendant lawfully armed himself in self-defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting gun *accidentally* discharged was sufficient to warrant instruction on involuntary manslaughter). *See also* State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002)(“An unintentional killing resulting from an unlawful assault and battery, **not of a character of itself to cause death**, is involuntary manslaughter...”)*quoting* State v. Chatman, 336 S.C. 149, 152-53, 519 S.E.2d 100, 101 (1999), *citing* 40 C.J.S. *Homicide* Section 40 (1991), *other citations omitted* (emphasis added).¹⁰ State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007)(defendant was not entitled to a jury instruction on involuntary manslaughter where striking someone in the head with a 5 pound sledgehammer would naturally tend to cause death or great bodily injury *and* there was no evidence defendant handled sledgehammer with reckless disregard for the

¹⁰*See also* Smith v. Padula, 444 F.Supp. 531 (D.S.C. 2006)(habeas corpus petitioner failed to show S.C. Supreme Court unreasonably applied United States Supreme Court precedent in reversing PCR Court’s grant of relief on ineffective assistance of counsel for failing to preserve trial judge’s refusal to charge involuntary manslaughter where S.C. Supreme Court determined Petitioner was not entitled to involuntary manslaughter instruction under S.C. law).

safety of others but *intentionally struck the victim on the head* with the weapon). Under the State's version of what occurred, Williams was not entitled to an instruction on involuntary manslaughter.

Williams was not entitled to an instruction on involuntary manslaughter under his version

"To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others. S.C. Code Ann. § 16-3-60 (1985)." Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991); Brayboy, (*Quoting State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009)); State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003). "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." Brayboy, 387 S.C. at 180, 691 S.E.2d at 486. (*Quoting Pittman*, 373 S.C. at 571, 647 S.E.2d at 167).

At trial, Williams testified when the individual outside the home [*Anthony*] approached him with a gun and said something, he acted in self-defense, by performing a defensive maneuver which resulted in the gun in the third-person's [*Anthony's*] hand going off, i.e. *Anthony* fired his gun through the window and accidentally struck Natasha between the eyes killing her. (R. pp. 338-41, 379, ll. 4-10). While evidence of a struggle over a weapon between a defendant and victim supports submission of an involuntary manslaughter charge,¹¹ Williams did not testify he had his hands on the gun, or that he and the third person [*Anthony*] were struggling over the weapon when it discharged outside the home. (R. pp. 338-41, 379). He testified he employed a defensive maneuver he had learned in self-defense training, and the gun went off in *Anthony's* hand while Williams employed the defensive maneuver. As a result,

¹¹ State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (2010). (*See Tisdale v. State*, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008); Casey, 305 S.C. at 447, 409 S.E.2d at 392.)

Judge Jefferson did not err in declining to charge involuntary manslaughter and charging self-defense and accident. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014)(trial court did not err in not charging involuntary manslaughter where under the defendant's version of the facts he unintentionally caused the victim's death when he lawfully but alleged recklessly performed a martial arts move in self-defense, because there was no basis to conclude the defendant acted recklessly in defending himself because the circumstances he alleged to be reckless were the same circumstances that justified his use of force), *cited approvingly in* State v. Sams, ___ S.C. ___, 764 S.E.2d 511, 516 (2014). In Scott, the appellant alleged the martial arts maneuver caused the victim to stab herself with her own knife. Here, appellant alleged below his defensive maneuver caused *Anthony* to fire his own weapon and kill *Natasha*. As a result, there is no merit to this argument. Id.¹²

Williams argues that State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) is similar to the facts of this case. Williams is wrong. In Burris, the defendant pulled his own gun out of his pocket and fired two (2) shots in the ground, and then claimed he fell down, and as he was getting up off the ground his gun, which he was holding, went off accidentally killing the victim. Id. Williams also argues Light and Battle are similar to this case. Again, he is wrong. As just stated, in Light, there was evidence the defendant and the victim struggled over the firearm,

¹² See also State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding defendant was entitled to an instruction on involuntary manslaughter where there was evidence in the record that there was a *struggle over the weapon* including defendant testified he took the gun away from the victim and he fell backward and it discharged; jury could have found the defendant handled the gun recklessly); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(finding defendant was entitled to an instruction on involuntary manslaughter where there was evidence in the record that there was a *struggle over the weapon* including appellant telling an investigator he grabbed the victim's gun, turned it around, they struggled and the gun went off, and appellant dropped the gun; a friend of appellant testified appellant told him after victim pointed the gun at him he grabbed the victim's gun, turned it around, and it went off; and, appellant testified at trial that in struggling over the weapon he may have touched the trigger).

including Light obtaining possession of the firearm and as he fell backward it went off. In Battle, again there was evidence of a struggle over the gun, as Battle told an investigator that after the victim pointed the gun in his face, he grabbed the victim's gun and turned it back towards the victim; he and the victim struggled and the gun went off; Battle didn't know whether he pulled the trigger or not, but Battle then dropped the gun. Id. at 115. A cousin of Battle also testified Battle told him that after the victim pulled the gun out, Battle turned the gun around and that was it. Id. at 114. Further, Battle testified at trial that in struggling over the gun, his finger may have touched the trigger. Id. As a result, this Court found there was evidence in the record there was a struggle over the weapon, and as a result, Battle was entitled to an instruction on involuntary manslaughter. Id. at 119-21.

What Williams is actually seeking to do is to assert imperfect self-defense as a means of reducing murder to involuntary manslaughter, i.e. the jury could have determined he acted recklessly while in self-defense; and, as a result, he alleges he was entitled to an involuntary manslaughter instruction. The South Carolina Supreme Court recently pointed out this is not the law in South Carolina, and the appellant's argument was tantamount to imperfect self-defense, which South Carolina has not recognized, and has no application to involuntary manslaughter. State v. Sams, *supra*, referencing State v. Finley, 277 S.C. 548, 551, 290 S.E.2d 808, 809 (1982)(imperfect self-defense is not the law in South Carolina), and citing Douglas v. State, 332 S.C. 67, 75 n. 4, 504 S.E.2d 307, 311 n. 4 (1998)(imperfect self-defense has no application to involuntary manslaughter). In addition, the Court held the most Williams would be entitled to receive, even if South Carolina were to recognize imperfect self-defense, was an instruction on voluntary manslaughter, which Appellant received at trial, not involuntary manslaughter. Id., citing Roy Moreland, The Law of Homicide 93 (1952); 40 C.J.S. *Homicide* Section 110 (2006),

also referencing State v. Falkner, 301 Md. 482, 483 A.2d 759 (1984). In fact, in Sams, the Court cited approvingly this Court's opinion in Scott, *supra*:

Similarly the Court of Appeals recently considered a defendant's assertion that "the trial court erred by not charging involuntary manslaughter because under his version of the facts, he unintentionally caused [the victim's] death when he lawfully but recklessly performed a martial arts move in self-defense." State v. Scott, 408 S.C. 21, 22, 757 S.E.2d 533, 534 (Ct. App. 2014). The Court of Appeals found "no basis to conclude Scott acted recklessly in defending himself because the circumstances Scott alleges to be reckless are the same circumstances that justified his use of force." *Id.*

Sams, *supra*. As a result, this appellate ground has no merit and must be dismissed.

Harmless Error

Even assuming *arguendo* Williams was somehow entitled to an involuntary manslaughter instruction, the failure to do so was harmless under the particular facts of this case. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014)(finding harmless error analysis is appropriate for the failure to charge a lesser included offense); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(same).¹³ The failure to charge involuntary manslaughter in this case was harmless where Williams' version of events was so preposterous and non-credible and the evidence of guilt was so overwhelming that the jury would not have accepted Williams' version and convicted him of involuntary manslaughter. State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" Middleton, *supra*, quoting State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218

¹³ This Court has previously held the refusal to charge the jury with a requested instruction is subject to harmless error analysis. State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310 (2010); State v. Jeffries, 316 S.C. 13, 21, 446 S.E.2d 427, 431 (1994)(harmless error analysis is appropriate where the error complained of is a "trial error" rather than a "structural defect" in the trial mechanism itself). *See also* Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41, *Toal*, C.J. concurring. *Contra* Light; Lee.

(Ct. App. 1998). “In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.” *Id.*, *citation omitted*. “Thus, whether or not the error was harmless is a fact intensive inquiry.” *Id.* A fact intensive inquiry shows Judge Jefferson’s not charging involuntary manslaughter did not contribute to the verdict.

It was undisputed at trial the victim and her husband, appellant Williams, were separated and there had been two (2) prior domestic incidents at the home resulting in Williams moving out and returning to his home in Gray Court. The victim had subsequently filed for a restraining order and for child support, and Williams had been served with the papers and was due in court the following week on the same. Testimony at trial established Williams was upset about having to pay child support. It was also undisputed at trial that the victim was afraid of Williams and had barricaded her front door with her living room furniture.

Williams, who was on a date the night of the victim’s murder, tried to call the victim several times, and she would not answer the phone. Williams’ date testified Williams left the nightclub they were at around 3:45 a.m. hurriedly “peeling” his tires and abandoning her and her aunt. As a result, she and her aunt had to obtain a ride home from the club.

While dark, Williams drove to the victim’s residence arriving at approximately 4:45 a.m. and claimed at trial that he was going by the victim’s home to check on the victim and the children and possibly stay the night, or pick up his daughter. This testimony is not credible given his admission at trial that the victim was afraid of him and had filed for a restraining order on him. There, at the victim’s residence, Williams found his estranged wife’s new boyfriend’s car parked in the driveway of the residence.

The victim's boyfriend, *Anthony*, who was sleeping beside the victim, testified he was awakened by noises outside the house. He awakened the victim, who immediately obtained her semi-automatic pistol from under the bed, and approached the barricaded front door. *Anthony* did not leave the home, but because of what was going on took the victim's infant daughter to the victim's young son's bedroom to lay her in the bed with her brother. *Anthony* could not have left the home, as Williams later claimed, through the rear door because it was armed with a burglar alarm. *Anthony* could not have exited the front door of the home because it was barricaded with furniture. Further, Williams admitted *Anthony* did not come out the front door.

The State introduced the 911 call of the incident. On the 911 tape, the victim can be heard telling the 911 operator there is someone on her front porch. She also tells the operator she had filed for a restraining order from her husband Williams *and* she is going through a divorce. She then tells the operator Williams is on her front porch. The victim can be heard yelling at Williams to get off her front porch and away from her house. The gunshot that killed the victim can then be heard on the 911 tape. Williams claimed at trial that he never heard the victim yell at him when he knocked on the front door. The physical evidence shows Williams shot the victim through the front living room window as she was peeking through the curtains. Her eyes were open when she was shot. She was shot between the eyes.

The victim immediately fell to the floor dead, with her phone lying beside her. The hole made by the vacant window pane was large enough for Williams to crawl through, which he did. Viewing the photographs of this hole, it is hard to fathom two (2) grown men fell through this window as Williams claimed at trial. Further, the glass in the window was not broken, as the police found the window frame and glass intact and leaning against an inside wall behind a

couch. Williams did not attempt to enter the residence through the back door, which contained the loud screeching alarm, or the front door, which was barricaded, but through the window pane hole he created.

Anthony testified he laid the victim's daughter in the bunk bed with *J.*; and, when he turned, Williams entered the room and fired at least three (3) shots. On the 911 tape, one can hear Williams fire four (4) shots in rapid succession. *Anthony* was struck by one (1) of the shots knocking him unconscious. He did not regain consciousness until *J.* was shaking him on the floor telling him to wake up.

J. testified he was awakened after he heard the first shot, and he saw Williams' car outside. He left his room crawling down the hallway and found his mom lying on the living room floor. *J.* stated he saw Williams standing over his mom shooting her. When asked how many shots did he hear, *J.* responded "[n]ine or four, one of those two." *J.* testified Williams left "[a]fter he ran out of bullets." *J.* explained that he knew Williams ran out of bullets because "he faced it at me" and "he shot it. He shot it at me. And then he ran out of bullets. You know how a gun says—when the bullet goes out of bullets, and then it says pssh [phonetic] and it's out of bullets. And then he left." *J.* testified Williams left out of the window in the den. (R. pp. 37-49).

When the first police responders arrived, they found the garage/den window pane missing and entered the home through the same window hole finding *J.* holding his baby sister in the living room. *J.* eventually told police outside the home that "Willie Marvin" killed my momma. Appellant's name is *Willie Marvin* Williams. Also in the living room police found *Anthony* with a blood soaked towel around his head. He had a grazing gunshot wound to the head.

Crime scene specialists found the doors to the residence locked, and had to break in the back door to enter the residence. Upon breaking in the back door, a screeching, piercing, burglar alarm went off. Inside the residence, police found the victim's body in front of the living room picture window with her feet toward this window with a gunshot wound to the inside of her right eye. Police also found a bullet hole in the front living room window where the victim had been peering out between the curtains before being shot. Police also found three (3) bullet holes in *J.*'s bedroom, including one (1) in the bunk-bed where the children had been sleeping before Williams shot *Anthony*. Police recovered a fired bullet from that bedroom wall. Police also found blood on the carpet consistent with *Anthony*'s testimony that after he was shot he collapsed on *J.*'s bedroom floor.

Police found no fired shell casings in the home, meaning Williams either picked up his brass or used a revolver to commit the crime. Police did not find the murder weapon in the victim's home either. Williams took the gun with him when he fled the crime scene.

The autopsy of the victim determined she was not killed with her own gun, a semi-automatic. She was killed with a .38/9mm bullet. This bullet was consistent with the bullet found in the wall in *J.*'s bedroom. A box of .38 caliber bullets was found in Williams' home in Gray Court after he was arrested. These were consistent with the two (2) bullets found at the crime scene, i.e. the one (1) in the wall and the one (1) removed from *Natasha*'s head.

While Williams testified at trial that both victims were shot while he was acting in self-defense, and that he came the residence to check on *Natasha* and the children, Williams did not stay at the scene and call 911 or the police. He did not stay at the home to care for the minor

children. He claimed he fled out the back of the home. He fled from the crime scene in his Chrysler 300.

Upon returning to Gray Court, Williams hid the Chrysler 300, the vehicle which he used to commit the crimes, in his garage, pushing a lawn mower behind it, and closing the garage door. Williams then changed vehicles into a Chevy Tahoe.

During this time, Williams spoke to a friend, and related to a friend something that was so incriminating that the friend would not include it in his written statement to police.

Williams was eventually spotted by police in the Tahoe, and fled from them when they attempted to apprehend him for the crimes in Greenville County. Williams led police on a 26 mile high speed chase, at times exceeding 110 m.p.h., in which he refused to stop and only stopped when his vehicle was rammed and disabled. It was then, rather than being apprehended for the crimes in Greenville, Williams attempted to take his own life by stabbing himself in the chest.

In addition to murder, the jury was charged on voluntary manslaughter, self-defense, and accident, and rejected all of the same finding Williams guilty of murder. It is clear the jury found Williams' preposterous story of how the events occurred not credible.

It is easy to see why. Williams' version of events was simply incredible and beyond belief. Admittedly, after legal papers for a restraining order and child support had been filed against him, and knowing that his wife was afraid of him, he drove to his estranged wife's home at approximately 4:45 a.m, and while dark, with the dogs barking, he attempted to open the front door without even knocking. (R. p. 366). His claim that he did not hear the victim yelling for

him to leave is also not credible as her statements are reflected on the 911 tape, and *Anthony* heard them in another part of the house. (R. p. 369, State's Ex. 1, [911 tape]). And, his claim that he fought with a man in front of the house and, as a result, the victim who he was angry with was coincidentally shot between the eyes strains credulity. Further, his claim that he and *Anthony* both fell through a small window in the garage / den area ending up in the house without breaking any glass is beyond belief. Further, it is incomprehensible to believe that he and *Anthony* struggled throughout the entire length of the house ending up in *J.*'s bedroom. Furthermore, his claim that he was at the home to check on the children is belied by the fact that after the shooting, he claims he never saw the children, and he did not remain at the scene to see about their welfare, but fled in the car he came in. Finally, the fact that he would engage in a 26 mile high speed chase with police, when as he claimed at trial, he did nothing wrong, is beyond belief.

Furthermore, *Williams*' own admissions at trial thoroughly incriminated him. He admitted that on the night of the murder he had attempted to call the deceased victim two (2) times before going to her home, and she would not answer his calls. (R. pp. 329, 377). He admitted he had been drinking alcohol on the night of his estranged wife's murder before he went to her home. (R. p. 372). He admitted he left his date at a night club at approximately 3:30 a.m., and changed clothes at another location before going to his estranged wife's residence. (R. pp. 326-28). He admitted he went to his wife's residence at approximately 4:45 a.m., while still dark, after she had already served him with papers seeking a restraining order, and he was due in Court three (3) days later on the requested restraining order and child support. (R. pp. 366-67, 329-30, 365). He admitted his wife was afraid of him. (R. p. 357). He admitted there had been two (2) prior domestic incidents at *Natasha's* residence before he moved out including one

where he confronted her with a weapon [a gun] and another in which the police were called to the home. (R. pp. 358-61, 312). He admitted he and *Natasha* had two (2) weapons, before he moved out of the home. (R. p. 312, ll. 7-12).¹⁴ He admitted he appeared at *Natasha*'s residence again on June 25, 2014, fifteen (15) days before her murder. (R. p. 361). He admitted he went to *Natasha*'s residence the night of the murder in his Chrysler 300. (R. p. 365). He admitted that on the night of the murder when he arrived at *Natasha*'s home, a car was parked in the driveway with North Carolina license plates [*Natasha*'s new boyfriend's car]. (R. pp. 329-30). He admitted he approached her home in the dark and attempted to open the door without knocking or talking to *Natasha* first. (R. pp. 336, 332). He then admitted he began knocking on the door. (R. p. 332). He admitted he saw someone peering through the front window curtains with the lights off. (R. p. 369, 333). He admitted *Natasha* was shot shortly after he saw someone peering through the front curtains. (R. p. 338-43). He admitted he entered her home through a knocked out window. (R. p. 340). He admitted he had received military training in how to enter and clear houses when someone is inside. (R. pp. 362, 280). He admitted he ended up in *J.*'s room where *Anthony* was shot. (R. p. 342). He admitted after *Anthony* was shot, he went to the living room and checked *Natasha*'s body and determined she was dead. (R. p. 343). He admitted he did not call 911. (R. p. 344). He admitted he did not remain at the residence but fled the scene in the Chrysler 300. (R. pp. 344-46). He admitted upon returning to his home in Gray Court he placed the Chrysler 300 in his garage, pushed the lawn mower behind the car, and closed the garage door. (R. pp. 373-76, 379-80). He admitted he then changed vehicles into the Chevy Tahoe. (R. p. 373-74). He admitted when police began following him he engaged in a 26 mile chase in

¹⁴ After the murder, police only found one (1) weapon after entering the residence. It was *Natasha*'s weapon lying next to her body.

which he refused to stop, even with tires flattened, until he was rammed by a police car. (R. pp. 351-53, 355-56). And, he admitted he attempted to kill himself with a knife taken from his glove box as police were approaching the car to arrest him. (R. p. 353).

Further, he never testified he had his hands on the alleged weapon that *Anthony* allegedly pointed at him. He alleged he employed a defensive maneuver he had been trained to use in self-defense, and the maneuver caused *Anthony* to fire the weapon.

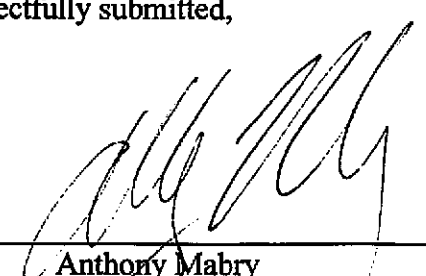
Given the evidence *in this particular case*, and *considering the entire record*, the failure to charge involuntary manslaughter was harmless beyond a reasonable doubt. Middleton (failure to charge lesser included offense was harmless after a fact specific inquiry); *see* Battle (failure to charge lesser included offense was not harmless after a fact specific inquiry).

Further, the failure to charge involuntary manslaughter **could have had no effect on the guilty verdicts for attempted murder and unlawful conduct toward a child.**

CONCLUSION

For the above stated reasons, Williams' convictions and sentences should be affirmed and this appeal dismissed.

Respectfully submitted,

By: 

Anthony Mabry
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

January 28, 2015

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Greenville County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIE MARVIN WILLIAMS,

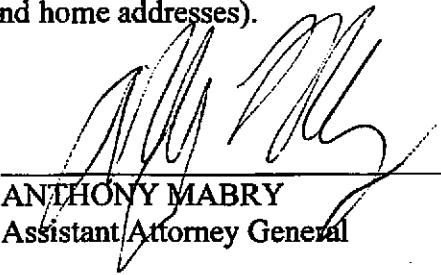
Appellant.

Appellate Case No. 2013-001152

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 28th day of January, 2015.



ANTHONY MABRY
Assistant Attorney General

ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Greenville County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIE MARVIN WILLIAMS,

Appellant.

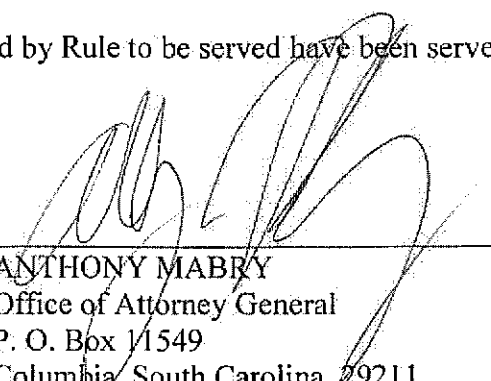
Appellate Case No. 2013-001152

CERTIFICATE OF SERVICE

I, Anthony Mabry, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, David Alexander, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 28th day of January, 2015.



ANTHONY MABRY
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT



Division of Appellate Defense
 1330 Lady Street, Suite 401
 Columbia, South Carolina 29201-3332
 Post Office Box 11589
 Columbia, South Carolina 29211-1589
 Telephone: (803) 734-1330
 Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
 Wanda H. Carter, Deputy Chief Appellate Defender

March 31, 2016

The Honorable Jenny Abbott Kitchings
 Clerk, S.C. Court of Appeals
 Post Office Box 11629
 Columbia, South Carolina 29211

RE: State v. Willie M. Williams, Appellate Case No. 2013-001152

Dear Ms. Kitchings:

The above-captioned case was argued on March 9, 2016, before Judges Huff, Konduros, and Geathers. Enclosed are eight (8) copies of the Supreme Court's decision today in Rutland v. State, ___ S.C. ___, ___ S.E.2d ___, Op. No. 27614. Shearouse Adv. Sheet No. 13 (Mar. 30, 2016). Pursuant to Rule 208(b)(7), SCACR, I am advising the Court that Rutland represents pertinent and significant authority for the hearsay argument presented in Issue 1. In particular, I would draw the Court's attention to page 4 of the opinion which recounts the defendant's testimony regarding what the alleged victim in a self-defense case said.

Should you have any questions or the Court needs any additional information, please do not hesitate to contact me.

Sincerely,

David Alexander
 Appellate Defender

Enclosure: Rutland v. State, Op. No. 27614

c: Anthony Mabry, Esquire (w/ enclosure)
 Client (w/ enclosure)

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Fred R. Rutland, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000381

ON WRIT OF CERTIORARI

Appeal from Lexington County
L. Casey Manning, Post-Conviction Relief Judge

Opinion No. 27614
Submitted January 15, 2016 – Filed March 30, 2016

REVERSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Patrick Lowell Schmeckpeper, both of
Columbia, for Respondent.

CHIEF JUSTICE PLEICONES: Petitioner was convicted of murder, possession of a firearm during the commission of a violent crime, and pointing a firearm. He was sentenced to life imprisonment without parole. This Court affirmed petitioner's convictions and sentences on direct appeal. *State v. Rutland*, Op. No. 95-MO-263 (S.C. Sup. Ct. filed Aug. 25, 1995).

Petitioner filed a post-conviction relief ("PCR") action,¹ and sought certiorari to review the PCR judge's order denying relief. We granted the petition for a writ of certiorari on two issues: (1) whether the PCR judge erred in finding trial counsel was not ineffective by failing to cross-examine the State's "key" witness regarding prior inconsistent statements;² and (2) whether the PCR judge erred in finding trial counsel was not ineffective by failing to preserve for appellate review the trial judge's refusal to charge the jury on the defense of others. Because we find the PCR judge erred as to the first issue, we reverse the PCR judge's decision.³

FACTS

Petitioner was romantically involved with the victim's estranged wife, Sally Peele ("Peele"), and both contend the victim was abusive and violent. On the morning of the victim's death, an altercation occurred at the Peele residence between petitioner, Peele, and the victim. Later that day, Peele and petitioner drove to Bow Wow Boutique ("Boutique"), a pet grooming business, to inquire about purchasing a vehicle from employee Kimberly Kestner ("Kestner"). The victim subsequently arrived at the Boutique, where he was shot and killed by petitioner. The only individuals in the Boutique at the time of the shooting, in addition to petitioner and the victim, were Peele and Kestner.

Prior to trial, Kestner gave a written and signed statement to law enforcement to the effect that the victim was armed when he was shot inside the Boutique. In the signed statement, Kestner attested, "[The victim] came in. He reached behind him

¹ The State consented to petitioner filing his PCR application after the statute of limitations had run. See S.C. Code Ann. § 17-27-45(A) (2014).

² Prior inconsistent statements are admissible pursuant to Rule 613, SCRE.

³ We decline to address petitioner's second argument as our holding on the first issue is dispositive. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address remaining issues on appeal when the disposition of a prior issue is dispositive (citation omitted)).

and pulled a gun. I heard two shots and [the victim] fell." Kestner gave a similar statement to a newspaper reporter, who later wrote a published article quoting Kestner as stating, "[the victim] said nothing. He pulled his gun out and was fixing to shoot, . . . It scared me to death. I couldn't understand why he was doing this."

At trial, Kestner testified she had a good view of the victim as he walked into the Boutique,⁴ and the only thing she saw in the victim's hands was a pack of cigarettes, which he placed on the counter as soon as he walked in. Kestner testified that as the victim entered the Boutique, petitioner put his pack of cigarettes in his mouth and reached behind his back, at which point the victim also reached behind his back. Kestner testified she then heard two gunshots, and that she never saw the victim possess a gun, or utter a word during the quick exchange. Kestner testified that after the victim was shot, she witnessed petitioner holding a handgun, and saw a second handgun lying on the floor.⁵

On cross-examination, trial counsel failed to question Kestner as to her prior inconsistent statements made to law enforcement and to the newspaper reporter.

Peele testified the victim entered the Boutique, drew his 9mm handgun, chambered a round,⁶ and pointed the handgun at Peele. Peele stated the victim had a "strange" look in his eyes she had seen before.⁷ Peele described that as she started moving toward the victim, she heard petitioner beg him, "Please don't," repeatedly. Peele testified that, in shock, she turned to look at petitioner, who was holding a .25

⁴ The State presented testimony by Robin Hunt that the encounter at the Boutique was prearranged by Peele; however, that testimony was recanted in 1997 in a sworn affidavit.

⁵ The 9mm handgun was recovered on the floor four to five feet from the victim with one bullet in the chamber and a full magazine. Peele later testified she moved the 9mm after the shooting in order to roll the victim over and administer CPR with petitioner's assistance.

⁶ Specifically, Peele's testimony was, "He come through the front door fairly quick; stopped in front of the gate; put his hands behind him; pulled that nine out; shhh, shhh; loaded."

⁷ Peele had previously testified as to the victim's demeanor when he was angry and abusive, stating, "I've seen him angry plenty of times. You can see it in his -- you can see it in his eyes when he was angry."

caliber handgun pointed towards the floor. Peele testified that when the victim saw petitioner's handgun, he shifted his aim to petitioner, at which point Peele saw the victim pull the trigger of the 9mm handgun. Peele testified that at that moment, she heard gunshots, and the victim collapsed.

Petitioner's testimony largely corroborated Peele's version of events. However, petitioner added he had concealed the .25 caliber handgun and carried it into the Boutique due to threats made earlier that day by the victim to "blow [petitioner's] shit away, fuck [petitioner's] world up." Petitioner explained that as he saw the victim quickly approaching the front door of the Boutique, he tried to avoid a confrontation by exiting through the back of the building, but when petitioner could not find an escape route, he removed the .25 caliber handgun from his belt. Petitioner recalled that when he then encountered the victim, the victim reached behind his back, pulled out a handgun, cocked it, and aimed it at Peele from less than one foot away. Petitioner testified the victim appeared "wild," and was unresponsive to petitioner's verbal attempts to calm him down.

Petitioner stated the victim then aimed the 9mm handgun at petitioner and pulled the trigger. Petitioner explained seeing the victim pull the trigger prompted him to shoot the victim once, which did not faze the victim, and as petitioner saw the victim continue to pull the trigger, petitioner shot the victim three more times. Petitioner described that in the moment, he believed he himself had been shot.

At the PCR hearing, petitioner argued, *inter alia*, trial counsel was ineffective for failing to cross-examine Kestner as to her prior inconsistent statements that the victim was armed at the time of the shooting.

Trial counsel agreed Kestner's testimony at trial was important as she was the only disinterested, objective witness to the shooting. Trial counsel testified he was aware of Kestner's prior inconsistent statements, and acknowledged they could have been used to impeach her trial testimony, but explained he was unable to locate the newspaper article prior to trial, and admitted his failure to use the police report was due to his "oversight." Trial counsel further acknowledged that whether the victim was armed was an important issue at trial, and agreed the statement given under oath to law enforcement could have been used not only to impeach Kestner, but also could have been entered into evidence if she had denied giving it.

The solicitor testified he was aware of Kestner's prior inconsistent statements, and agreed her trial testimony was essential as she was the only independent witness, and any inconsistencies in her statements could have negatively affected her credibility.

Although Kestner did not testify at the PCR hearing, petitioner produced the signed police statement wherein Kestner stated the victim was armed at the time of the shooting. Petitioner also produced affidavits by several individuals swearing that after the incident, Kestner stated to them the victim was armed when he was shot.

In his order denying relief, the PCR judge determined trial counsel was deficient for failing to impeach Kestner with her prior inconsistent statements; however, the PCR judge further found petitioner failed to prove he was prejudiced by trial counsel's deficient performance. We granted petitioner's petition for a writ of certiorari to review the PCR judge's decision.

ISSUE

Did the PCR judge err in finding trial counsel was not ineffective by failing to cross-examine the State's "key" witness as to her prior inconsistent statements?

LAW/ANALYSIS

The PCR judge found that although trial counsel was deficient in failing to cross-examine Kestner as to her prior inconsistent statements, petitioner failed to meet his burden of proving trial counsel's deficiencies were prejudicial. We disagree.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 669 (1984). In a PCR proceeding, the burden is on the applicant to prove the allegations in his application. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citation omitted). This Court will uphold factual findings of the PCR court if there is any evidence of probative value to support them. *Webb v. State*, 281 S.C. 237, 238, 314 S.E.2d 839, 839 (1984) (citation omitted). However, this Court will not uphold the findings of a PCR court if no probative evidence supports those findings. *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) (citing *Cartrette v. State*, 323 S.C. 15, 448 S.E.2d 553 (1994)).

In order to prove trial counsel was ineffective, the PCR applicant must show: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (citing *Strickland*, 466 U.S. at 687; *Rhodes v. State*, 349 S.C. 25, 30–31, 561 S.E.2d 606, 609 (2002)).

Regarding the deficiency prong, the proper measure of counsel's performance is whether he has provided representation within the range of competence required by attorneys in criminal cases. *McHam v. State*, 404 S.C. 465, 474, 746 S.E.2d 41, 46 (2013) (quoting *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985)). Regarding the prejudice prong, the defendant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985) (citing *Strickland*, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Strickland*, 466 U.S. at 694.

In denying petitioner's PCR application, the PCR judge relied on petitioner's failure to present Kestner as a witness at the PCR hearing and to produce extrinsic evidence as to her prior inconsistent statements.

We agree with the PCR judge's finding that there is substantial evidence trial counsel was deficient for failing to cross-examine Kestner as to her prior inconsistent statements. See *Strickland*, 466 U.S. at 688; *Webb*, 281 S.C. at 238, 314 S.E.2d at 839. However, we find the PCR judge's ruling as to the prejudice prong is not supported by the evidence in the record. See *Holland*, 322 S.C. at 113, 470 S.E.2d at 379 (stating the Court will not uphold findings of a PCR court if no probative evidence supports those findings). Principally, the PCR judge was incorrect in finding petitioner failed to produce extrinsic evidence of Kestner's statements at the PCR hearing. To the contrary, petitioner produced both the written copy of Kestner's statement to law enforcement, as well as affidavits from individuals attesting to have heard Kestner state the victim was armed at the time of the shooting. Accordingly, there is no evidence of probative value supporting the PCR judge's ruling that petitioner failed to present extrinsic evidence of Kestner's prior inconsistent statements. See *Holland*, 322 S.C. at 113, 470 S.E.2d at 379; *Webb*, 281 S.C. at 238; 314 S.E.2d at 839.

Further, had trial counsel discredited Kestner's testimony by raising the prior inconsistent statements on cross-examination, Kestner's credibility at trial would have suffered. Notably, petitioner admitted to shooting the victim, but maintained his actions were in self-defense; both petitioner and Peele testified at trial that the victim entered the Boutique and immediately brandished his 9mm handgun; and the only other witness to the shooting—and the only disinterested, objective witness—was Kestner. As a result, we find there is a reasonable probability the outcome of the trial would have been different had trial counsel impeached Kestner, as her prior inconsistent statements demonstrate all three witnesses to the incident attested at some juncture the victim was armed at the time of the shooting. See *Strickland*, 466 U.S. at 694; see also, e.g., *Thomas v. State*, 308 S.C. 123, 124,

417 S.E.2d 531, 532 (1992) (finding trial counsel's performance was deficient and prejudicial in failing to call as witnesses medical personnel who were the only individuals that could cast doubt on the victim's identification of the petitioner). Moreover, had Kestner denied making the statements during cross-examination, trial counsel could have introduced as evidence the police report or the newspaper article, which we find also would have damaged Kestner's credibility as to her version of events leading up to the shooting. *See* Rule 613(b), SCRE.

Any question as to whether petitioner was prejudiced may be answered by looking to the solicitor's reliance on Kestner's trial testimony, and the questions posed by the jury upon deliberation. During closing arguments, the solicitor emphasized Kestner was the only "independent witness," and relied upon her testimony to argue the victim was never armed, stating, "[The victim] never ever pulled that weapon. [Kestner] didn't see it. . . . Kim Kestner independent witness. Kim Kestner never ever saw [victim] with [a gun] ever." The solicitor further insinuated the victim never possessed the 9mm handgun, suggesting it could have been planted at the scene of the shooting. We find the solicitor's reliance on Kestner's uncontroverted trial testimony highlights trial counsel's deficient performance, and supports a finding the deficient performance undermines confidence in the outcome of the trial. *See Strickland*, 466 U.S. at 694 (establishing the prejudice prong is satisfied when there is a reasonable probability that but for counsel's errors, the result of the trial would have been different, which requires a probability sufficient to undermine confidence in the outcome of the trial).

Additionally, it is clear the jury was focusing on whether the victim was armed. Out of several questions asked by the jury, one of the initial questions was whose fingerprints were on the 9mm handgun. We find this inquiry indicates the jury was considering the State's argument the victim was never armed, and was focusing "critical attention" on the sequence of events surrounding the shooting, which was undoubtedly impacted by Kestner's trial testimony, and would have been impacted by trial counsel's impeachment of those statements. *See State v. Blassingame*, 271 S.C. 44, 46–47, 244 S.E.2d 528, 530 (1978) (finding when a jury submits a question to the court following a jury charge, it is reasonable to assume the jury is focusing "critical attention" on the specific question asked). Moreover, although the jury was re-charged on the elements of murder, manslaughter, mutual combat, and self-defense at its request at least twice, the jury foreperson indicated she was unsure the jury could reach a unanimous verdict on any indictment except one.⁸

⁸ The foreperson did not disclose on which indictment she believed the jury could

The trial judge informed the foreperson he did not want to keep the jury from their families, but instructed the jury that it was important for them to work together to agree on a verdict, and asked that they continue to deliberate. Although the jury had been deliberating over six hours at that point, the jury returned a verdict on all indictments ten minutes later. Our finding that trial counsel's deficient performance undermines confidence in the outcome of petitioner's trial is supported by the jury's struggle to reach a unanimous verdict on all indictments in this case. *See Strickland*, 466 U.S. at 694.

CONCLUSION

For the reasons given above, we reverse the PCR judge's order denying petitioner PCR relief.

BEATTY, KITTREDGE and HEARN, JJ., concur. FEW, J., not participating.

reach a unanimous verdict.

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

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

The State, Respondent,

v.

Willie M. Williams, Appellant.

Appellate Case No. 2013-001152

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

Unpublished Opinion No. 2016-UP-215
Heard March 9, 2016 – Filed May 18, 2016

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General J. Anthony Mabry, all of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Willie Marvin Williams appeals his conviction for the murder of his estranged wife, Natasha Kerns (Victim). He argues the circuit court erred in (1) excluding a statement made by Victim's boyfriend and (2) denying his request to charge involuntary manslaughter. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the circuit court's exclusion of Victim's boyfriend's statement: Rule 801(c), SCRE (defining hearsay as "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"); *State v. Vick*, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) ("It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted."); *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 312-13, 628 S.E.2d 496, 514 (Ct. App. 2006) ("The [circuit] court's decision will not be reversed on appeal unless it appears the [circuit] court clearly abused its discretion and the objecting party was prejudiced by the decision."); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (indicating error is harmless when it could not reasonably have affected the trial's outcome); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (finding error is harmless when "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached").

2. As to the circuit court's refusal to charge the jury with involuntary manslaughter: *State v. Rios*, 388 S.C. 335, 340-41, 696 S.E.2d 608, 611-12 (Ct. App. 2010) (finding defendant's request for an involuntary manslaughter charge unpreserved when he acquiesced in the circuit court's decision not to give the charge and never subsequently objected to the court's refusal to give the charge).

AFFIRMED.

HUFF, A.C.J., and KONDUROS and GEATHERS, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)Guille Martin Williams #167044)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-23- 07610

APPLICATION FOR
POST-CONVICTION RELIEF

2016 DEC 28 PM 2 19

FILED IN COURT:
GREENVILLE CO. S.C.
PAUL D. WICKENSIMERINSTRUCTIONS - READ CAREFULLY

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

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

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

- LEE CORRECTIONAL INSTITUTE
1. Place of detention GREENVILLE COUNTY DETENTION CENTER AND
990 WISACKY HWY. BISHOPVILLE S.C. 29010.
20 MCGEE STREET, GREENVILLE, S.C. 29601 AND
 2. Name and location of Court which imposed sentence GREENVILLE GENERAL
SESSIONS, 305 EAST NORTH STREET GREENVILLE S.C. 29601
 3. Name(s) of co-defendant(s) (if any) NONE
 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS 230 3238 - MURDER
 - (b) 2013 GS 230 3239 - MURDER / ATTEMPTED MURDER

(c) 2013 GS 23032 40A - Legal custodian, unlawful Neg. of child

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

(a) May 16, 2013, Life

(b) May 16, 2013, 30 YEARS

(c) May 16, 2013, 10 YEARS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed convictions

ii. _____

iii. _____

(c) the date of each such result:

i. May 18, 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. The refusal to admit the boyfriend's statement harmless error.

ii. The request for the involuntary manslaughter charge was

iii. unpreserved.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DUE PROCESS VIOL. and DUE PROCESS CONSTITUTION VIOLATION
- (b) FRAUD UPON THE COURT and 6th amend. (fully heard) CONST. VIOLATION
- (c) TRIAL COURT LACKED OF JURISDICTION and DUE PROCESS CONST. VIOLATION
- (d) BRADY VIOLATIONS and DUE PROCESS CONSTITUTION VIOLATION
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DUE PROCESS and CONST. VIOL. attached additional pages (16 of 16).
- (b) FRAUD UPON THE COURT and CONST. VIOL. attached addi. pages (11 of 11).
- (c) LACKED OF JURIS. and DUE PROCESS CONST. VIOL. attached addi. p. (4 of 4).
- (d) BRADY VIOL. and DUE PROCESS CONST. VIOL. attached additional P. (2 of 2)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) DUE PROCESS Viol and DUE PROCESS Const. Viol., pending Appeal.
 (b) Fraud upon the Court and Const. Viol., pending Appeal.
 (c) Trial Court Lacked of Juris. and DUE PROCESS Const. Viol. RECENT discovery.
 (d) Brady Violation and DUE PROCESS Const. Violation, pending Appeal.

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

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

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

- (a) the name and address of each attorney who represented you:
 i. W. TOWNES JONES, IV 116 W. COURT AVENUE
GREENWOOD, S.C. 29646
 ii. RICHARD WARDER, 15 PRIMArose STREET
P.O. Box 26133 GREENVILLE, S.C. 29616
 iii. DAVID ALEXANDER, Appellate P.O. Box 11589, Columbia, S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. GREENVILLE GENERAL SESSION COURT
 ii. GREENVILLE GENERAL SESSION COURT
 iii. Appeal, S.C. Court of Appeals

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

DUE PROCESS Viol. and DUE PROCESS CONST. Viol., REVERSED New trial.
FRAUD upon the Court and 6th amend (fully heard) Const. Viol., VACATED.

20. Trial Court Lacked of Jurisdiction and DUE PROCESS CONST. Viol., VACATED.
Brady Violation and DUE PROCESS CONST. Violation, REVERSED New trial.
 Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of GREENVILLE)

VERIFICATION

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

Willie M. Williams

SWORN to and subscribed before me this 3
 day of Nov., 2014.

Debra Eastledge (L.S.)
 Notary Public

My Commission Expires: 3/3/2026

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

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

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

Willie M. Williams
Applicant

SWORN or affirmed to and subscribed before me this

3 day of Nov., 2014.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEWILLIE MARVIN WILLIAMS #167046
Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA
Defendant(s)Submitted By: WILLIE MARVIN WILLIAMS
Address: LEE CORRECTIONAL INSTITUTE
990 WISACKY HWY.
BISHOPVILLE S.C. 29010.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

~~2016-CP-23-~~ 07610

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Conversion (310)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Condemnation (410)
☐ General (130)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Foreclosure (420)
☐ Breach of Contract (140)	Previous Notice of Intent Case #	☐ Products Liability (340)	☐ Mechanic's Lien (430)
☐ Fraud/Bad Faith (150)	20 <u>-NI-</u>	☐ Personal Injury (350)	☐ Partition (440)
☐ Failure to Deliver/ Warranty (160)	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Possession (450)
☐ Employment Discrim (170)	☐ Other (299)	☐ Assault/Battery (370)	☐ Building Code Violation (460)
☐ Employment (180)		☐ Slander/Label (380)	☐ Other (499)
☐ Other (199)		☐ Other (399)	
Immune Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☒ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
☐ Sexual Predator (510)	☐ Pre-Suit Discovery (670)		
☐ Permanent Restraining Order (680)			

Submitting Party Signature:

Willie M. WilliamsDate: 11-3-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Willie M. Williams, SCDC № 00167044,	)	2019-CP-23- 02687
Applicant,	)	
	)	
	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention:
Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence:
General Session Court, Greenville, SC

Revised 3/2003

3. Name(s) of co-defendant(s) (if any):
None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-23-3238
 - (b) 2013-GS-23-3239
 - (c) 2013-GS-23-3240
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 14, 2013
 - (b) May 14, 2013
 - (c) May 14, 2013
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere ____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - I. South Carolina Court of Appeals
 - ii. ____
 - iii. ____
 - (b) the result in each such Court to which you appealed:
 - i. Convictions affirmed
 - ii. ____
 - iii. ____
 - (c) the date of each such result:
 - I. May 18, 2018
 - ii. ____
 - iii. ____
 - (d) if known, citations of any written opinion or orders entered pursuant to such

results:

I. 2016-UP-215

ii. ____

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) ____

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was ineffective in failing to preserve for appellate review the failure to charge involuntary manslaughter.

(b) Trial counsel was ineffective in failing to object to the jury charge concerning transferred intent.

(c) Trial counsel was ineffective in failing to object to the jury charge as to mutual combat when no evidence was presented to support such a charge.

(d) Trial counsel was ineffective when he failed to object to the charge specific intent is not required in an attempted murder case.

(e)

(f)

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

(a) In affirming the conviction of the Applicant, the South Carolina Court of Appeals found that the issue to be "unpreserved when [trial counsel] acquiesced in the circuit court's decision not to give the charge and never subsequently objected to the court's refusal to give the charge."

(b) In the charge as to manslaughter, the trial judge charged "The provocation needed for voluntary manslaughter must come from some act of or related to the victim." Tr. at 639, ll 24-25. This charge was not proper as the provocation may legally come from Anthony

Bernard Wilson who was shot at by the Applicant when he accidentally hit his former wife.

(c) The trial judge instructed the jury as part of her self defense instruction, the law of mutual combat. Tr. at 644, 124 to 645, 14. The South Carolina Supreme Court in *State v. Taylor* 356 S.C. 227, 589 S.E.2d 1 (2003) held such a charge should not be given in connection with self defense, especially when no facts support the allegation.

(d) The trial judge charged the jury "I instruct you that a specific intent to kill is not an element of attempted murder." Tr. at 642, 116-17. The South Carolina Supreme Court recognized in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), reh'g denied (Mar. 9, 2018) that a specific intent is required in an attempted murder case and noted such a position was consistent with prior decisions in our state.

(e)

(f)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law?

No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions

relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if

any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. —

iv. —

(c) the disposition thereof:

I. —

ii. —

iii. —

iv. —

(d) the date of each such disposition:

I. —

ii. —

iii. —

iv. —

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

I. —

ii. —

iii. —

iv. —

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

No

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

(a) which grounds have been presented:

I. —

ii. —

iii. —

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

I. —

ii. —

iii. —

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Revised 3/2003

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Trial Counsel raised no objection_
- (b) same
- (c) same
- (d) same
- (e)
- (f)

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or

applications with respect to this conviction, which you filed? Yes

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

- (a) the name and address of each attorney who represented you:
 - I. Richard H. Warder, P. O. Box 26133, Greenville, SC 29616
W. Townes Jones, 116 Court Ave. W, Greenwood, SC 29646
 - ii. David Alexnader, South Carolina Commission on Indigent Defense, P. O. Box 11589, Columbia, SC 29211
 - iii. C. Rauch Wise
305 Main Street
Greenwood, SC 29646
- (b) the proceedings at which each such attorney represented you:
 - I. initial plea, pretrial motions, trial and sentencing
 - ii. appeal to the South Carolina Court of Appeals
 - iii. preparation of this amended application for Post Conviction Relief

19. State clearly the relief you seek in filing this application:
New trial_
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

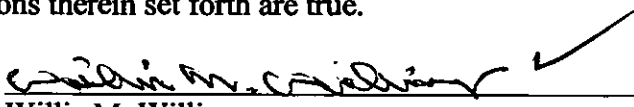
)
)

VERIFICATION

County of Greenville

)

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


Willie M. Williams

SWORN to and subscribed before me this 23rd
day of April, 2019.

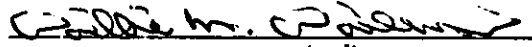

Notary Public (L.S.)

My Commission Expires: 1-23-2021

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

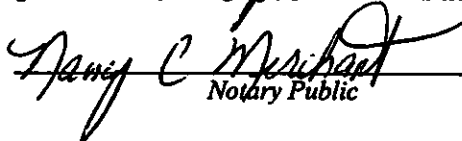
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

 ✓
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of April, 2019.


Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
Willie Marvin Williams, #167044,	)	2016-CP-23-7610
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS AND MOTION FOR A MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on December 28, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April 2013, the Greenville County Grand Jury indicted Applicant for Murder, possession of a weapon during a violent crime (2013-GS-23-3238), attempted murder (2013-GS-23-3239), and unlawful conduct toward a child (2013-GS-23-3240). Richard H. Warder, Esquire and W. Townes Jones IV, Esquire represented Applicant. Assistant Solicitor Judith M. Munson, Esquire prosecuted the case. On May 13, 2013, Applicant proceeded to trial before the Honorable Deadra L. Jefferson. The jury found Applicant guilty as indicted. Judge Jefferson sentenced Applicant to imprisonment for concurrent terms of life for murder, five years for possession of a weapon during a violent crime, thirty years for attempted murder, and ten years for unlawful conduct toward a child.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 18, 2016. State v. Williams, Op. No. 2016-UP-215 (S.C. Ct. App. filed May 18, 2016). The remittitur was returned to the circuit court on June 3, 2016.

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

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Due process and constitutional violations"
 - a. "The State used perjured testimony and falsified evidence to support its case"
 - b. "During closing arguments the solicitor re-introduced known false testimony to the jury"
 - c. "The solicitor made improper closing arguments by making a false and misleading statement to the court."
 - d. "The solicitor's prosecutorial and courtroom misconduct, and use of false testimony and falsified evidence induced a cumulative effect upon the jury and affected the judgement of the jury."
 - e. "The State was so fundamentally unfair that the applicant was deprived of due process of law which resulted in an unfair trial."
2. "Fraud upon the Court' and constitutional violations"
 - a. "The State knowingly presented perjured testimony and false statements to the trial court, which constituted fraud upon the court."
 - b. The State provided a witness that "presented fabricated and perjurious testimony to the court that resulted in intrinsic fraud."
 - c. "The solicitor knew that the testimony was false and perjurious, but re-introduced it again to the jury during closing arguments that resulted in extrinsic fraud."
 - d. "During opening statements, the solicitor made a false statement."
 - e. "The applicant was prevented from fully preserving and exhibiting facts to the court because of the perjurious testimony from the State's witness, which was knowingly presented by the State."
 - f. Because the State fabricated an exhibit and submitted it into evidence, the solicitor and State investigator conspired together and presented perjured testimony."
3. "Trial court lacked subject matter jurisdiction"
 - a. "No legal indictments charging the applicant with the alleged offences"
 - b. Judge Letitia Verdin is a resident judge of Greenville County and therefore does not have jurisdiction in a circuit court in which she resides.
 - c. "The Chief Justice of the South Carolina Supreme Court did not set the term April 23, 2013 term of the court of general sessions and did not assign Judge Verdin to hold the grand jury session."
4. "Brady violation and constitutional violation"

- a. “The State failed to disclose evidence that was favorable to the applicant.”
- b. “The State failed to disclose the forensic result of the swabs of the suspected blood that was taken and identified.”

III.

The Applicant alleges a denial of due process of law. Respondent interprets this allegation as ineffective assistance of counsel. However, Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant

such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation of “fraud upon the court” should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the claim collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). This allegation is improper for post-conviction relief because it could

have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRPC, the Court should dismiss the claim for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V.

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). Since there exist indictments that sufficiently state the offenses, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI.

In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only

if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.*, 434 S.E.2d at 268. Since the Applicant did not show that evidence was suppressed, the Respondent would motion the Applicant for a more definite statement in regards to this allegation. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claim is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claim is based.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX.

WHEREFORE, Respondent moves to dismiss the allegation of “fraud upon the court” on the grounds of failure to state a claim upon which relief can be granted. Respondent further moves to dismiss the allegations of “due process,” “lack of subject matter jurisdiction,” and “Brady violation” for failing to specifically set forth the grounds upon which the application is based.

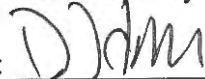
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

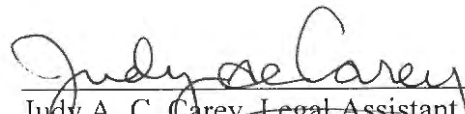
Sept. 13, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2016-CP-23-7610
	)	
WILLIE MARVIN WILLIAMS, 167044	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Rodney W. Richey, Esquire
Post Office Box 10916
Greenville SC 29603

DATED this 13th day of September, 2017.


Judy A. C. Carey, Legal Assistant
For Respondent

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)
)
 Willie M. Williams, SCDC № 00167044,)
) 2016-CP-23-07610
 Applicant,)
) AMENDED
)
 v.) APPLICATION FOR
)
 State of South Carolina) POST-CONVICTION RELIEF
)

19 JUN 9 AM 2:18
 301 Wickensimer CDC GVL SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention:
Perry Correctional Institution, Pelzer, SC
2. Name and location of Court which imposed sentence:
General Session Court, Greenville, SC

Revised 3/2003

3. Name(s) of co-defendant(s) (if any):
None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-23-3238
 - (b) 2013-GS-23-3239
 - (c) 2013-GS-23-3240
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 14, 2013
 - (b) May 14, 2013
 - (c) May 14, 2013
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere ____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - I. South Carolina Court of Appeals
 - ii. ____
 - iii. ____
 - (b) the result in each such Court to which you appealed:
 - i. Convictions affirmed
 - ii. ____
 - iii. ____
 - (c) the date of each such result:
 - I. May 18, 2018
 - ii. ____
 - iii. ____
 - (d) if known, citations of any written opinion or orders entered pursuant to such

results:

I. 2016-UP-215

ii. —

iii. —

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) —

(b) —

© —

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was ineffective in failing to preserve for appellate review the failure to charge involuntary manslaughter.

(b) Trial counsel was ineffective in failing to object to the jury charge concerning the provocation for ^{VOLUNTARY MANSLAUGHTER} self defense must come from the victim.

(c) Trial counsel was ineffective in failing to object to the jury charge as to mutual combat when no evidence was presented to support such a charge.

(d) Trial counsel was ineffective when he failed to object to the charge specific intent is not required in an attempted murder case.

(e) Trial counsel failed to object to an improper closing argument given by the state.

(f) Trial counsel failed to object to the failure of the trial judge to give a charge on criminal intent as it relates to the murder charge or voluntary manslaughter.

(g) Trial counsel failed to request a charge as to transferred intent as it relates to self defense.

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

(a) In affirming the conviction of the Applicant, the South Carolina Court of Appeals found that the issued to be "unpreserved when [trial counsel] acquiesced in the circuit court's decision not to give the charge and never subsequently objected to the court's refusal to give the charge."

(b) In the charge as to manslaughter, the trial judge charged "The provocation needed for

voluntary manslaughter must come from some act of or related to the victim." Tr. at 639, ll 24-25. This charge was not proper as the provocation may legally come from Anthony Bernard Wilson who was shot at by the Applicant when he accidentally hit his former wife.

(c) The trial judge instructed the jury as part of her self defense instruction, the law of mutual combat. Tr. at 644, ll 24 to 645, ll 4. The South Carolina Supreme Court in *State v. Taylor* 356 S.C. 227, 589 S.E.2d 1 (2003) held such a charge should not be given in connection with self defense, especially when no facts support the allegation.

(d) The trial judge charged the jury "I instruct you that a specific intent to kill is not an element of attempted murder." Tr. at 642, ll 16-17. The South Carolina Supreme Court recognized in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), reh'g denied (Mar. 9, 2018) that a specific intent is required in an attempted murder case and noted such a position was consistent with prior decisions in our state.

(e) During her closing argument, the assistant solicitor argued "On behalf of the people of Greenville County please, find him guilty." This charge encouraged the jury to convict on an improper basis and lessened the burden on the state.

(f) During the charge to the jury the trial court never gave a charge as to mens rea as to the murder charge or voluntary manslaughter. As the jury was never given a mens rea charge, the jury was not properly instructed.

(g) The defense in this case was self defense. Trial counsel should have requested a charge that if Mr. Williams was justified in shooting at Mr. Wilson, and the bullet accidentally killed the deceased, then Mr. Williams would be not guilty as the intent of Mr. Williams would have been to defend himself. The accidental shooting of a third party under these circumstances would not be murder or manslaughter.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law?

No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

Revised 3/2003

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - I. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - I. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - I. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - I. _____
 - ii. _____
 - iii. _____
 - iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - I. —
 - ii. —
 - iii. —
 - (b) the proceedings in which each ground was raised:
 - I. —
 - ii. —
 - iii. —
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Trial Counsel raised no objection_
 - (b) same
 - (c) same
 - (d) same
 - (e)
 - (f)
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - © your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - I. Richard H. Warder, P. O. Box 26133, Greenville, SC 29616
W. Townes Jones, 116 Court Ave. W, Greenwood, SC 29646
 - ii. David Alexnader, South Carolina Commission on Indigent Defense, P. O. Box

11589, Columbia, SC 29211

iii. C. Rauch Wise

305 Main Street

Greenwood, SC 29646

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

I. initial plea, pretrial motions, trial and sentencing

ii. appeal to the South Carolina Court of Appeals

iii. preparation of this amended application for Post Conviction Relief

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

New trial as to all charges

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

No

STATE OF SOUTH CAROLINA

)
)

VERIFICATION

County of Greenville

)

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

Willie M. Williams
Willie M. Williams

SWORN to and subscribed before me this July
day of 24th, 2019.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September 25, 2023

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

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

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

Caroline M. Williams
Applicant

SWORN or affirmed to and subscribed before me this
24 day of July, 2019.

Tamara Conwell
Notary Public

My Commission Expires: _____ My Commission Expires
September 25, 2023

Copy mailed to Attorney _____ on ____/____/____.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	2016-CP-23-7610
Willie Marvin Williams, #167044,	)	2019-CP-23-2687
	)	
Applicant,	)	
	)	
v.	)	MOTION FOR MERGER
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief (2016-CP-23-7610) filed by Willie Marvin Williams (Applicant) on December 28, 2016. Respondent filed its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on October 5, 2017. Thereafter, Applicant retained C. Rauch Wise, Esquire, as his PCR counsel. On May 10, 2019, Respondent is informed and believes that Applicant, through Mr. Wise, filed a second Application for Post-Conviction Relief (2019-CP-23-2687), which deals with the same convictions as the original Application (2016-CP-23-7610). The undersigned has since discussed the matter with Mr. Wise, and understands that Mr. Wise intends for Respondent to treat the later-filed Application as an amendment to Applicant's original application. Applicant has since forwarded to Respondent an Amended Application for Post-Conviction Relief in the original case (2016-CP-23-7610). However, there still remains two pending actions concerning the same convictions for Applicant.

An applicant is generally not allowed to have two post-conviction relief actions in regard to the same conviction. S.C. Code Ann. § 17-27-90; Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Therefore, Respondent moves to have the two actions merged and the Application for

Post-Conviction Relief filed on May 10, 2019, (2019-CP-23-2687), be considered a supplemental filing to the Application filed December 28, 2016, (2016-CP-23-7610). Additionally, Respondent moves to merge the cases, with docket number 2016-CP-23-7610 being the surviving case number.

WHEREFORE, Respondent requests that these two cases be merged, with 2016-CP-23-7610 being the surviving case number.

Respectfully submitted,

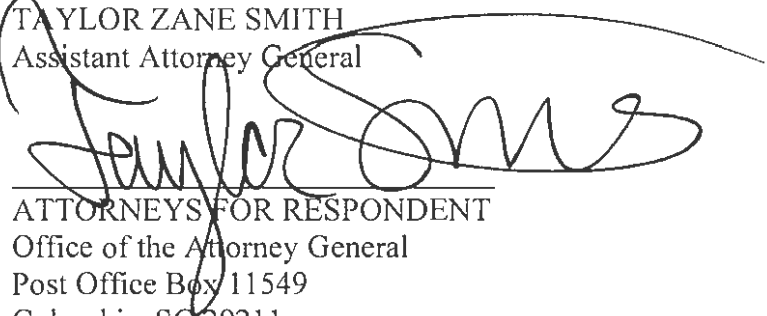
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

July 30, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2016-CP-23-7610
	)	2019-CP-23-2687
WILLIE MARVIN WILLIAMS, 167044	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

DATED this 30th day of July, 2019.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

Willie Marvin Williams, #167044,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS)
 FOR THE THIRTEENTH JUDICIAL CIRCUIT)

2016-CP-23-7610

2019-CP-23-2687

ORDER MERGING CASES

19 SEP 24 PM 1:56
 Case Number 0000000000

This matter comes before the Court by way of an Application for Post-Conviction Relief (2016-CP-23-7610) filed by Willie Marvin Williams (Applicant) on December 28, 2016. Respondent filed its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on October 5, 2017. Applicant then retained C. Rauch Wise, Esquire, as PCR counsel. On May 10, 2019, Applicant, through PCR counsel, filed a second Application for Post Conviction Relief (2019-CP-23-2687), which concerns the same convictions as the original, earlier-filed Application (2016-CP-23-7610). Thereafter, Applicant, through counsel, served an additional amended/supplemental Application on Respondent. As a consequence, there are two pending PCR actions for Applicant concerning the same convictions. Respondent has since filed a Motion for Merger, requesting that the two actions be merged.

The matter came before the undersigned for a hearing on Respondent's Motion for Merger and for an evidentiary hearing on Applicant's PCR claims on August 28, 2019. At the start of the hearing, Applicant notified the Court that the undersigned had presided over a hearing in a family court action in which Applicant and his deceased wife, the victim in his underlying

criminal cases, had been the parties. For this reason, Applicant moved for a continuance without objection from Respondent; however, Applicant did consent to Respondent's Motion for Merger.

An applicant is generally not allowed to have two post-conviction relief actions in regard to the same conviction. S.C. Code Ann. § 17-27-90; Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

THEREFORE, the two actions shall be merged, and the Application for Post-Conviction Relief filed under case number 2019-CP-23-2687 shall be considered a supplemental filing to the Application filed on December 28, 2016, which is filed under case number 2016-CP-23-7610. The surviving case number shall be 2016-CP-23-7610. Furthermore, the matter shall be continued to the next PCR term of court in the Thirteenth Judicial Circuit.

AND IT IS SO ORDERED this 3 day of Sep., 2019.


LETITIA H. VERDIN
Presiding Judge

Greenville, South Carolina

Copy mailed to
Attorney <u>General / R. Wise</u>
on <u>9</u> / <u>4</u> / <u>2019</u> .

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF GREENVILLE

4 Willie M. Williams,
5 Applicant,

6 vs.

Transcript of Record
Case No.: 2016-CP-23-7610

7 The State of South Carolina,
8 Respondent.

9
10
11 December 18, 2019
12 Greenville, South Carolina

13 B E F O R E:

14 The HONORABLE ROBIN B. STILWELL

15
16 A P P E A R A N C E S:

17 C. Rauch Wise, Representing the Applicant
18 Taylor Z. Smith, Representing the Respondent

19
20
21
22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, II
24
25

1 INDEX

2 WITNESS/EXAMINATION

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6	Cross By Mr. Wise	39	15
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7	Richard Gerald Warder		
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9			
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11

12 EXHIBITS

13	RESPONDENT EXH. 1, Plan of house	12	19
14	introduced at trial;		
15	to be supplemented		

16

17

18

19

20

21

22

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25

1 THE BAILIFF: All rise. The Honorable
2 Robin Stilwell is presiding.

3 THE COURT: Good morning. I hope
4 everyone is doing well. Take your seats, please.

5 THE COURT: You're Mr. Williams; is that
6 right, sir?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Good morning. How.

9 MR. WILLIAMS: Good morning.

10 THE COURT: Let's go ahead and call to
11 the bar the case of Willie M. Williams vs. The
12 State. This is case number 2016-CP-23-7610. It's
13 an application for post-conviction relief.

14 So anything that either of the parties
15 need to put on the record before we begin?

16 MR. WISE: Your Honor, we discussed this
17 matter. Most of the issues in our motion -- the
18 issues involved in this case are all legal.

19 THE COURT: All right, sir.

20 MR. WISE: I'm not going to have Mr.
21 Williams get up here and pretend to be a lawyer
22 and talk about the legal issues.

23 THE COURT: Sure.

24 MR. WISE: Because they are set forth in
25 his petition. You know, and I think I got page

1 references to it on that.

2 THE COURT: Yes, sir.

3 MR. WISE: It's the failure of the
4 Jefferson charge and so forth.

5 THE COURT: Yes, sir.

6 MR. WISE: He does have some testimony, I
7 think, that's relevant to show why these
8 particular issues were prejudicial. It's not
9 going to be long, but it certainly would help the
10 Court understand some of the idea of why these
11 legal issues would be prejudicial, which is also a
12 burden we have to prove.

13 THE COURT: Yes, sir.

14 MR. WISE: So we're not going to take a
15 lot of the Court's time.

16 THE COURT: Okay.

17 MR. WISE: Except for the fact the Court
18 would have to spend the time reading the
19 transcript.

20 THE COURT: Yeah, I understand. I
21 understand. And I've read the application and
22 return. And I agree with you, I think the
23 legal -- and I presume that in some form, you've
24 given me both the page references and the
25 applicable case law relevant to the legal issues.

1 MR. WISE: Yeah. Now, have you got the
2 amended application?

3 THE COURT: I do. If that amended
4 application is the one that was filed on
5 19, August 2019, or August 9, 2019.

6 MR. WISE: Yes, that would be it.

7 THE COURT: I got it right here.

8 MR. WISE: That would be it. Just to
9 make sure we got the right one.

10 THE COURT: Yes, sir.

11 MR. SMITH: May I ask just a question?

12 THE COURT: Sure.

13 MR. SMITH: I would put out to Your Honor
14 that there were, I think, more than one amended
15 applications filed in this case.

16 MR. WISE: Correct.

17 MR. SMITH: So Number 10 on the
18 application the lettered subparts go through G?

19 THE COURT: Yes, sir. And then there's a
20 hand-cranked portion of B where self-defense
21 manslaughter.

22 THE COURT: Correct. Involuntary
23 manslaughter.

24 MR. WISE: And I will say for the record
25 that some of this was caught by my client.

1 THE COURT: Well, good. Good.

2 MR. SMITH: And one more thing for the
3 record, since we're all looking at the same
4 amended application now, and I'll just point out
5 to the Court that we did merge the two cases by
6 order of Judge Verdin back in September because
7 there were two parallel cases.

8 In the case number that was the second
9 final case that was merged into this one was
10 2019-CP-23-2687.

11 THE COURT: All right. Thank you, sir.
12 I saw that. I saw that order in the file, so
13 thank you for referencing it.

14 Okay. If there's nothing else, Mr. Wise,
15 you can call your first witness.

16 MR. WISE: I call Mr. Williams.

17 THE CLERK: Mr. Williams, will you please
18 place your left hand on the Bible and raise your
19 right hand. Do you solemnly swear or affirm that
20 the testimony you're about to give in this case
21 will be the truth, the whole truth, and nothing
22 but the truth, so help you God?

23 THE WITNESS: So help me God.

24 THE CLERK: Thank you. You may be
25 seated.

1 MR. WISE: Give me one second, Your
2 Honor. I'm will looking for what was introduced
3 at trial as an exhibit, and I had a copy last
4 night when I put this file together, and I
5 didn't --

6 THE COURT: Take your time. I'm not
7 leaning on you.

8 THE CLERK: Mr. Williams, please state
9 your full name for the record.

10 THE WITNESS: Willie Williams.

11 THE CLERK: Thank you.

12 WHEREUPON:

13 WILLIE MARVIN WILLIAMS,
14 after having been sworn to tell the truth, testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q Mr. Williams?

19 A Yes, sir.

20 Q You have filed this application for
21 post-conviction relief?

22 A Yes, sir.

23 Q All right. Among the allegations -- and I don't
24 want to go into detail, but among the allegations was
25 that there was an improper charge on voluntarily

1 manslaughter; is that correct?

2 A Yes, sir.

3 Q Do you believe that was prejudicial to you in this
4 case?

5 A Yes.

6 Q And why is that?

7 A On the voluntarily manslaughter charge?

8 Q Right.

9 Let me ask you this question first: Did
10 the jury indicate in the trial that they were
11 having -- they were struggling to find the
12 difference between murder and manslaughter?

13 A Yes, sir.

14 Q How did they -- demonstrate that struggle.

15 A They asked Your Honor for the legal
16 definition between murder and voluntary
17 manslaughter.

18 Q And that's in the transcript?

19 A Yes, sir.

20 Q Okay. Now, there was also -- you testified that
21 you had an altercation with one of the -- the
22 gentleman that was wounded outside the house.

23 A Yes, sir.

24 Q All right. Did he ever admit going outside the
25 house?

1 A No, he did not.

2 Q In his testimony?

3 A No, he did not.

4 Q All right. Was there any proof that he went
5 outside the house?

6 A Yes, sir.

7 Q What is that?

8 A His bloody handprint was found outside the
9 house.

10 Q And was there a stipulation on that by the
11 parties?

12 A It was an exhibit. And it's on page 172 in
13 the transcript. It was agreed upon.

14 Q I hand you what's -- and if you look at
15 State's Exhibit 59, not that you have it, but for the
16 Court's reference, State's Exhibit 59 is a stipulation
17 that your lawyers made?

18 A Yes, sir.

19 Q And whose handprint was that?

20 A The handprint was Anthony Wilson.

21 Q Anthony Wilson.

22 THE COURT: Mr. Wise, I'm going to just
23 stop you real quick, so my reference is right.

24 MR. WISE: Sure.

25 THE COURT: The first reference I heard

1 was Page 172 and then I heard page 59.

2 MR. WISE: Exhibit 59.

3 THE COURT: Exhibit 59, Okay. Exhibit.

4 Got it.

5 MR. WISE: Let me check. And these PCRs
6 when we talk about page numbers, we often confuse
7 record on appeal and the transcript. Let me make
8 sure that we're correct on that.

9 THE COURT: I just remember you telling
10 me I was going to have to read. I just want to
11 make sure I'm reading the right thing.

12 MR. WISE: Yes. It is transcript
13 page 172, as opposed to record on appeal 172.

14 THE COURT: Got it.

15 MR. WISE: Just keep that reference.

16 BY MR. WISE:

17 Q Now, there were several witnesses that testified
18 in this case?

19 A Yes, sir.

20 Q Among them I believe your son?

21 A Yes, sir. Step-son.

22 Q Step-son, excuse me. And he was in the home.
23 There's no question about that that night, is there?

24 A Correct.

25 Q Was his testimony consistent with everybody

1 else's?

2 A He was inconsistent.

3 Q He was inconsistent.

4 All right. Is that pointed out in the
5 transcript, too? Or do you recall?

6 A On --

7 Q I believe in the cross-examination of your son --
8 or step-son.

9 A I think it was page 92 where he was giving
10 his testimony about what occurred.

11 Q Uh-huh.

12 A That's the original transcript.

13 Q Okay. And then also on -- the cross-examination
14 of your step-son begins on page -- let me get to it.
15 Well, on, roughly, Page 99 -- 98 and 99 is also part
16 of his testimony. And does that point out some
17 inconsistency in his testimony?

18 A Yes, sir.

19 Q Now, is that -- do you believe that's important in
20 taking up the idea of your being prejudiced by an
21 error in the law in this case?

22 A Yes, sir.

23 Q All right. Now, there was some testimony from the
24 officers that tended to refute your version of what
25 happened by the fact that two doors were blocked; is

1 that correct?

2 A That's correct.

3 Q All right. Is that a correct statement of the
4 facts of the case, though?

5 A That's incorrect, because there's three entry
6 doors to the house.

7 Q All right.

8 A Three exit doors to the house.

9 Q And a plan of the house was introduced.

10 A Yes, sir.

11 Q I can't remember what the exhibit number is right
12 now. And I had a copy of it and for some reason I
13 can't find it, but I would like to supplement the
14 record with a copy of the exhibit that was introduced
15 at trial rather than --

16 A Defense Exhibit Number 1.

17 Q Defense Exhibit Number 1. He's better than I am.

18 THE COURT: All right.

19 (RESPONDENT EXH. 1, Plan of house introduced
20 at trial; to be supplemented, was entered into
21 evidence.)

22 BY MR. WISE:

23 Q And it shows three doors?

24 A Yes, sir.

25 Q And where was -- how many doors in the front and

1 how many in the back?

2 A You got one front door, then you got a -- it
3 was a garage but it was enclosed into a dining
4 room. And at the back of it is the laundry room
5 and you got a door that goes out to the back of
6 the house. And then you got patio door that goes
7 in the kitchen that goes out to the back of the
8 house. That makes three doors.

9 Q In the trial of the case, was there anything
10 mentioned about the third door in the back?

11 A No, sir.

12 Q All right. But it was on the exhibit that was
13 introduced?

14 A I mentioned it in my testimony.

15 Q All right.

16 A But it wasn't --

17 Q You mentioned it in your testimony.

18 A Yes, sir.

19 Q But no one else did.

20 A No one did.

21 Q The exhibit showed there was a third door that --

22 A Yes, sir.

23 Q -- Mr. Wilson could have come out of?

24 A Yes, sir.

25 Q Okay.

1 All right. And had the jury been given a --
2 well, that's a legal conclusion. I'm not going to ask
3 you that.

4 Do you have a feel of whether or not -- well,
5 let me ask you this. The inconsistencies you're
6 talking about in the transcript, what does that tell
7 you about the State's case from your having observed
8 it?

9 A It tells me they don't have no solid case as
10 far that goes.

11 Q So it wasn't a solid case?

12 A Correct.

13 Q There were factual disputes?

14 A Correct.

15 Q And based upon that, an error in the law could
16 have impacted the outcome?

17 A Yes, sir.

18 MR. WISE: Okay. Thank you very much.

19 THE COURT: Hold on, sir. Hold one, Mr.
20 Williams. Mr. Smith has the opportunity to
21 cross-examine you, if he wants to. Do you have
22 questions, sir?

23 MR. SMITH: I have no questions,
24 Your Honor?

25 THE COURT: All right. Thanks, Mr.

1 Williams. I appreciate you being here today.

2 THE WITNESS: Thank you.

3 MR. WISE: Your Honor, with that we would
4 rest on the law as far as the errors that we
5 pointed out in the transcript that we think are
6 substantial in this matter.

7 THE COURT: So let me make sure that I'm
8 correct. Your amended petition, you include all
9 of those legal issues and all of those references
10 to the transcript.

11 MR. WISE: That is correct.

12 THE COURT: Okay. Fair enough. You've
13 given me a guidebook. I'm good to go. Anything
14 else you need to -- any additional evidence that
15 you want to put on the record?

16 MR. WISE: I apologize for not having the
17 Defendant's Exhibit 1, which I did have last
18 night. I have misplaced it. I would like to
19 supplement with just a diagram, unless it's in the
20 packet the Court has.

21 THE COURT: I don't know that it is.

22 Mr. Smith, do you have any objection to
23 Mr. Wise supplementing the packet?

24 MR. SMITH: I don't, Your Honor. I don't
25 believe it's in the Court packet.

1 THE COURT: Okay.

2 MR. SMITH: I do believe that, but we
3 have included exhibits. So I haven't seen it, but
4 it definitely is in the exhibits.

5 MR. WISE: If I have to go to the clerk's
6 office and make another copy, I'll do that.

7 THE COURT: You can supplement the
8 record. I don't have an issue with that.

9 MR. WISE: All right.

10 THE COURT: Mr. Smith, do you have anyone
11 you would like to call to the stand or any
12 evidence you'd like placed in the record?

13 MR. SMITH: I do, Your Honor. I would
14 like call as my first witness Mr. Townes Jones.

15 THE CLERK: Mr. Jones, please place your
16 left hand on the Bible and raise your right hand.
17 Do you solemnly swear or affirm that the testimony
18 you're about to give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Please state your full name
23 for the record.

24 THE WITNESS: William Townes, you spell
25 that T-o-w-n-e-s, Jones.

1 THE CLERK: Thank you.

2 THE WITNESS: Good morning, Your Honor.

3 THE COURT: Good morning. How are you?

4 THE WITNESS: Good. How are you?

5 THE COURT: Fine.

6 WHEREUPON:

7 WILLIAM TOWNES JONES,

8 after having been sworn to tell the truth, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q Mr. Jones, tell us a little bit about your legal
13 background, if you will, such as experience?

14 A Sure, sure. I graduated University of
15 South Carolina School of Law after attending and
16 graduation from Erskine College in Due West, South
17 Carolina. And I graduated law school in the fall
18 of '81, I'm pretty sure. It's '81 or '82. That
19 spring, I was fortunate enough, after having taken
20 the bar exam, to get a job offer from a former
21 Circuit Court judge, Luke Brown, who was living in
22 Jasper County and a resident judge for the 14th
23 Judicial Circuit. I spent a year with Judge
24 Brown. We traveled across the State from Florence
25 to Pickens to Anderson to Greenville to different

1 locations all over the counties, and of course in
2 the 14th Circuit; Allendale, Colleton, Jasper,
3 Beaufort, and Hampton.

4 And I really enjoyed the opportunity to
5 observe other lawyers practice in both the civil venue
6 and the criminal courts. Of course, in this circuit,
7 Solicitor Buster Murdaugh, and some of his finest
8 assistants were in charge of the criminal docket, so I
9 gleaned a good bit of experience from him.

10 After that year, I had several job offers
11 with civil firms in the Hilton Head area, but
12 Solicitor Murdaugh came to me and said he didn't have
13 a space but his good friend, Donnie Myers, would love
14 for me to come up to Lexington County and work as an
15 solicitor with him, and he encouraged me to do that.
16 He was the second person, the first being by advisor
17 at Erskine who switched me from pre-dental to law
18 because I had a legal background.

19 And then Solicitor Murdaugh said that, you
20 know, I needed to get into the criminal law to see if
21 I could get some trial experience. So Donnie welcomed
22 me. I took that job. I moved from Hilton Head to
23 Lexington.

24 And Donnie Myers at the time was dealing with
25 a Democratic county council that weren't funding his

1 office like he needed to. Lexington, I think, turned
2 Republican in '84, the county council rather.

3 And I tried a number of cases --

4 MR. WISE: Excuse me. Your Honor, I hate
5 to interrupt, but -- I meant to do this earlier.
6 Can we free one of Mr. Williams hands so he can
7 make notes?

8 THE COURT: Any issues with that? I
9 defer security entirely. Yes or no.

10 MR. WISE: We don't need both. Just one.

11 THE DEPUTY: It's not typically how we
12 operate, Your Honor.

13 THE COURT: All right. Well, I know it's
14 typically, but do you have a concern for security
15 about it?

16 THE DEPUTY: Judge, if you us to let
17 loose one of this hands --

18 THE COURT: How about uncuff one hand?
19 Let him have one hand.

20 MR. WISE: Are you left-handed or
21 right-handed?

22 MR. WILLIAMS: Left.

23 MR. WISE: He's left-handed.

24 THE COURT: There's three of you all and
25 one of him.

1 MR. WISE: He usually doesn't have a
2 problem getting one hand free.

3 THE COURT: I suspect.

4 MR. WISE: It beats having him whisper in
5 my ear.

6 THE COURT: I got you. I got you.

7 MR. WISE: Thank you very much. I meant
8 to address this earlier.

9 THE WITNESS: I'll try to get to the
10 point.

11 BY MR. SMITH:

12 Q Okay. We appreciate it, Mr. Jones.

13 A I'll move along. The point is, Solicitor
14 Myers said, I can't pay you much, but you can try
15 as many cases as you can do. And I tried about 30
16 cases in the year and a half I worked with him.
17 Everything from DUI to murder as a prosecutor.

18 At the conclusion of my work with him, I was
19 encouraged to return to my hometown of Greenwood and
20 run for the office of the solicitor, and I did. I was
21 elected in November of '84 and was sworn in in
22 February of '85. From then until January of 2005, I
23 served as solicitor for the 8th Judicial Circuit as
24 the chief prosecuting officer and was reelected during
25 that time, of course, to five consecutive terms

1 without opposition fortunately. That's a good way to
2 do it.

3 But I got a lot of experience. Back in
4 those days and in that county, it's a rural
5 circuit, Greenwood, Abbeville, Laurens, and
6 Newberry Counties. The solicitor shows up every
7 term of court or the bailiffs wonder where the
8 heck he is. Okay? You don't run it from a
9 downtown office. You go to Newberry and you go to
10 Laurens and you go to Laurens and you go to
11 Abbeville and you go to Greenwood. And while
12 you're there, you may as well work.

13 So I tried a lot of cases over those 20 years
14 and developed my expertise, which is criminal law.
15 And in that case, criminal prosecution. Although, I
16 learned from a good teacher, the best way to be
17 successful there was to work real hard, try to out
18 work your opponent, and to be familiar with their side
19 of the fence and what to expect coming your way. And
20 to try to learn from your experiences, which is what
21 my father said the best comment and compliment he ever
22 received from a judge was that, Jones, you won't want
23 to hit him with the same rock twice, and he thought
24 that was a real nice thing to say about a trial
25 lawyer.

1 But after retiring from the solicitor's
2 office, I opened a private practice, and I've been in
3 that practice since January of 2005. Probably
4 85 percent of my practice is criminal defense with
5 another 15 percent being personal injury and worker's
6 compensation.

7 Q Okay. So it's a fair statement that the majority
8 of your legal work has been in criminal law.

9 A Correct.

10 Q Okay. And, although you did go through your
11 extensive experience and practice in the field --

12 MR. SMITH: I'll just clarify for the
13 record that we're not offering Mr. Jones as an
14 expert witness today.

15 THE COURT: I realize that.

16 MR. SMITH: Since he used the word
17 expert.

18 THE COURT: I realize that.

19 BY MR. SMITH:

20 Q So, Mr. Jones, tell me how you came to be involved
21 in Mr. Williams' case?

22 A All right. I received a call from a good
23 friend that I had worked with while I was
24 solicitor. He was a -- I think he retired at the
25 captain level with the Laurens Police Department.

1 And he asked me to help out a friend of his whose
2 brother had gotten charged with murder. And I
3 said, well, send his brother in, and that was
4 Willie Williams' brother. Willie was either in
5 the hospital or under -- under detention, whether
6 he was in the hospital or not. At that time, he
7 had been arrested for the crime of murder, among
8 other crimes.

9 And his brother came and spoke to me, and
10 then a sister came, the family came, and I met with
11 the family. In toto probably 8 or 10 members of
12 Willie's family and explained to them what the primary
13 goals would be if they hired me, and we discussed some
14 fee arrangements and things like that. But they hired
15 me through Willie. I went to visit Willie at the
16 Greenville Detention Center to make sure that he would
17 be satisfied with me doing what I could for him.

18 So once we had addressed those issues, I
19 dealt, either with Willie at the jail, or with his
20 sister -- youngest sister. Or maybe a niece. I'm
21 trying to remember what her relationship was to
22 Willie, but she would be the contact person for the
23 family if I needed anything from them.

24 So, you know, the case came to me from a
25 former law enforcement officer that I had worked with.

1 His name was Levester Hill, H-i-l-l. Levester was one
2 of the best police officers I ever had the pleasure of
3 working with.

4 Q At what point did Mr. Warder become involved in
5 this case?

6 A Well, during the course of representing
7 Willie, we decided that we were going to need to
8 get a private investigator involved. And Willie
9 took it on his own -- I think maybe he met this
10 man. I don't know how he -- maybe somebody in the
11 detention facility told him about this
12 investigator.

13 And so Willie met with him and liked him and
14 wanted to hire him. I met with him. I liked him. He
15 was from here in Greenville and was a hard-working
16 guy. I think he had grown up in the Florida area,
17 but -- he's no longer living. But he was brought on
18 as an investigator. And we began to work towards
19 trying to iron out some of the issues in the case.

20 And Willie consistently wanted me to try to
21 get a bond hearing for him. And I said, well, Willie,
22 I think it's time for you and I to discuss bringing on
23 a local attorney to assist me and you in your defense,
24 not only with the bond motion but with some other
25 issues. He would be right here in Greenville.

1 So I gave Willie at least one name, maybe
2 two, Dick Warder, and I think the private investigator
3 had a relationship with Mr. Warder, and also
4 encouraged Willie to bring him onboard.

5 And so I had worked with Mr. Warder while I
6 was solicitor. He would occasionally have cases in
7 the Laurens County area, the Greenwood County area.
8 He was one of the toughest defense attorneys I ever
9 went up against as far as having a good calm demeanor,
10 a thorough knowledge of his facts and the law, so I
11 felt like I was advising Willie -- based on what
12 experiences I had, good advice there.

13 And so Willie met with Mr. Warder, and I
14 think another investigator from Mr. Warder's office,
15 and retained Mr. Warder, along with me to move forward
16 with his defense and the potential bond motion.

17 Q Okay. And how did you and Mr. Warder and
18 Mr. Williams agree to split up the representation?
19 How were you going to navigate that with two defense
20 counsels?

21 A Well, you know, what we did in the beginning
22 was to spend our time and resources, both being
23 fully -- both lawyers being fully aware of all
24 facts and issues in the case.

25 And probably the week before trial, we began

1 to -- we did have some late pretrial meetings with the
2 solicitor's office and so we had some issues out there
3 that we were, kind of, using a strategy to see where
4 they were going and what would be a part of the case.
5 I can't recall specifically now what they were, but I
6 do recall that Mr. Warder and I waited until pretty
7 late in the game to decide how we would share
8 responsibility in representing him.

9 And we ran this by Willie and he was in full
10 agreement. He had grown to trust Mr. Warder, and I
11 hope he continued to trust me to our best for him.

12 And so we decided before the trial, the week
13 before, that Mr. Warder would handle opening. We
14 would decide later on, during the course of the trial,
15 about closing, and that Mr. Warder would handle the
16 cross-examination of the State and that portion of
17 Willie's defense, and that I would handle the
18 presentation of the defense witnesses, if Willie
19 decided to go forward with the defense.

20 I think there were some occasions when I
21 would assist to some extent, even when Mr. Warder was
22 handling the cross-examination of the State's case, on
23 additional arguments for the Court, the judge, about
24 the law, possibly even the examination of some
25 witnesses that I engaged in along with Mr. Warder

1 because I had had more personal contact with the
2 witness. The one who comes to mind -- I can't
3 remember the good man's name. Willie's brother who's
4 a pastor or reverend.

5 And he was brought in, and the State trying
6 to get the Court to force him to divulge some
7 information that the State believed that Willie had
8 shared with him about the facts of the case. And
9 Willie's brother was of the belief from the beginning
10 about that. I had met with him in my office on
11 numerous occasions that this was not brother to
12 brother. This was Willie, in a time of need, calling
13 somebody that he felt, at the time, was his pastor, in
14 addition to being his brother.

15 And so, as a result, we sought and were
16 successful in preventing that communication from being
17 entered into the record for the jury's
18 consideration.

19 Q And that was in accordance with the
20 pastor/penitent privilege.

21 A Correct.

22 Q Well, let's jump right in and talk about some
23 involuntary manslaughter issues.

24 MR. SMITH: Your Honor, may I approach?

25 THE COURT: Yes, you may.

1 BY MR. SMITH:

2 Q Okay. Let's look at some portions of the
3 transcript. I realize this trial was some years ago.

4 A Uh-huh.

5 Q So if you need to read this for a minute just to
6 refresh your memory that will be fine, just let me
7 know.

8 A All right.

9 Q But I'm looking at page 535 and 536 in the trial
10 transcript.

11 A Okay.

12 Q And when Mr. Williams testified at trial about how
13 his wife came to be shot, what was his testimony on
14 that point?

15 A Well, he was talking on page 535 about,
16 "Little curtains that came down like panel
17 curtains, 1, 2, 3, and the curtains moved right in
18 here. This curtain right here and right in here."

19 And, I guess, I said, "Okay. And what
20 happened? What did you see? What did you do?"

21 "It was dark. And, you know, usually up here
22 there was a motion light that would come on that will
23 shine on this front area here. But since the light
24 was off, there's no street light, so it was dark. So
25 I go to the corner and try to look in here. That's at

1 the end where the curtain slides to the back, and
2 right there. And it was dark so I couldn't see
3 anything at the end right here. So this is the end of
4 the porch. I turned right here, and that's when I see
5 an individual come here. It's in view here. They
6 come up to me like that, walk up to me, fast-like, and
7 we face about like right in here."

8 "Okay. Now, not saying what he said, but
9 what did he do when you saw him coming toward you?
10 Don't say what he said."

11 "He pointed a weapon at me."

12 "What kind of weapon?"

13 "It appeared to be a handgun."

14 "All right. I want now your -- if the jury
15 is on the inside of Idlewild in the living room
16 looking out the window, you're standing outside the
17 porch facing me, being the person approaching you,
18 correct?"

19 "Correct."

20 "I want you to demonstrate. Put the pen
21 down. And as he comes forward, did he have a right
22 hand, left hand, what hand did he have the gun in?"

23 "It was on the right hand."

24 "He had it out like this?"

25 "Right."

1 "All right. For the purpose of
2 demonstration, assume that I'm the person, the man
3 coming towards you with it, I want you to demonstrate
4 for the jury what you did, if anything."

5 "He come up to me. I can't say what he said.
6 So that's the -- right here. So -- and I just react.
7 Self-defense like. I took self-defense, so I react.
8 And by controlled moment of self-defense, you're going
9 to grab here. What you're going to grab in here and
10 put pressure to keep from doing the squeeze. And then
11 you're going to come here with a controlled movement
12 like that and then like that."

13 "And then what happened?"

14 "Then the gun went off, pow."

15 Q You can stop there?

16 THE COURT: Tell me what page that was.

17 MR. SMITH: 535 and 536.

18 THE WITNESS: The last thing I said was
19 the bottom of page 536, Your Honor. I apologize.

20 THE COURT: That's all right. That's
21 okay. I just want to make sure I had that
22 reference in my notes. Thank you.

23 BY MR. SMITH:

24 Q So I'm going to attempt to summarize what you just
25 read and tell me if this is correct based on your

1 understanding of it. He testifies that -- I believe
2 the man's name was Anthony Wilson -- came towards him
3 with a weapon, and that, in self-defense, he struggled
4 with Mr. Wilson. And during that struggle, the gun
5 went off.

6 A That's the way I perceived the testimony as
7 being presented.

8 Q Okay. And let's look at one more page here. I'm
9 looking at about page 565. Okay, I'm sorry. 566, and
10 we're looking here at about line 7. And this is the
11 State questioning Mr. Williams. Will you please read
12 her question and answer here?

13 A All right. On page 7, you said?

14 Q Page 566, line 7.

15 A Page 566, line 7.

16 Question: "All right. When the first shot
17 went off, you were outside the house."

18 Answer: "Yes, ma'am."

19 Q That's good. And we'll look at one more page,
20 576. Page 575. And if we look at line 18 through 25,
21 will you please read those questions and questions.

22 A Page 575, line 18?

23 Q Correct.

24 A Begins with a question. "Okay. So you
25 didn't go to the front window with a gun in your

1 hand, that 38 caliber that you got for a
2 Father's Day present. You didn't go to Natasha's
3 window with that gun in your hand."

4 Answer: "No, ma'am."

5 Question: "You did not shoot through the
6 glass and shoot her in the head."

7 "No, ma'am."

8 Q Okay. And, Mr. Jones, it looks like you asked the
9 Court for a jury instruction on involuntary
10 manslaughter, but then the appellate courts found that
11 you did not preserve the issue because you didn't
12 object to it after the Court refused to give that
13 charge.

14 Can you tell me, you know, your thoughts at
15 the time about, was there a reason that you didn't
16 object to that further?

17 THE COURT: Let me make sure, you're
18 talking about voluntary or involuntary?

19 MR. SMITH: Involuntary.

20 THE COURT: Involuntary.

21 MR. SMITH: Correct.

22 THE COURT: Okay.

23 THE WITNESS: My thinking at the time,
24 because during the course of the discussions with
25 the Judge about potential charges, we had

1 information that she intended to charge accident.

2 And I felt like the charge of -- an accident

3 charge would support Willie's testimony that --

4 you know, it was an accident between he and

5 Mr. Wilson, and that he never shot Natasha, or,

6 you know, Mr. Wilson with any intent.

7 BY MR. SMITH:

8 Q Okay. Do you remember what the Court charged on

9 provocation at the time of trial, or would you like to

10 look at the record?

11 A I'd have to see the record --

12 Q Okay.

13 A -- to make that recollection, refresh my

14 memory about what the Court did charge as it

15 relates to provocation.

16 Q Okay. And do you know, at the time, what your

17 understanding of provocation would have been and

18 whether -- did you think it was supported in this

19 case?

20 A For voluntarily manslaughter?

21 Q Yes, that's correct. And I'll refer you here to

22 page 639.

23 A And what line do you want me -- you want to

24 read the entire page 639?

25 Q Down at the bottom. I believe the copy here I

1 have here is highlighted, but it should be the last
2 few lines, 23 through 25.

3 A Let me start at line 18, if that's all right,
4 on page 639. "The sudden heat of passion must be
5 the type that would make an ordinary person unable
6 to coolly reflect on his actions and would produce
7 an uncontrollable impulse to do violence.
8 Sufficient legal provocation must be the type that
9 would make a person of ordinary reason and caution
10 become enraged and lose control temporarily."

11 And then line 24 and 25 that you pointed out
12 states: "The provocation needed for voluntary
13 manslaughter must come from some act of or related to
14 the victim."

15 And, quite frankly, based on what the judge
16 said she intended and believed that the provocation
17 involved, I knew of no, at the time, Supreme Court
18 ruling or a case law that would be sufficient to
19 convince her to reconsider her position.

20 Q Do you remember whether or not Mr. Williams
21 testified as to provocation during trial?

22 A I don't remember.

23 Q Okay.

24 MR. SMITH: And I'll be happy to point
25 that out to Your Honor in closing.

1 THE COURT: Okay.

2 BY MR. SMITH:

3 Q Did you find any reason to object to the trial
4 Court's instruction on provocation?

5 A I did not.

6 Q Okay. And the Court did give instruction on
7 mutual combat during trial. Do you recall if the
8 Court ever instructed the jury that mutual combat
9 negated self-defense?

10 A You know, I don't recall whether her
11 instruction contained that language. I do recall
12 that, in discussing the issue with Mr. Warder, we
13 concluded that we weren't suffering from any
14 prejudice based on that charge, and that Willie --
15 William had already testified about an altercation
16 with Mr. Wilson.

17 Q At the time of trial in May of 2013, do you -- and
18 this may be a difficult question, but do you remember
19 what your understanding of specific intent and
20 attempted murder would have been the time?

21 A Understanding of what again?

22 Q Specific intent as it relates to attempted murder.

23 A I think that, at the time in 2013, we didn't
24 have a Supreme Court ruling that we have now from
25 State vs. King that was decided in 2015. And so,

1 my understanding was that, you know, the judge's
2 position on specific intent was essentially
3 correct at that time.

4 Q Okay. I'll refer you to page 630 of the
5 transcript, and in here -- I believe this is closing
6 argument. The solicitor ends by saying, "On behalf
7 Greenville County, please find Mr. Williams guilty."
8 At the time, did you find this comment
9 objectionable?

10 A I did not.

11 Q Okay.

12 A And do you want me to explain why I did not?

13 Q Sure.

14 A You know, when she said, "On behalf of the
15 people of Greenville County," the elected
16 solicitor for the 13th Judicial Circuit is a State
17 employee. The overwhelming majority of his
18 assistants are essentially county employees. This
19 crime, allegedly, was committed in Greenville
20 County, and a Greenville County jury was deciding
21 what the truth was.

22 And her remark "On behalf of the people of
23 Greenville County," that's who she was, kind of,
24 representing. And I just didn't see an undue amount
25 of prejudice and effort on the prosecutor to inflame

1 this jury with undue passion and a sense of
2 retribution, if you will.

3 So, it just didn't come across as being, at
4 the time, the type of comment that one might
5 immediately feel was prejudicial, over the top, and
6 just appealing to the jury's passion as opposed to
7 their sense of reason and justice.

8 Q Okay.

9 A For commitment to the community.

10 Q Okay. If you look at page 638 of the transcript,
11 and we're looking there at a jury instruction. Did
12 you find any aspect of that instruction about the
13 mental state required for murder to be inadequate?

14 THE COURT: What page are you talking
15 about?

16 MR. SMITH: 638, Your Honor.

17 THE COURT: I got you.

18 THE WITNESS: Well, it goes on over to
19 page 639, discussing first on page 638 at the
20 bottom of the page, expressed malice. And then
21 she speaks about inferred malice from conduct
22 showing a total disregard for human life.

23 So, no, I do not see any significant
24 basis to object to the charge. No language that
25 was blatantly inconsistent with what the law was

1 at the time.

2 BY MR. SMITH:

3 Q Okay. At the time, did you -- at the time of
4 trial in 2013, did you have any particular
5 understanding of transferred self-defense? And, if
6 you don't remember, you know, that's fine.

7 A You know, the only thing that came to my mind
8 when the issue of that -- what arisen would be
9 that, you know, the bulk of the testimony from the
10 defense was that this was an accidental shooting,
11 and that -- actually, both instances where shots
12 were fired were accidental, from the outside of
13 the house on in through the inside of the home,
14 down a hallway, and into Willie step-son's bedroom
15 where shots were fired in the hallway and in that
16 bedroom.

17 My understanding from our testimony is that
18 those shots were fired when Willie continued to
19 struggle with Mr. Wilson in an effort to protect
20 himself and to gain access to a weapon.

21 Q Do you recall any testimony about whether
22 Mr. Williams had a firearm in his hand and shot it at
23 someone?

24 A From him?

25 Q Correct. Right.

1 A Right.

2 Q Do you recall any testimony from Mr. Williams that
3 he had a weapon in his hand and shot it in
4 self-defense?

5 A You know, it was unclear as to whether, when
6 they were in the hallway in the back bedroom,
7 Willie ever gained control of the weapon. It was
8 more struggling with the weapon and the --
9 Mr. Wilson. And so my perception of that
10 testimony was that he never actually had control.
11 Willie Williams never actually had control of the
12 weapon, correct.

13 MR. SMITH: Okay, thank you. I have no
14 more questions.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. WISE:

18 Q Let's deal first with the charge to the jury on
19 page 639 of the transcript. Do you have a copy of the
20 transcript in front of you?

21 A I don't in front of me. I think I've got a
22 portion of it here.

23 Q I think you got all of it there.

24 A All right. Like you, I'm not always sure
25 what I got with me all the time. I try to keep

1 track of it. What page?

2 Q 639. Line 24, to be precise.

3 A I don't have any page 600 in what I have that
4 I've been able to locate at this point in time.
5 Let me look in one more -- well, I think I do.

6 Q All right.

7 A Page 639?

8 Q Okay.

9 A Where?

10 Q Line 24 where the judge charged to the jury, "The
11 provocation for voluntary manslaughter must come from
12 some act of or related to the victim." Do you see
13 that?

14 A I see that.

15 Q Okay. You see that?

16 A I do.

17 Q And the victim in this case of voluntary
18 manslaughter, or whether or not the jury would convict
19 him of voluntary manslaughter, of course, was his
20 wife, correct?

21 A Correct.

22 Q And his wife was inside the house.

23 A Correct.

24 Q And his wife obviously did not engage in any act
25 of provocation.

1 A Well, from a factual standpoint, you're
2 probably right. But her actions, by someone,
3 could be interpreted as being provocation. There
4 was a conversation between his wife and a 911
5 dispatcher that was played for the Court to hear.

6 Q Right.

7 A And on that recording the dispatcher kept
8 asking her, how do you know it's Willie? How do
9 you know it's Willie out there? And she kept
10 saying, because he's trying to bust in the front
11 door. I've got it blocked. Send somebody out
12 here, please, now.

13 And she said, well, ma'am, do you have a
14 weapon with you? And she said, yes. And she said,
15 why don't you get up and go to the window and look
16 outside and see if you can tell that it's Willie out
17 there.

18 And she finally conceded to do that after
19 asking her multiple times to send a deputy to that
20 location.

21 Q Okay.

22 A And she went up to the window and she said,
23 okay, I'm going to look out. I'm going to pull
24 these blinds back, and, bam, she was shot almost
25 immediately.

1 But, apparently, she did something at the
2 window to get someone's attention, or it's just
3 coincidental that she was shot in the head at the same
4 time she pulled the blinds back.

5 So, yeah, probably not provocation, as I
6 said. But there was some issue that one could have
7 argued that that provoked me into defending myself, if
8 you wanted to take that position.

9 Q If the provocation is required to come from the
10 victim, as the judge charged --

11 A Right.

12 Q -- then in this particular case, there would be no
13 provocation sufficient to justify -- for a jury to
14 find voluntarily manslaughter.

15 A That would probably be a jury's conclusion.

16 Q Right. But the question --

17 A But you never know what a jury is going to
18 decide.

19 Q I understand. You say there's no real provocation
20 from his wife in this case.

21 A I said you're probably right when you make
22 that argument.

23 Q Right.

24 A But, you know, it depends on how you
25 identified the action and how the person that

1 might be alleging provocation would state it and
2 define it.

3 Q Are you --

4 A And that, quite frankly, my recollection of
5 Willie's testimony was that, at the time the
6 blinds were coming back, he heard or saw somebody
7 coming out of the shadows, and that whole
8 situation was not only dark, but scary, and in
9 combination of actions by multiple individuals
10 could have resulted in provocation that one could
11 have attached to the victim.

12 Q There's no question there's clearly, from
13 Mr. Williams testimony, provocation by Mr. Wilson,
14 correct?

15 A Excuse me?

16 Q There's no question, based upon the testimony of
17 Mr. Williams that there was provocation by Mr. Wilson
18 in coming outside the house with the gun.

19 A What I read this morning from the transcript
20 was that Willie was standing outside in the dark
21 and turned and saw somebody coming towards him,
22 that he couldn't hear exactly what the person said
23 but it caused him concern about what the person
24 intended to do.

25 And while he not only testified but

1 demonstrated while I played the role of Mr. Wilson
2 what he would have done and where the parties were
3 positioned and how he did it. And I believe he said
4 he had to grab his arm here, twist him down to keep
5 him from getting in that position, basically
6 demonstrating and reiterating to some of training that
7 he had received while working as a -- in the military
8 as a civilian supplier for the military in war time
9 areas for some time.

10 Q Okay. Clearly, there was some provocation from
11 Mr. Wilson, correct?

12 A In Willie's mind, I think he felt like that
13 there was some need he turned into self-defense.
14 You act in self-defense. You act in
15 several-defense, is what Willie testified to.

16 Q Correct.

17 A When somebody comes at you in that arena at
18 that time under those circumstances.

19 Q Have you ever dealt with the concept of
20 transferred intent?

21 A Yes.

22 Q Excuse me?

23 A Yes.

24 Q And you were familiar with transferred intent at
25 the time of this trial?

1 A I was familiar with transferred intent. I
2 was less familiar with transferred intent as it
3 relates to self-defense.

4 Q What about as it relates to voluntary
5 manslaughter, or murder even?

6 A I think that transferred intent could apply
7 to murder, yes.

8 Q As a prosecutor, you've used transferred intent
9 when somebody attempted to shoot someone, and,
10 unfortunately, killed someone else?

11 A Out of the 50 plus murder cases I tried as a
12 solicitor, I probably dealt with that issue once
13 or twice.

14 Q But it's enough --

15 A It is.

16 Q -- to be aware of it.

17 A It's a lot.

18 Q But you never requested a charge about transferred
19 intent in this case, that if Mr. Williams' intent was
20 to defend himself from Mr. Wilson, then,
21 unfortunately, his wife would be in the same position
22 of Mr. Wilson if she were killed in lieu of
23 Mr. Wilson?

24 A Well, the testimony wasn't that Mr. Williams,
25 Willie Williams was attempting to defend himself

1 from Mr. Wilson with a firearm. The testimony was
2 that, while he was trying to prevent Mr. Williams
3 from was causing any harm to him, pow, the gun
4 went off.

5 Q Okay. Now, you dealt with the concept of
6 imperfect self-defense.

7 A Yes.

8 Q And under the elements, or whatever you want call
9 it of self-defense, one of them is, you must not be --
10 you must be without fault in bringing on the
11 difficulty.

12 A That's the first element. You must not be,
13 in any way, at fault in bringing on the initial
14 difficulty.

15 Q And, obviously, walking onto someone's property
16 late at night with a gun would tend to negate that
17 concept.

18 A Willie, I don't think, had been served with a
19 restraining order or a notice of trespass --

20 Q I'm not asking about restraining orders.

21 A -- not to come on that property.

22 Q All I'm asking is, as a prosecutor, would you have
23 argued that someone who comes on another person's
24 property in the early hours of the morning armed does
25 not qualify as without fault in bringing on the

1 difficulty?

2 A No, I would not have. I don't think I would
3 have been successful in making that argument as a
4 prosecutor. I think they would require more than
5 that act to bring -- of course, you would prefer
6 not to have that issue being on someone else's
7 property. But, as long as you could express a
8 legitimate basis and need for being there, you
9 know, knocking on the front door, asking for
10 assistance and being armed, I don't think is, you
11 know, any act that would be responsible for
12 bringing on the initial difficulty.

13 Q Now, Mr. Williams testified about this.
14 Mr. Wilson testified he never left the house,
15 correct?

16 A I can't recall Mr. Wilson.

17 Q Okay. That was a stipulation with you and the
18 State that a bloody fingerprint was found on the car
19 outside and the fingerprint belonged to Mr. Wilson.

20 A Correct.

21 Q All right. So that's pretty conclusive evidence
22 he was outside after he was shot.

23 A Correct.

24 Q And that tended to back up Mr. Williams' testimony
25 that he encountered Mr. Wilson outside?

1 A Yeah, and we tried to argue that. But we
2 also backed up the State's position, and that was,
3 Mr. Wilson, after being shot, didn't die in the
4 house, didn't live in the house, didn't stay in
5 the house. He left the house at some point in
6 time.

7 Q But he never testified leaving the house, did
8 he?

9 A He said he didn't leave the house during the
10 altercation. He didn't leave the house as long as
11 Willie was in the house.

12 Q And I believe he testified that he didn't -- he
13 was in the house when the police arrived.

14 A He may have, yes. Yes, yes.

15 Q Now, do you recall whether or not you and
16 Mr. Warder argued to the jury to negate the charge
17 that provocation needed for voluntary manslaughter
18 must come from the victim? Did you make any argument
19 to negate that charge that you recall?

20 A I can't recall.

21 Q Okay.

22 A But I don't recall that I did either.

23 Q Okay. Now, on the charge of involuntary
24 manslaughter, the judge did charge accident,
25 correct?

1 A Correct.

2 Q And you would agree that the difference between
3 accident and involuntary manslaughter literally can
4 turn upon how reckless one was in conducting and doing
5 an accident?

6 A How reckless one was when an accident occurs?

7 Q Correct. Because involuntarily manslaughter
8 involves an element recklessness.

9 A As long as you're dealing with a dangerous
10 instrumentality.

11 Q Right.

12 A Right.

13 Q Correct. And you're dealing with dangerous
14 instrumentality in a gun.

15 A If you ever had control of it.

16 Q Or if you were reckless in wrestling with someone
17 even.

18 A Trying to prevent the gun from being shot at
19 other people, I don't know.

20 Q But you didn't come back and object to the charge
21 of involuntarily -- not charging involuntary
22 manslaughter after the judge said she wasn't going to
23 charge it.

24 A I did not.

25 Q Okay. And, therefore, that was not preserved for

1 review.

2 A Correct.

3 Q All right. Did the judge tell you or discuss with
4 you all in chambers ahead of time, even if it's not in
5 the record, that she was going to charge mutual combat
6 in the middle of her self-defense charge?

7 A Mr. Wise -- and, again, this was a good six
8 years ago, many cases and many conferences in
9 chambers ago --

10 Q Right. I understand.

11 A -- I don't recall ever having a conference in
12 this judge's chambers during the course of this
13 trial either before it started, during it, or
14 afterwards.

15 Q Now, are you familiar with the Taylor case
16 involving mutual combat that was decided many years
17 before this trial?

18 A Would you refresh my recollection of the
19 Taylor case, Mr. Wise, because I can't tell you
20 that it's really --

21 Q Let me get my mine.

22 A -- in front of my brain right now.

23 MR. WISE: Judge, I'm going to pass up to
24 you a packet of law involving this case that you
25 don't have to open now.

1 THE COURT: All right. Thank you.

2 BY MR. WISE:

3 Q The case is State v. Therl Avery Taylor decided in
4 2003, and I'm handing you a copy of it to review.

5 A What portion of this? You want me to read
6 the entire case? Apparently, this is
7 Justice Toal --

8 Q Right.

9 A -- who was holding that the evidence was
10 insufficient to warrant the jury charge on mutual
11 combat.

12 Q Right. First of all, I'm asking if you're
13 familiar with it?

14 A No.

15 Q Okay. That may eliminate a lot of questions.

16 A Okay.

17 Q But, basically -- let me get that back.

18 So you're not familiar where the Court
19 found that the Court's mutual combat charge acted as a
20 limitation on the petitioner's ability to claim
21 self-defense? You're not familiar with that aspect of
22 the Taylor case?

23 A Right.

24 Q Okay. So there was no objection the mutual combat
25 charge by either you or Mr. Warder, obviously?

1 A I can't recall, but apparently not.

2 Q All right. Did you or Mr. Warder do any research
3 on the issue of what the intent that is required for
4 an attempted murder charge in either South Carolina or
5 in any jurisdiction?

6 A No.

7 Q Okay.

8 A I can't speak for Mr. Warder.

9 Q Excuse me?

10 A I can't speak for Mr. Warder.

11 Q True. I apologize for that. I should have just
12 asked for you.

13 Now, the State in their closing argument,
14 you found no objection to the State saying, on
15 behalf of the people of Greenville County, find
16 him guilty of murder?

17 A No, I didn't.

18 Q All right. A prosecutor is not supposed to argue
19 the basis for a conviction outside the record in the
20 trial; is that correct?

21 A Correct.

22 Q And basically telling a jury that -- well, let me
23 back up.

24 Do you consider basically telling the jury
25 that you should do this on behalf of your fellow

1 citizens was arguing a fact beyond the actual trial of
2 the case?

3 A Well, a fact came in in testimony that this
4 crime occurred in Greenville County, all right,
5 which made it not only factual evidence, but
6 relevant.

7 Q Okay. And you did not request any charge on
8 transferred intent so as to justify a voluntarily
9 manslaughter charge even if Miss Williams was not
10 involved in the provocation? Or was that question
11 poorly worded?

12 A Well, you know, I'm trying to follow it.

13 Q Okay. Let me back up.

14 A I think, regardless of how you phrase your
15 question, you know, it's clear that I didn't --
16 regardless of what my motivation was, or lack
17 thereof, for not requesting the charge, I didn't
18 request it.

19 Q Right. Go back. When a judge tells the jury that
20 the provocation -- under the facts of this case, when
21 the judge tells the jury the provocation must come
22 from the victim in a voluntary manslaughter case, do
23 you, under the facts of this case, perceive that as
24 pretty well telling the jury there is no voluntary
25 manslaughter as to Miss Williams because she was not

1 engaged in any act of provocation?

2 A Tell me again, if you found it in the
3 transcript, who testified that she was not engaged
4 in an act of provocation.

5 Q I don't think anybody ever said she was engaged or
6 not engaged in an act of provocation. I think they
7 just testified that she was at the window and was
8 shot.

9 A Who testified to that?

10 Q Well, I think the ballistics people, where they
11 found her, they perceived her being at the window when
12 she was shot.

13 A Well, you had the transcript of her telephone
14 call --

15 Q Right.

16 A -- where she was detailing to the 911
17 operator exactly what she was doing.

18 Q Correct.

19 A That she had a gun in her hand and that she
20 was going to the window to open the blind to look
21 out. Right?

22 Q Correct.

23 A And that she did that. And when she did
24 that, she was shot in the head.

25 Q Right.

1 A And that evidence could be perceived as
2 provocation.

3 Q But that wasn't argued by either you or Mr. Warder
4 as provocation on her part to justify a voluntary
5 manslaughter charge by the jury?

6 A It was a fact in evidence.

7 Q I understand.

8 A All right.

9 Q Did either you or Mr. Warder argue that she was
10 engaged in an act of provocation that would reduce it
11 to manslaughter?

12 A At that point in time, we had determined that
13 it would be in Willie's best interest to go
14 forward with the accident defense as related to
15 that issue.

16 Q But the judge gave a charge of voluntary
17 manslaughter, correct?

18 A Correct.

19 Q And the jury struggled between murder and
20 manslaughter, correct?

21 A I don't know what went on in the jury room as
22 to --

23 Q Let me rephrase my question then.

24 After the jury had been out a couple of
25 hours, did they come back and ask to be recharged on

1 the difference between murder and manslaughter?

2 A I think they asked to be recharged on a
3 number of issues.

4 Q Let me go back to the transcript here. And look
5 the page 655. All right. And look at the top, and it
6 says proceedings were recessed at 12:40, which is
7 about the time the case went to the jury.

8 A All right.

9 Q So after about an hour and a half, they came back
10 and asked for the definition of murder and
11 manslaughter.

12 A Right.

13 Q All right. So they were -- would that be some
14 indication that that was an issue they were dealing
15 with?

16 A My experience has been, Mr. Wise, that when
17 they want a recharge on any -- any legal
18 definition, it could mean that they had some
19 differing opinion and needed clarification on the
20 law. But my experience has been that when jurors
21 hear these charges, these definitions from judges,
22 most of these jurors hear it for the first time in
23 their life, and most of them hear it one time from
24 a judge.

25 And then depending on how much time the

1 attorneys spend on trying to explain what these
2 laws mean and what murder means and what the
3 definition is, and what provocation is, they
4 generally want, when they're dealing with an
5 issue, sometimes to have the charge given to them
6 again so that they are clear about what it is.

7 So, I don't know why they asked for that,
8 but I don't see where they were asking about the
9 fact that they wanted the specific provocation
10 terminology in the voluntary manslaughter
11 charge.

12 Q I understand that.

13 A Okay.

14 Q But, clearly, they wanted to know the difference
15 between murder and manslaughter?

16 A Yes.

17 Q Correct. And again --

18 A Or at least they wanted -- they wanted -- the
19 first thing was, we have a note from the jury, and
20 it reads as follows: "Legal definition between
21 murder and manslaughter," signed by the
22 foreperson.

23 Q Correct.

24 A So they wanted legal definitions of those two
25 crimes.

1 Q All right. And when the judge recharged -- she
2 again recharged the provocation must come from
3 Miss Williams.

4 A I can't recall.

5 Q Well, let's look at page 657, lines 14 through 18.

6 A Line 14: "Sufficient legal provocation must
7 be the type that would make a person of ordinary
8 reason and caution to become enraged and to lose
9 control temporarily. The provocation needed for
10 voluntary manslaughter must come from some act or
11 related to the victim."

12 Q Right. And you're familiar with the concept of
13 imperfect self-defense?

14 A Yes.

15 Q Which results in a manslaughter conviction -- or
16 could result in a manslaughter conviction when all the
17 elements of self-defense have not been proven.

18 A If you got a charge on manslaughter.

19 Q Right.

20 A Sometimes judges don't charge manslaughter.
21 It's murder or self-defense.

22 Q In this case, you did get a charge on
23 manslaughter.

24 A Correct.

25 Q And so imperfect self-defense could have also

1 resulted in a -- arguably could have resulted in a
2 manslaughter conviction.

3 A Yes.

4 Q Okay.

5 MR. WISE: Give me one minute.

6 BY MR. WISE:

7 Q Look at page 297 of the transcript. I believe
8 it's the testimony of Mr. Wilson.

9 A I'm on page 297. You got a line or you want
10 the whole page?

11 Q I'm getting ready to get you a line. I want to
12 verify it myself, too. Yes, line 13.

13 A All right.

14 Q And this is the testimony of Mr. Wilson.

15 A Yes.

16 Q And he stated there, "Before I could even make an
17 exit out of the house and everything, the sheriff was
18 coming in through the back door." Is that correct?

19 A Yes.

20 Q So Mr. Wilson testified that he never left the
21 house.

22 A No. He testified that he was in the house
23 when the sheriff came to the door before he could
24 leave, that's what he testified.

25 Q Correct.

1 A Right.

2 Q Do you know of any testimony in this record that
3 said he ever left the house after he was shot?

4 A You know, somewhere it seems to me that when
5 he testified, Mr. Wilson, he testified he was
6 taken to the hospital shortly thereafter.

7 Q Right. He was.

8 A Yeah. And he may have been allowed to go to
9 his car to get something out of his car before he
10 went to the hospital.

11 Q But there's no testimony in the trial to that.

12 A Correct.

13 MR. WISE: Okay, thank you.

14 THE COURT: Yes, sir.

15 MR. SMITH: Your Honor, I have a few
16 questions. Can I approach, Your Honor?

17 THE COURT: Yes, you may.

18 REDIRECT EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Jones, you were asked some questions about the
21 solicitor's request that the jury find Mr. Williams
22 guilty. I'm going to show you a portion of her
23 closing argument on pages 629 and 630. And if you
24 will confirm in there a few things. Will you confirm
25 that she tells the jury that the State has the burden

1 of proof beyond a reasonable doubt?

2 A On page 629 or 630?

3 Q Both.

4 A All right.

5 Q We are looking at the --

6 A Beginning on page 629, Miss Munson, Judy
7 Munson: "There are a few things we can know in
8 this life with absolute certainty. And while the
9 State's burden is heavy, it is not required that
10 we prove it to an absolute certainty. In fact,
11 after looking all the facts and circumstances, you
12 are firmly convinced of the defendant's guilt then
13 you must find him guilty."

14 Q So there she did tell the jury that the State had
15 the burden beyond a reasonable doubt?

16 A Well, it just says it doesn't have to be
17 proven with absolute certainty, but the burden is
18 heavy. And, you know, you must look at all the
19 facts and circumstances. And, if you are firmly
20 convinced of the defendant's guilt, but I don't
21 see the words "beyond a reasonable doubt" in that
22 portion of her closing argument.

23 Q Okay. And if we look at the top of 630 --

24 A Uh-huh.

25 Q -- if you will confirm here that she's discussing

1 the fact that Mr. Williams had the presumption of
2 innocence?

3 A I will by reading it starting with line 1 on
4 page 630: "It's been said that the presumption of
5 innocence that is with the defendant is like a
6 robe of righteousness that is about his shoulders,
7 and it stays with him the whole time, even to the
8 jury room. And that's good. That's how we do
9 things in South Carolina and in America. His robe
10 of righteousness, he's innocent right now."

11 Paragraph, line 7: "But when you all go back
12 there and start examining that evidence, each piece of
13 that evidence is just like a little razor. It's
14 cutting away the threads of that robe of
15 righteousness. And after careful deliberation and
16 without hesitation, you will remove that robe from him
17 and you will come back in here and tell him that he's
18 guilty. On behalf of the people of Greenville County,
19 please find him guilty."

20 Q Okay, thank you. And --

21 A And I would say that having read that just
22 now, I would suggest that if she was asked to
23 explain that statement, she would say that she was
24 saying, on behalf of the people Greenville County
25 who I represent. I'm representing the people of

1 Greenville County, and so, on their behalf, I'm
2 asking you to please find him guilty.

3 Q Okay.

4 A Not that they're asking them. She's asking
5 them as their public servant.

6 Q Okay. And so I'm going to ask you a question or
7 two now about the bloody handprint. If you look at
8 page 348 and 349, if you will confirm that this is
9 testimony from the investigating officer. And if you
10 have to flip back, you can.

11 A I'll go on page 348 to line 7, question: "As
12 a supervisor, do you inspect them? Are you aware
13 of them?" The photographs he's talking about.

14 "So with every photograph being taken on line 4, I
15 can't say I was there for every single one, but I
16 was in the area inside or outside the house." It
17 sounds like an investigator.

18 Q Okay.

19 A The question on line 9 of page 348: "Well,
20 the forensics team has their own lieutenant who
21 also shows up. I wouldn't say I inspect their
22 photographs. They have their own supervisory
23 division that would do that, but I'm aware of what
24 they take. They report back to us what's going on
25 and we'll ask them specific things that we want to

1 know."

2 Q Okay.

3 A Do you want me to read further?

4 Q And I'm going to direct you specifically to
5 lines 20 and following. And the officer is testifying
6 about the bloody handprint on the car there.

7 A Uh-huh.

8 Q Will you tell me what the officer's testimony is
9 as far as where they found the print?

10 A Okay. It's on line 20. Question: "Okay, we
11 have a stipulation we've entered into about a
12 handprint on the -- at the back of the house. Are
13 you aware of that?"

14 Answer: "Yes, sir."

15 Question: "Did you go out and view that
16 handprint on that Lexus?"

17 Answer: "That's correct. Yes, I did."

18 Q And keep going, please.

19 A Question: "And can you tell us where it was
20 at on the Lexus?"

21 Answer: "Not without looking at a
22 picture. To the back of the house, there was a
23 vehicle, and there was a bloody handprint on it.
24 If I saw a picture of the vehicle, I could tell
25 you. But I don't remember. It was on the

1 exterior. I would have to look at the picture. I
2 can't remember everything."

3 Q Okay. So his testimony was that the handprint was
4 on the back of the Lexus, which was at the back of the
5 house; is that correct?

6 A That's what I read here, and he was being
7 examined by Mr. Warder during that section of the
8 testimony.

9 Q Okay. What was Mr. Williams' testimony at trial
10 about where the struggle took place? Was that the
11 front of the house or the back of the house?

12 A It was -- which struggle are you referring to
13 because there were two, according to
14 Willie Williams? One was at the front of the
15 house on the outside and one was in the middle of
16 the house on the inside going to the back bedroom
17 where his step-son slept.

18 Q Did he ever testify as to a struggle with
19 Mr. Wilson at the back of the house on the outside?

20 A Not that I recall. No, I don't believe he
21 did.

22 Q Okay. And his testimony -- if we need to look at
23 it, we can -- was that, when he fled the house,
24 Mr. Wilson was still lying on the floor in the
25 bedroom.

1 A That's my recollection.

2 Q Okay. Did any of Mr. Williams' testimony indicate
3 that at any point during the beginning of their
4 struggle until they fled the house that Mr. Wilson
5 went outside?

6 A I don't recall anything of that nature being
7 testified to.

8 MR. SMITH: Okay, thank you. No more
9 questions.

10 MR. WISE: Nothing further.

11 THE COURT: Okay. Thank you, sir. You
12 can step down.

13 So let's take a brief break and then
14 we'll come back it in and we'll wrap it up.

15 (A break was taken from 10:55 a.m. to 11:09 a.m.)

16 THE BAILIFF: Please remain seated.
17 Court is in session.

18 THE COURT: Keep your seats.

19 Mr. Smith, call your next witness, sir.

20 MR. SMITH: Yes, Your Honor. I would
21 call Mr. Richard Warder.

22 THE CLERK: Mr. Warder, raise your right
23 hand. Do you solemnly swear or affirm the
24 testimony you're about to give in this case will
25 be the truth, the whole truth, and nothing but the

1 truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Please state your full name
4 for the record.

5 THE WITNESS: Richard Gerald Warder.

6 THE CLERK: Thank you. You may be
7 seated.

8 WHEREUPON:

9 RICHARD GERALD WARDER,
10 after having been sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SMITH:

13 Q Mr. Warder, can you tell us why you did not
14 further raise the issue of the Court's refusal to
15 charge involuntarily manslaughter?

16 A I honestly cannot tell you my reasoning from
17 back at the time of the trial. We prepared for
18 this a couple times and read the transcript, but I
19 don't remember what my reasoning was six years
20 ago.

21 Q Okay. I may ask you some more questions where
22 that's your same answer, but just tell me if it is.

23 A Yes, sir.

24 Q Do you know what your understanding of provocation
25 and voluntary manslaughter was at the time?

1 A My understanding of provocation?

2 Q Correct, and voluntarily manslaughter.

3 A I don't know what my -- what the state of my
4 recollection was six years ago.

5 Q Okay. Did you see any reason to object, if you
6 remember, to the Court's jury instruction on mutual
7 combat?

8 A No, but The transcript reflects what I did.
9 If I had saw a reason to object, I certainly would
10 have objected.

11 Q Okay. Do you remember what your understanding of
12 specific intent and attempted murder was at the time
13 of the trial?

14 A I don't remember what it was at the time of
15 the trial.

16 Q Okay. Do you remember if you found anything
17 objectionable in the solicitor's comment that she
18 asked the jury to find Mr. Williams guilty on behalf
19 of Greenville County?

20 A I don't remember anything. But, you know,
21 you're reacting to the whole trial. You're there.
22 You're in it. And you object to the things that
23 you think are wrong and incorrect.

24 So, I guess, I would say I didn't think I saw
25 anything wrong or I would have objected.

1 Q Okay. Did you have -- what was your understanding
2 at the time of trial on transferred self-defense?

3 A I would have the same answer.

4 Q Okay. Let me get my transcript, and I'm going to
5 refer to your closing argument.

6 MR. SMITH: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 BY MR. SMITH:

10 Q I'm looking at page 610. I see you have a copy
11 there. If you flip through your closing argument, can
12 you tell us in your closing if you argued self-defense
13 or relied more on accident?

14 A I cannot tell you without going through all
15 the closing argument.

16 Q Okay. So we'll just let record speak on that.

17 Mr. Warder, do you remember if you had any
18 trial strategy on what jury instructions and lesser
19 included offenses you wanted?

20 A We discussed that, but I don't -- you know,
21 certainly we had -- I had some opinion then as to
22 what we wanted.

23 Q Okay. You just don't remember that now?

24 A No.

25 MR. SMITH: All right. No more

1 questions. Thank you.

2 THE COURT: Mr. Wise, any questions, sir?

3 CROSS-EXAMINATION

4 BY MR. WISE:

5 Q Are you familiar with State vs. Therl Avery
6 Taylor?

7 A No, not with that name.

8 Q Okay. You want to look at it real quick and see
9 if it refreshes any of your memory? It's cited 2003.

10 A The answer is, I'm not familiar with it.

11 Q Okay. And so you made no objection to the charge
12 on mutual combat, nor did you argue it negated
13 self-defense?

14 A I'm not sure why we didn't do that. But if
15 the record shows there was no objection, then
16 there was no objection.

17 Q Now, as to involuntarily manslaughter, you will
18 agree it involves, basically, gross negligence or
19 extreme recklessness.

20 A Involuntary --

21 Q Involuntarily.

22 A Yeah, it can be extreme recklessness.

23 Q Okay. And she charged accident in this case,
24 correct?

25 A Yes.

1 Q And would you agree that the difference between
2 what is an accident and what is gross negligence is,
3 in many cases, in the mind of the beholder?

4 A Well, yeah. I think all of the trials are in
5 the perception of the jury and the testimony and
6 how it relates to facts. So, certainly, that
7 different distinction would be in their minds.

8 Q So I guess my question is, if she's going to
9 charge accident, is there a basis for not charging
10 involuntarily manslaughter that you can think of?

11 A I think that would be fact specific.

12 Q Okay. In the facts of this case then. In the
13 facts of this case, do you know of --

14 A Obviously, at the time, I didn't. I would
15 have objected if I perceived that.

16 Q She charged the jury on several occasions -- on
17 several occasions that the provocation to reduce it to
18 voluntary manslaughter must come from the victim. Do
19 you remember that?

20 A In the transcript, what are you examining in
21 regards to that?

22 Q Hold on. Let me find it here. I know it's on
23 page 657. She charged the jury that, "The provocation
24 needed for voluntary manslaughter must come from some
25 act of or related to the victim."

1 A Yeah, that's the passage I remember where she
2 says it's an act related to.

3 Q You would agree that finding an act of provocation
4 from Miss Williams in this case would be difficult at
5 best?

6 A It's certainly is not clear that there was
7 any one act that would have been the
8 provocation.

9 Q Right. Well, any provocation from Miss Williams,
10 who was in the house, would be difficult to find?

11 A You know, it's been awhile. I can't think of
12 any of her conduct that I can, at this time, point
13 to as provocative.

14 Q But you made no objection to the provocation for
15 voluntarily --

16 A I think there record reflects it.

17 Q What about the concept of transferred intent? Did
18 you ever think about that or research that under the
19 facts of this case?

20 A You know, we discussed all the facts.
21 Discussed it with co-counsel, discussed it with my
22 client, and I can't remember what -- which ones we
23 thought were particularly important, you know. I
24 don't remember anything specific either way on
25 transferred intent.

1 Q Right. From what Mr. Williams said, he was
2 basically in a self-defense struggle with Mr. Wilson.

3 A At the point we went to trial, that was the
4 way it was categorized, yes.

5 Q Correct.

6 All right. And the person that got killed,
7 of course, was, unfortunately, not Mr. Wilson but
8 Miss Williams.

9 A Miss Williams was killed before the
10 confrontation.

11 Q I think Mr. Williams satisfied that in a struggle
12 over the gun, it went off and killed Miss Williams.

13 A That was -- yeah, that was the one that went
14 into the house.

15 Q In front of the house.

16 A It went through the front window.

17 Q And then they fell through the window afterwards.

18 A I think it was the side window they came
19 through.

20 Q All right. Did you ever do any research on -- you
21 knew before the trial what Mr. Williams told you about
22 his defense, obviously.

23 A I knew several different things he told me.

24 Q Right. But he had told you before trial that he
25 was going to say that there was a struggle over a gun.

1 A I'm not sure that that was crystal clear,
2 what he was going to say.

3 Q But did you do any research on transferred intent
4 being a basis for a charge to the jury?

5 A I had no recollection of specific research.

6 Q When the State argued about convict of behalf on
7 the people of Greenville County, did you ever think of
8 that as being an appeal to elements beyond the facts
9 of the case?

10 A At the time, I didn't.

11 Q Okay. And -- hold on.

12 You didn't object to any failure to give a
13 charge on criminal intent as it relates to murder or
14 involuntary manslaughter other than -- well, let me
15 back up.

16 The judge charged the jury as to malice, an
17 element of malice being required for murder, correct?

18 A Yes.

19 Q All right. But you didn't object to any criminal
20 intent charge beyond that.

21 A No. I think the record shows no
22 objections.

23 Q All right. Hold on one second.

24 Oh, would you agree that Mr. Wilson never
25 left the house -- or testified he never left the house

1 after he was shot?

2 A I can recall no testimony that he left the
3 house.

4 Q Turn, if you would, please, to 175. All right?

5 A Just a minute. You're quicker than I am.
6 Okay, I got 175.

7 Q All right. Now, this is direct examination by
8 Miss Munson in which they are examining a gentleman
9 with EMS.

10 All right. And 175, Mr. Ryan Mahaffey
11 testified: "We loaded him up on the stretcher and
12 took him to the hospital for evaluation."

13 A What line are you on there?

14 Q Line 1.

15 A Okay.

16 Q Correct?

17 A Yes, sir. That's an accurate reading.

18 Q And Mr. Wilson had testified earlier that he
19 didn't go outside the house, correct?

20 A I don't recall any testimony.

21 Q Let me get that. That is on page 297, line 13
22 through 15.

23 A He says there, "Before I could even make an
24 exit out of the house and everything, the sheriff
25 was coming in through the back door."

1 Q Is that correct?

2 A Yes.

3 Q And then EMS said they put him on a stretcher and
4 carried him out, what we read earlier. So it would be
5 an accurate statement that Mr. Wilson testified he
6 never walked outside the house that night, correct?

7 A That appears to be what he said.

8 Q Yeah. And there was a bloody fingerprint of his
9 on a car outside the house, correct?

10 A Yes.

11 Q You all stipulated to it.

12 A Yes, that's what it says.

13 Q And that was never explained by the State.

14 A No, sir.

15 MR. WISE: Excuse me one minute. Okay,
16 thank you very much.

17 THE COURT: Redirect?

18 MR. SMITH: No more questions.

19 THE COURT: Thank you, Mr. Warder.

20 THE WITNESS: Thank you.

21 THE COURT: Yes, sir. Anything further
22 from the State?

23 MR. SMITH: That's the State's case.

24 MR. WISE: Nothing further from us.

25 THE COURT: All right. Good enough.

1 Thank you, gentlemen. I've got the transcript and
2 I have the application. So what I'll do is, I'll
3 go back and I'll read everything that you
4 submitted to me and I'll submit instructions for
5 drafting an order to one party or the other.

6 MR. SMITH: And, Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: I apologize. I just wanted
9 to say I have some law I'd like to hand up for the
10 Court's consideration too.

11 THE COURT: Yes.

12 MR. WISE: He's given me copies.

13 THE COURT: Sure. Okay.

14 MR. WISE: Either, fortunately or
15 unfortunately, you're going to get duplicates.

16 THE COURT: Okay, fair enough. Fair
17 enough.

18 MR. SMITH: I will say, since we're not
19 closing --

20 THE COURT: You're welcome to, if you'd
21 like. You all sounded like you were very resolute
22 that you were done. But if you want to offer
23 something additional on the record, I'll be happy
24 to hear it.

25 MR. SMITH: Well, on some points, I guess

1 I would like to close.

2 MR. WISE: If he puts something on the
3 record, I will too.

4 THE COURT: I'm comfortable with that.

5 MR. WISE: I'll just respond to what he's
6 got.

7 THE COURT: Sure, okay.

8 MR. SMITH: Well, the two issues that I
9 wrote down to come back and address, I guess, one
10 is the bloody handprint issue. That was not
11 something that was raised as something that should
12 have been pointed out at trial, but we did take
13 testimony on that issue here today.

14 I would just like to draw Your Honor's
15 attention to the fact that my understanding of it
16 is, it seems that they're offering that testimony
17 to show that the State's case lacks sufficiency
18 because the State couldn't explain how the bloody
19 handprint got on the car, and I really think that
20 that's -- my position would be that's, kind of,
21 immaterial to the issues before us because
22 Mr. Williams' own testimony at trial doesn't
23 explain how this bloody handprint -- the testimony
24 at trial nor today explained how this blood
25 handprint goes to show that his testimony was more

1 critical.

2 So I would put it out for the fact that,
3 if the struggle happened outside the front of the
4 house, as Mr. Williams testified, and then went
5 immediately inside the house and continued there
6 until he fled the scene with Mr. Wilson on the
7 floor, there's no explanation for how blood from
8 Mr. Wilson got to be placed on the back bumper of
9 a car behind the house.

10 So, although the State's testimony at
11 trial doesn't explain how this handprint got
12 there, there's no reason, from the testimony we've
13 heard from Mr. Wilson, to think that that goes to
14 show his version of events was any more credible
15 because his testimony was they began fighting in
16 the front continuing until he fled, so that
17 doesn't explain how the blood got on the car
18 either. So, I just I think there's no aid to his
19 case there.

20 I guess the second issue is, as far as
21 the testimony and the questions asked by counsel
22 today about the voluntary manslaughter issue,
23 if -- in the amended application and explanation
24 for the argument was that the voluntarily
25 manslaughter charge was not proper because the

1 trial court instructed the jury that provocation
2 has to come from the victim, which would not have
3 been Mr. Wilson in this case.

4 And their argument was that provocation
5 could properly come from Mr. Wilson instead, and
6 so I'm going to hand up a case saying that --
7 State vs. Wharton. And I'll just cite for the
8 record the case citation is 381 S.C. 209. It's a
9 2009 case in which the Court says it's an
10 unsettled issue in South Carolina whether
11 transferred intent applies in a voluntary
12 manslaughter case.

13 So, in reliance upon that the State would
14 just make a clairvoyance argument that would say,
15 this wasn't a settled issue. Counsel obviously
16 didn't raise this point, but it's not something
17 they would have been required to do under
18 Strickland because it's not settled the law in
19 South Carolina. I'll hand that case up to
20 Your Honor too.

21 And even if we're arguing -- even if we
22 move from the fact that -- the argument, I
23 believe, pled was that transferred intent should
24 have allowed provocation to come from Mr. Wilson
25 even though the victim was ultimately

1 Mr. Williams' wife. Even if they're making the
2 argument that trial counsel should have objected
3 to the voluntary manslaughter charge on the ground
4 that there was no evidence in the record to
5 support provocation coming from the victim herself
6 who was, supposedly, inside the house until she
7 was killed, I make the argument there is no
8 prejudice there. He was not convicted of
9 voluntary manslaughter. He was convicted of
10 murder, that that's something that would be more
11 applicable if we were dealing with a voluntary
12 manslaughter condition. So I don't think he can
13 show any prejudice there.

14 And I'll point out that the courts have
15 said that -- I apologize. Let me get that -- that
16 imperfect self-defense does not work to reduce
17 murder to involuntarily manslaughter. And I will
18 cite to you State v. Sams and State v. Finley.
19 277 SC 548, which says, "Imperfect self-defense is
20 not law in South Carolina." And I apologize I
21 don't have that case to hand up, but...

22 Then also the issue of mutual combat, and
23 counsel has cited State v. Taylor. And I have
24 that case to hand up as well. The case citation
25 is 356 S.C. 227. And I'll point out some issues

1 in that case and some references in the opinion
2 itself. One thing the Court noted was that -- in
3 that case, Taylor admitted to killing the victim
4 and relied entirely on self-defense at trial.

5 And, in this case, as pointed out from
6 Mr. Warder's testimony -- and I would direct
7 Your Honor to the closing. In this case, the
8 defense actually relied upon accident as a
9 defense, not self-defense. And, all though
10 Mr. Williams did use the word "self-defense" at
11 trial in the questioning, he was explaining why he
12 was fighting with Mr. Wilson, not explaining his
13 actions with regards to the victim. And his
14 testimony, I think, may even have not warranted a
15 self-defense charge. It seems to go more towards
16 accident. And I will point to the fact that
17 Mr. Warder did not argue self-defense in closing.
18 He argued accident. So I think that that's
19 instructive on that -- on that point.

20 So there's essentially no prejudice in
21 this mutual combat charge because the defense's
22 turned on accident.

23 And counsel raised the issue of specific
24 intent with murder. It looks like State v. King,
25 42 S.C. 47. Essentially, the South Carolina

1 Supreme Court clarified specific intent is
2 required in attempted murder cases. And in there,
3 I believe, there is sufficient statements from the
4 Court to justify the conclusion that the reason
5 this opinion came out was there was a lot of
6 confusion over what intent was required in
7 attempted murder cases.

8 And, for example, in one part in the
9 opinion the Court says, "Our appellate courts have
10 not issued a depository opinion like the other
11 opinions cited in the case." And then it
12 references the fact that there's confusion --
13 confusing and conflicting case law regarding
14 levels of criminal intent.

15 And, again, the Court references the
16 confusion in the case law later on in the opinion
17 again.

18 And then page 62, the Court says, "While
19 we're convinced that this is the correct
20 interpretation," meaning specific intent is
21 required, the Court went on to say, "We
22 acknowledge that the ambiguity created by the
23 language in the code session is aptly noted and
24 offer the concurring opinion."

25 So again, on this, the State would make a

1 clairvoyance argument and rely on
2 Thornes v. State. Case citation 310 S.C 306.

3 And, although maybe this is not
4 necessarily a change in law, we believe that the
5 Court has recognized that there was sufficient
6 ambiguity in the issue at the time which it would
7 not be deficient for counsel to not object to a
8 general intent charge in an attempted murder case.
9 That, they weren't really put on notice of this
10 issue sufficiently such that they should have made
11 that objection. So I'll hand that case up, State
12 v. King.

13 And the last case I have to hand up is
14 State v. Porter. It's 269 S.C. 618. And counsel
15 raised this issue about transferred self-defense,
16 and I'll point out that the Court goes on to say
17 that, "Some jurisdictions recognize transferred
18 self-defense." In South Carolina it's an
19 unsettled issue. And the Court says, "But we
20 don't need to settle it now," and resolved the
21 case on other grounds. And that is a 1977 case,
22 so it's still not an issue that the Court, as far
23 as I'm aware of, has addressed and settled.

24 So, again, I'll rely upon
25 Thornes v. State clairvoyance issue in which the

1 Supreme Court says, "We never require counsel to
2 anticipate changes in the law."

3 So that's the State's case on that, and
4 I'll hand these cases up. I'll just close my
5 argument there.

6 THE COURT: Thank you, sir.

7 MR. WISE: Just to respond, briefly.

8 Counsel is correct that the idea of the
9 handprint is to show there is a great deal of
10 credibility with Mr. Wilson's testimony when he
11 said he never went outside and yet his bloody
12 handprint is outside.

13 Just as we pointing out some
14 inconsistencies in his step-son's testimony, as
15 the Court when reading the transcript will see,
16 the step-son's testimony is, kind of, all over the
17 lays.

18 It goes to show that there are unanswered
19 questions that the jury had to struggle with, and,
20 therefore, more likely to be prejudicial. And it
21 was done for the sole purpose of pointing out
22 prejudice, not for the sole purpose of committing
23 any legal error that defense counsel didn't talk
24 about the bloody handprint enough. It was just to
25 illustrate to the Court, there are some real

1 questions in this case that hadn't been answered.

2 I would point out the idea of Wharton
3 saying that transferred intent is unsettled. When
4 this Court advises the bench and bar years before
5 this trial that a certain issue is unsettled, I
6 think competent counsel has an obligation to bring
7 forth issues to settle that case, if they're going
8 to adequately represent their client. It is not a
9 case of being clairvoyant because our court has
10 long before this trial, this is unsettled. We
11 need to settle it. It's like inviting defense
12 counsel to bring up the issues of transferred
13 intent.

14 And some of the material I've handed up
15 to the Court from other states have been very,
16 very clear on that.

17 The other aspect of this PCR that I think
18 the Court has to bear in mind as you read the
19 transcript, the judge in this case, unlike this
20 Court, saw the witnesses, saw the demonstrations
21 that were in the courtroom where Mr. Jones and
22 Mr. Williams demonstrated self-defense. The judge
23 saw that and elected to charge self-defense. I
24 don't think this Court can go back and look at the
25 court transcript and say, I would not have charged

1 self-defense.

2 So we have to accept the fact that the
3 trial judge found sufficient evidence of
4 self-defense based upon the credibility of the
5 witnesses. And once the question of self-defense
6 is established, then Taylor and the charging of
7 mutual combat becomes very, very vital.

8 And I handed up to the Court a recent
9 case by our Court of Appeals that also talked
10 about -- again, it just basically reaffirmed
11 Taylor. That you don't charge self-defense and
12 mutual combat in the same time.

13 And competent counsel, I think, should
14 have been aware of the Taylor case because it was
15 decided some seven or eight years before this case
16 was tried. So it wasn't a case of being
17 clairvoyant on that either.

18 So when issues are in a state of limbo,
19 it is not a case of being clairvoyant to a change
20 in the law. It's a case of keeping up with the
21 law to the point that you raise these issues at
22 the proper time, and that's what I think defense
23 counsel failed to do in this case.

24 THE COURT: Okay. Thank you.

25 All right. Counsel, thank you very much.

1 I appreciate it. Appreciate you all being here
2 today and presenting excellent and logical cases.
3 I'll take it under advisement.

4 Mr. Williams, I wish you good luck and
5 wish you a Merry Christmas.

6 MR. WILLIAMS: You to, sir.

7 THE COURT: Yes, sir.

8 (The proceeding was concluded at 11:42 a.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Commo Pleas, Greenville, County, South Carolina.

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

August 18, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Willie Marvin Williams, #167044,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

Case No. 2016-CP-23-7610

ORDER GRANTING APPLICATION

ENTERED COMPUTER

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This matter comes before this Court by way of an application for post-conviction relief filed on December 28, 2016, by Willie Marvin Williams (Applicant). The State (Respondent) filed its return on October 5, 2017, in which it moved to dismiss some of the grounds raised by Applicant and moved for a more definite statement. On May 9, 2019, Applicant, through counsel, filed an amended application for post-conviction relief.¹ An evidentiary hearing in the matter was held before the undersigned on December 18, 2019, at the Greenville County Courthouse. Applicant was present and represented by C. Rauch Wise, Esquire, and Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf, and Respondent called W. Townes Jones, IV, Esquire, and Richard H. Warder, Esquire, as witnesses. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court grants the application.

¹ Applicant's PCR counsel filed a second application for post-conviction, which was assigned a case number of 2019-CP-23-2687. The two cases were merged, with this case surviving. Williams v. State, No. 16-CP-23-7610 (Greenville, S.C., Ct. Common Pleas, September 3, 2019).

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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its April of 2013 term, the Greenville County Grand Jury indicted Applicant for murder (2013-GS-23-3238), possession of a weapon during the commission of a violent crime (2013-GS-23-3238), attempted murder (2013-GS-23-3239), and unlawful conduct towards a child (2013-GS-23-3240). Jones and Warder represented Applicant, and Assistant Solicitor Judith M. Munson of the Thirteenth Circuit Solicitor's Office prosecuted the case. On May 13, 2013, through May 16, 2013, Applicant proceeded to a jury trial with the Honorable Deadra L. Jefferson, presiding. The jury convicted Applicant as indicted. Judge Jefferson sentenced Applicant to concurrent terms of imprisonment of life for murder, five years for possession of a weapon during the commission of a violent crime, thirty years for attempted murder, and ten years for unlawful conduct towards a child.

Jones filed a timely notice of appeal. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense perfected Applicant's appeal, arguing the trial court erred (1) in excluding a statement made by the victim's boyfriend and (2) denying Applicant's request to instruct the jury on involuntary manslaughter. State v. Williams, Op. No. 2016-UP-215 (S.C. Ct. App. filed May 18, 2016) (per curiam). The South Carolina Court of Appeals affirmed in an unpublished opinion, finding the trial court did not abuse its discretion in admitting the boyfriend's statement and the request to instruct the jury on involuntary manslaughter was not preserved for appellate review. The Remittitur was issued on June 3, 2016.

CURRENT PROCEEDING

On December 28, 2016, Applicant filed an application for post-conviction relief, in which he alleged that he was being held in custody unlawfully based on the following grounds:

1. "Due process and constitutional violations"
 - a. "The State used perjured testimony and falsified evidence to support its case"
 - b. "During closing arguments the solicitor re-introduced known false testimony to the jury"
 - c. "The solicitor made improper closing arguments by making a false and misleading statement to the court."
 - d. "The solicitor's prosecutorial and courtroom misconduct, and use of false testimony and falsified evidence induced a cumulative effect upon the jury and affected the judgment of the jury."
 - e. "The State was so fundamentally unfair that the applicant was deprived of due process of law which resulted in an unfair trial."
2. "'Fraud upon the Court' and constitutional violations"
 - a. "The State knowingly presented perjured testimony and false statements to the trial court, which constituted fraud upon the court."
 - b. "The State provided a witness that presented fabricated and perjurious testimony to the court that resulted in intrinsic fraud."
 - c. "The solicitor knew that the testimony was false and perjurious, but re-introduced it again to the jury during closing arguments that resulted in extrinsic fraud."
 - d. "During opening statements, the solicitor made a false statement."
 - e. "The applicant was prevented from fully preserving and exhibiting facts to the court because of the perjurious testimony from the State's witness, which was knowingly presented by the State."
 - f. "Because the State fabricated an exhibit and submitted it into evidence, the solicitor and State investigator conspired together and presented perjured testimony."
3. "Trial court lacked subject matter jurisdiction"
 - a. "No legal indictments charging the applicant with the alleged offences"
 - b. Judge Letitia Verdin is a resident judge of Greenville County and therefore does not have jurisdiction in a circuit court in which she resides.
 - c. "The Chief Justice of the South Carolina Supreme Court did not set the term April 23, 2013 term of the court of general sessions and did not assign Judge Verdin to hold the grand jury session."
4. "Brady violation and constitutional violation"
 - a. "The State failed to disclose evidence that was favorable to the appellant."
 - b. "The State failed to disclose the forensic result of the swabs of the suspected blood that was taken and identified."

At the start of the evidentiary hearing before the undersigned on December 18, 2019,

Respondent requested that Applicant specify for the record the grounds upon which he would

move forward. Applicant specified that he would be moving forward only upon the grounds articulated in the amended application for post-conviction relief, which are as follows:

1. Trial counsel was constitutionally ineffective for:
 - a. Failing to preserve for appellate review the trial court's failure to instruct the jury on involuntary manslaughter;
 - b. Failing to object to the jury instruction that the provocation in voluntary manslaughter must come from the victim;
 - c. Failing to object to the jury instruction on mutual combat when no evidence was presented at trial that would have supposed such an instruction;
 - d. Failing to object to the jury instruction that specific intent is not required in an attempted murder case;
 - e. Failing to object to the State's request in closing arguments that the jury find Applicant guilty "[o]n behalf of the people of Greenville County . . . ;"
 - f. Failing to object when the trial court failed to instruct the jury on criminal intent as it relates to murder or involuntary manslaughter; and
 - g. Failing to request a jury instruction on transferred intent as it relates for self-defense.

This Court finds that all allegations other than these have been waived by Applicant and they will not be addressed in this order.²

Testimony at PCR Hearing

Applicant testified on his own behalf at the PCR hearing. He testified the jury indicated it was struggling to understand the difference between murder and manslaughter by sending a note to the trial court requesting further instruction. He testified he fought with Anthony Wilson, the

² Applicant testified about his concerns about a print from Wilson found on the trunk of a vehicle parked at the victim's home, the existence of which and connection to Wilson the parties stipulated during trial. Tran. 172. Respondent noted in closing argument that the issue had not been raised as a claim in the pleadings or during the PCR hearing, and Applicant stated in closing that he was not alleging that his attorneys were constitutionally ineffective regarding their treatment of Wilson's print at trial; rather, he was bringing up the print to rebut any argument from Respondent that there was overwhelming evidence of Applicant's guilt and to support his argument that he was prejudiced by the other errors he alleges his attorneys made during his trial. Therefore, this Court will not address the print as a stand-alone claim for post-conviction relief.

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victim's boyfriend, outside the victim's home. He testified Wilson's testimony at trial was that he never went outside the victim's home when the victim was murdered, but noted the parties stipulated at trial that Wilson's fingerprint was found outside the victim's home, referring to what was admitted at trial as Exhibit 59. He testified the victim's son's testimony was inconsistent with everyone else's testimony, and believed this supported his contention that he was prejudiced at trial. He testified victim's home had a garage door, front door, and a patio door that led to the rear of her home, and that Wilson could have used that door to exit the victim's home, although he testified this was never mentioned of the back door at trial. He testified the inconsistencies in the State's case at trial indicated to him that the State did not have a solid case against him because there were factual disputes.

Jones testified as a witness at the PCR hearing. He testified he has been practicing law since 1981 and has experience clerking for a trial court, working as an assistant solicitor, and as the elected Solicitor for the Eighth Judicial Circuit, and working in private practice. He testified approximately 85% of his legal experience has been in the field of criminal law. He testified he hired an investigator to assist him in preparation for trial and that he and Applicant selected Warder as co-counsel after Applicant's bond hearing. He testified he and Warder both wanted to be conversant in the case and prepared the facts and evidence equally. He testified he knew the trial court would instruct the jury on accident but believed the instruction was supported by the evidence presented at trial. He testified the bulk of testimony at trial was that the shootings were accidental and that the victim and Wilson were shot during Applicant's struggle with Wilson. He testified it was unclear from Applicant's testimony whether he ever gained control of the gun.

On cross-examination, Jones testified the manslaughter victim would have been the victim, Applicant's wife, and that there was no evidence that she had engaged in any provocation. He

testified the victim's actions could have been interpreted as a provocation. He referred to the 911 call in which the operators asked the victim to look out the window to see who was beating on her front door. He testified the victim could have done something that attracted Applicant's attention at the time, although he did not think that this would have constituted provocation. He testified the defense did not argue at trial that the victim had provoked Applicant. When asked about the jury's question about manslaughter and provocation, he testified he thinks juries ask for supplemental instructions because they have a lot of unfamiliar information to take in during deliberations and they want to be clear. He testified it did not appear that the jury clearly was asking about provocation and noted the trial court charged the jury that provocation must come from the victim.

He testified he was familiar with the concept of transferred intent but not as much with the concept of transferred self-defense. He testified he did not request a jury instruction on transferred intent. He testified he has dealt with the concept of imperfect self-defense before. He testified he knew the first element of self-defense, and based upon his previous experience as a solicitor, he would never have argued that someone who goes to another's house in the early morning hours while armed with a handgun was entitled to a jury instruction on self-defense.

He testified the parties stipulated at trial that a bloody fingerprint found on the car outside the victim's home belonged to Wilson, and further testified that this fact would have supported Applicant's defense. He testified he did not know of any testimony at trial that Wilson ever left the victim's home after being shot.

Upon being given a copy by Applicant of State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003), to review, Jones testified he was not familiar with the case. He testified no one objected to the jury instruction on mutual combat, but said he could not remember details about it.

He testified he did not remember if he had done any legal research of the mental requirement needed for attempted murder. He testified he did not think it objectionable that the State referred in its closing argument to Greenville County. He agreed with Applicant that the State should not argue outside the record, but did not believe the comment was objectionable. He noted that the crime occurred in Greenville County.

Warder also testified as a witness at the PCR hearing. He testified that, for the most part, he has no specific recollections about why he did or did not make specific objections or arguments during Applicant's trial. He testified he could not remember whether the defense requested jury instructions in involuntary or voluntary manslaughter. He testified he would have objected during trial to anything he found objectionable at the time and would have raised any issue he felt needed to be addressed. He testified he does not know if he is aware of Taylor. He testified he did not think there was any evidence of extreme recklessness, as required in a charge of involuntary manslaughter, on the part of Applicant at the time of trial. He testified he, Jones, and Applicant discussed all facts of the case but cannot remember what they decided to do about jury instructions. He testified it was not clear to him before trial began whether Applicant would testify that the gun discharged while he and Wilson were struggling outside the victim's home. He testified he does not have any recollection of the specific research he did in the case in preparation for trial. He testified he did not find the State's comment during its closing argument about the people of Greenville County objectionable at the time of trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which

allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Applicant's attorneys were constitutionally ineffective for failing to preserve for appellate review the trial court's failure to instruct the jury on involuntary manslaughter.

Applicant argues that his defense attorneys were constitutionally ineffective for failing to preserve for appellate review their objection to the trial court's not instructing the jury on involuntary manslaughter. During the charge conference, Jones asked the trial court to charge the jury on involuntary manslaughter. Tran. 581. The trial court questioned whether the instruction would be warranted. Tran. 582. Later, the court informed the parties that it would not instruct the jury on involuntary manslaughter as the record was "void of any evidence supporting that instruction." Tran. 600-01. When asked if the defense took any exception to the court's decisions

regarding jury instructions, Jones did not take any exception as to the involuntary manslaughter issue. Tran. 603. After the court charged the jury, excluding an instruction on involuntary manslaughter, Jones informed the court that it did not have any issues other than those it had already stated. Tran. 651. The Court of Appeals affirmed the convictions, finding Applicant's attorneys had not preserved the issue of the instruction on involuntary manslaughter for appellate review.

When an issue was unpreserved for appellate review, a PCR court must examine whether the applicant suffered prejudice from the lack of preservation by analyzing the merits of the issue and considering whether the applicant has established that the outcome would have been different had the issue been preserved. See Milledge v. State, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018) (instructing that the PCR court is to evaluate prejudice when considering an applicant's claim that counsel failed to preserve an issue for appellate review by viewing "the trial court's ruling through the same lens that would be applied on appeal . . .") (citation omitted); see also McHam v. State, 404 S.C. 465, 474-82, 746 S.E.2d 41, 46-50 (2013) (holding the PCR court erred in finding counsel was not deficient in failing to preserve an issue for appellate review but agreeing with the PCR court that McHam failed to establish prejudice because the Fourth Amendment claim failed on the merits), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). When an appellate court is reviewing a trial court's jury instructions for error, it must consider the instructions as a whole "in light of the evidence and issues presented at trial." Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011) (citation omitted).

Involuntary manslaughter is "the unintentional killing of another without malice while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm or (2) a lawful activity with reckless disregard for the safety of others." Sullivan v. State, 407 S.C.

241, 244, 754 S.E.2d 885, 887 (S.C. Ct. App. 2014) (citation omitted). “Involuntary manslaughter requires a showing of criminal negligence, which ‘is defined as the reckless disregard of the safety of others.’” State v. Scott, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015) (citing S.C. Code Ann. § 16-3-60 (2003)). In Scott, the South Carolina Supreme Court affirmed the Court of Appeals’ opinion in upholding the trial court’s decision not to instruct the jury on involuntary manslaughter because the evidence did not support the instruction. Id. at 484, 779 S.E.2d at 530 (citation omitted). Scott’s explanation for the victim’s death was that the victim pulled an object out of her pocket while they were engaged in a confrontation, that he performed a martial arts move on her that caused her elbow to be pushed up, and that the move caused her to stab herself in the throat. Id. at 485, 779 S.E.2d at 530. The Court found Scott did not present any evidence that he acted with reckless disregard for the safety of others. Id. at 488, 779 S.E.2d at 532.

In this case, Applicant testified at trial that he performed a self-defense move when Wilson approached him outside the victim’s home. According to Applicant, the gun discharged during that maneuver, and the fired bullet went through a window on the victim’s house and struck her between her eyes. Applicant did not testify that he had his hands on the gun or that he and Wilson were struggling for control of the weapon when it discharged. Rather, his testimony was that the gun discharged in Wilson’s hand when Applicant performed his self-defense move. Like the defendant in Scott, Applicant was not entitled to an instruction on involuntary manslaughter because his defensive move caused the weapon’s bearer to use it to cause harm; in this case, according to Applicant’s testimony, his move caused Wilson to fire the fatal shot at the victim. Additionally, Applicant’s testimony would not support the instruction because he never claimed to have or to struggle for control of Wilson’s gun. See State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008). Jones’s testimony at the PCR hearing was that it was not clear from Applicant’s

testimony that he was claiming to have had control of the gun rather than Wilson having had control. Warder testified that he did not believe at the time of trial that Applicant's testimony provided evidence of recklessness as would be required to warrant a jury instruction on involuntary manslaughter.

To the extent that Applicant's argument amounts to an argument that he was entitled to an instruction on imperfect self-defense, meaning that the jury could have determined that he acted recklessly while acting in self-defense, this Court rejects that argument as well. South Carolina does not recognize the doctrine of imperfect self-defense. State v. Sams, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014) (citing State v. Finley, 277 S.C. 548, 290 S.E.2d 808 (1982)).

This Court finds, even if the jury instruction on involuntary manslaughter were somehow warranted at trial, Applicant has not shown his conviction would have been reversed on appeal because any purported error was harmless. Applicant's explanation of the events at the victim's home was not credible in light of the evidence. The evidence at trial showed that the victim had sought an order of protection and that Applicant had recently been served with court papers indicating that he and the victim were due in the Family Court for a hearing a week after her death, that the victim had barricaded her front door with furniture out of fear of Applicant, that Applicant had attempted to call the victim multiple times on the night of her death, that Applicant abandoned his date at a nightclub in a hurried fashion at around 3:45 a.m. on the night of the murder, that he arrived at the victim's home at around 4:45 a.m. on the morning of the murder, that the victim told the 911 operator shortly before being shot through the eyes that she believed Applicant to be attempting to gain entry to her home, that Wilson identified Applicant as the shooter, and that the victim's young son identified Applicant as the shooter.

This Court finds Applicant was not entitled to a jury instruction on involuntary manslaughter and would not have prevailed on the issue, even if it had been preserved for appellate review. The instruction was not warranted based on the evidence at trial. This allegation is denied and dismissed with prejudice.

Applicant's attorneys were constitutionally ineffective for failing to object to the jury instruction that the provocation in voluntary manslaughter must come from the victim.

Applicant argues that his defense attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction, while charging the jury on voluntary manslaughter as the lesser-included offense of murder, that "[t]he provocation needed for voluntary manslaughter must come from some act of or related to the victim." Tran. 657. Applicant maintains that the instruction was not properly given as provocation may have come from Wilson, whom Applicant alleges was approaching Applicant with a gun in a threatening manner, such that the jury may have convicted Applicant of the voluntary manslaughter of the victim rather than of her murder.

In State v. Wharton, 381 S.C. 209, 215, 672 S.E.2d 786, 788-89 (2009), the South Carolina Supreme Court vacated the portion of the Court of Appeals' decision that addressed the question of whether the doctrine of transferred intent was applicable in voluntary manslaughter cases. The Supreme Court found the Court of Appeals had improperly relied upon State v. Childers, 373 S.C. 267, 645 S.E.2d 233 (2007), in which a plurality of the Supreme Court held that transferred intent does not apply to voluntary manslaughter, because Childers was not a majority opinion, the applicability of the doctrine remains unsettled in South Carolina, and the issue was not properly before the Wharton court as there was no evidence that a third party had given Wharton sufficient legal provocation. Id. Even without the statement from Childers that transferred intent is not recognized, authority at the time of Applicant's trial would have reasonably given notice to defense attorneys that provocation must come from the victim in a case of voluntary manslaughter. Harris

v. State, 354 S.C. 382, 387, 581 S.E.2d 154, 156 (2003) (“Sufficient provocation necessary to justify a manslaughter charge must come from the victim and not be transferred from a third-party to the victim.”) (emphasis in original) (citations omitted); State v. Franklin, 310 S.C. 122, 125, 425 S.E.2d 758, 760 (S.C. Ct. App. 1992) (“The provocation of the deceased must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection.”) (citation omitted), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019).

This Court finds neither Jones nor Warder exhibited deficient performance by failing to object to the trial court’s jury instruction that provocation must come from the victim or in requesting that the court instruct the jury on the doctrine of transferred intent in the context of voluntary manslaughter. Our appellate courts have not answered the question of whether the doctrine is recognized in South Carolina, and there is therefore no legal authority in this State regarding the doctrine. In recognizing the uncertainty surrounding a legal issue that was unsettled at the time of Applicant’s trial and is unsettled now, this Court finds the attorneys were not ineffective. Cf. State v. Starnes, 388 S.C. 590, 597-98, 598 S.E.2d 604, 608 (2010) (recognizing that “[t]rial courts often struggle with the difficult interplay between murder and the lesser-included offense of voluntary manslaughter . . .” and affirming the trial court’s refusal to give a jury instruction on voluntary manslaughter). Jones and Warder should not be held to the standard of a clairvoyant, seeing the answer to the question on transferred intent when the question remains unanswered to this day. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (explaining that the Supreme Court “has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”).

This Court finds Applicant has failed to demonstrate that there is a reasonable likelihood the outcome of trial court have been different had Jones and Warder objected to the trial court's instruction that provocation in voluntary manslaughter must come from the victim. Applicant's explanation as to Wilson's approaching him in a threatening manner with a weapon outside victim's home was not credible. As previously noted in this order, the evidence at trial showed that victim had sought an order of protection and that Applicant had recently been served with court papers indicating that he and the victim were due in the Family Court for a hearing a week after her death; that the victim had barricaded her front door with furniture out of fear of Applicant; that Applicant had attempted to call the victim multiple times on the night of her death; that Applicant abandoned his date at a nightclub in a hurried fashion at around 3:45 a.m. on the night of the murder; that he arrived at the victim's home at around 4:45 a.m. on the morning of the murder; that the victim told the 911 operator shortly before being shot through the eyes that she believed Applicant to be attempting to gain entry to her home; that Wilson identified Applicant as the shooter, and; that the victim's young son identified Applicant as the shooter. In light of all of this, Applicant has failed to show a reasonable likelihood that the jury's decision to find Applicant guilty of the victim's murder rather than convicting him of the lesser-included offense of voluntary manslaughter would have been different had the trial court given the provocation instruction Applicant believes he should have received.

This Court finds Applicant has failed to show his attorneys were constitutionally ineffective for failing to object to the jury instruction or in failing to request an instruction based on the doctrine of transferred intent in the context of voluntary manslaughter as he has shown no deficiency in their performance in this regard nor any resulting prejudice. This allegation is therefore denied and dismissed with prejudice.



Applicant's attorneys were constitutionally ineffective for failing to object to the jury instruction on mutual combat when no evidence was presented at trial that would have supposed such an instruction.

Applicant argues that his attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction on mutual combat because there was no evidence at trial that supported the instruction and because the charge violates established law. The trial court instructed the jury, without objection from the defense, that:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true if even during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

Tran. 644-45.

The law of South Carolina is clear that mutual combat should generally not be charged in connection with self-defense. *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). In *Taylor* the Court found that:

Although the court charged self-defense properly in Petitioner's case, that charge was negated by the court's unwarranted charge on mutual combat. We find that the court's mutual combat charge acted as a limitation on the Petitioner's ability to claim self-defense, and prejudiced him by transferring the State's burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense. *Id.* at 235.

The same is true in the case at bar. The mutual combat charge had the impact of negating the self-defense charge, and Mr. Williams was in fact prejudiced thereby.

Further, both trial counsel testified at the Post Conviction Relief hearing they were not familiar with the holding in *Taylor*. This case was tried on May 13-14, 2013. *Taylor* had been the law of our state for over 10 years. A reasonable criminal defense attorney should have been

knowledgeable concerning the application of *Taylor*. In addition, even if trial counsel were not familiar with *Taylor*, the evidence in this case does not support mutual combat. Giving due deference to the credibility issues, the evidence does not indicate that Mr. Wilson and Mr. Williams intended to engage in mutual combat. The evidence did not support mutual combat, and trial counsel should have objected to such a charge. Under this charge, the jury was unable to fairly consider the Defendant's claim of self-defense.

The Applicant has, therefore, met his burden of proof with respect to the Mutual Combat charge.

Applicant's attorneys were constitutionally ineffective for failing to object to the jury instruction that specific intent is not required in an attempted murder case.

Applicant argues that his attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction that specific intent is not an element of attempted murder. While instructing the jury on the elements of attempted murder, the trial court charged the jury as follows:

I instruct you that a specific intent to kill is not an element of attempted murder. But here must be a general intent to commit serious bodily injury. Intent means intending the result which, actually, occurs, not accidentally or involuntarily.

Tran. 642.

Neither of Applicant's attorneys objected to the instruction.

The South Carolina Court of Appeals held in State v. King, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (S.C. Ct. App. 2015), that the specific intent to commit murder is an element of attempted murder. The South Carolina Supreme Court later affirmed that holding. State v. King, 422 S.C. 47, 64, 810 S.E.2d 18, 27 (2017). In its discussion of the Court of Appeals' treatment of the issue, the Supreme Court agreed with the State that the Court of Appeals partly based its conclusion on dicta from State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), acknowledging that South Carolina has been afflicted with "conflicting case law regarding levels of criminal intent . . .," and

noted the “ambiguity” created by the language in the attempted murder statute. King at 55-62, 810 S.E.2d at 22-26. A concurring opinion in King further emphasized the ambiguity of the attempted murder statute, stating that the question of whether attempted murder is a specific intent crime “is easily stated . . . but not easily answered.” Id. at 71, 810 S.E.2d at 31 (Kittredge, J., concurring).³

This Court finds that, due to the ambiguity of the language in the attempted murder statute, Applicant’s defense attorneys were not acting outside the reasonable bounds of prevailing professional norms by not objecting to the jury instruction. At the PCR hearing, neither Jones nor Warder could remember their understanding of specific intent and attempted murder at the time of Applicant’s trial; however, the difficulty in knowing the level of intent required in attempted murder cases before King is apparent from our appellate courts’ decisions. The Court of Appeals’ decision in King, which was published almost two years after the conclusion of Applicant’s trial, recognized that the language of the attempted murder statute was ambiguous, and that it was necessary for the Court to resort to statutory interpretation and legislative history in order to determine whether specific intent was an element of attempted murder. Id. at 408-09, 772 S.E.2d at 191-91. The Supreme Court’s decision in King, which was published almost four years after Applicant’s trial, also makes it clear that the issue was confusing due to the interplay of common law offenses and statutory enactments. King clarified that the specific intent to kill is an element of attempted murder after the decision would have been of any guidance to Jones or Warder, and they should not be held to the standard of a clairvoyant. See Thornes, at 309-10, 426 S.E.2d at 765-66 (explaining that the Supreme Court “has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”).

³ The majority in King acknowledged and agreed with Justice Kittredge on this point. Id. at 62, 810 S.E.2d at 25-26.

This Court finds Applicant has failed to show there is a reasonable likelihood the jury's verdict as to Applicant's attempted murder of Wilson would have been different had Jones or Warder objected to the trial court's instruction regarding specific intent. Wilson testified at trial that Applicant entered the room belonging to the victim's children, in which Wilson was waiting with the children after Applicant entered the victim's home, and that the room was somewhat illuminated from the closet light. Tran. 294. Wilson testified Applicant shot at him three times and that he was struck by one of the bullets. Tran. 295. Wilson's testimony indicated the bullets may have mostly missed him due to his tripping over the children's video game console on the floor. Tran. 295. The shooter was close enough to Wilson that Wilson's face and clothing suffered powder burns and he smelled gunpowder. Tran. 295-96. Additionally, the jury heard testimony from Wilson and the victim's son regarding Applicant's killing of the victim, which included the son's testimony that Applicant trained his gun on him and fired, thwarted by a malfunction in the gun's firing mechanism or a depletion of ammunition.

This Court finds Applicant has failed to demonstrate his attorneys were constitutionally ineffective for failing to object to the trial court's specific intent instruction because he has failed to show any deficiency in his attorney's performance and resulting prejudice. This allegation is denied and dismissed with prejudice.

Applicant's attorneys were constitutionally ineffective for failing to object to the State's request in closing arguments that the jury find Applicant guilty "[o]n behalf of the people of Greenville County . . .".

Applicant argues his attorneys were constitutionally ineffective because they did not object when the State asked the jury to find Applicant guilty "[o]n behalf of the people of Greenville County . . ." because the comment encouraged the jury to convict on a basis other than the evidence admitted at trial and lessened the State's burden of proof.

The State ended its argument by explaining to the jury that Applicant enjoyed the presumption of innocence and was clad in “a robe of righteousness” that could only be removed if the jury removed the robe from Applicant after considering the evidence against him. Finally, the State said:

And after careful deliberation and without hesitation, you will remove that robe from him. And you’ll come back in here and tell him that he’s guilty. On behalf of the people of Greenville County, please, find him guilty.

Tran. 630.

Neither Jones nor Warder objected to the reference to the people of Greenville County, and both testified at the PCR hearing that they did not find the comment objectionable.

The South Carolina Court of Appeals considered whether comments made by the State during closing argument denied a defendant the right to a fair trial in State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (S.C. Ct. App. 2001). Id., overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). In Hamilton, the State argued the defendant took the stand and admitted his guilt after going through a jury trial when he could have pleaded guilty at the start of the week and also said, “[L]adies and gentlemen, you put me here as a representative of your system of justice, a representative of your community, and I wouldn’t bring in to you a borderline case.” Id. at 359-60, 543 S.E.2d at 594-95. The Court found the comments “highly inappropriate and constitutionally impermissible.” Id. at 362, 543 S.E.2d at 596. It evaluated the comments by giving the test that the State’s closing:

Must be carefully tailored so it does not appeal to the personal biases of the jurors. Further, the argument may not be calculated to arouse the jurors’ passions or prejudices and its content should stay within the record and its reasonable inferences. Moreover, the State cannot, through evidence or argument, comment upon a defendant’s exercise of a constitutional right.

Id. (citations omitted).

The Court of Appeals went on to find that, though the comments were not permissible, they did not so infect the trial with unfairness that Hamilton's due process rights were violated. Id. at 365, 543 S.E.2d at 596. The South Carolina Supreme Court recently affirmed that this is the proper test for judging whether a defendant's due process rights were violated by comments made by the State during closing argument. Fortune v. State, Op. No. 27932 (S.C. Sup. Ct. filed Dec. 4, 2019) (Shearouse Adv. Sh. No. 47 at 6, 9) (citations omitted) (finding the State's closing argument was improper when the State commented that the solicitor's job is to tell the truth but the job of defense attorneys is to "manipulate the truth" and "do whatever they have to – without regard for the truth – to get a not guilty verdict.").

The State's reference to the people of Greenville County in this case was not impermissible. In contrast with Hamilton, the solicitor did not make derogatory references during Applicant's trial to Applicant's right to a trial before the jury, did not identify himself as a representative of the jury's members by virtue of his position as a solicitor, and did not personally vouch for the strengths of the State's case against Applicant. The State's comment in closing was no more objectionable than the solicitor's informing the jury at the beginning of jury qualification that she worked as an assistant solicitor for the Thirteenth Circuit Solicitor's Office or Warder's note that he and Jones were appearing before the jury on behalf of Applicant. Tran. 10-12. The jury was aware that the purpose of the trial concerned allegations that Applicant had committed crimes within the jurisdiction of Greenville County from the trial court's reading to them of the indictments. Tran. 8-10. The trial court also informed the jury pool that its members were pulled from Greenville County, which was part of the Thirteenth Judicial Circuit. Tran. 8. The State's comment did not ask the jury to inject arbitrary factors in its deliberations, particularly when the

State's references to the presumption of innocence and its burden of proving Applicant's guilt beyond a reasonable doubt are taken into consideration.

This Court finds Applicant has failed to demonstrate his attorneys were constitutionally ineffective for failing to object to the State's reference to the people of Greenville during closing argument because he has failed to show any deficiency in his attorney's performance and resulting prejudice. This allegation is denied and dismissed with prejudice.

Applicant's attorneys were constitutionally ineffective for failing to object when the trial court failed to instruct the jury on criminal intent as it relates to murder or involuntary manslaughter.

Applicant argues that his attorneys were constitutionally ineffective for failing to object to the trial court's failure to instruct the jury on criminal intent as it relates to murder or involuntary manslaughter.

When giving its charges to the jury, the trial court instructed the jury as follows:

The Defendant is charged with murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury, or under the circumstances the law an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed. But malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Tran. 638-39.

The trial court then went on to explain that malice aforethought may be expressed or inferred and distinguished the difference, and then went on to instruct the jury that it was to consider whether Applicant was guilty of voluntary manslaughter if it found the State had not proven Applicant guilty of murder beyond a reasonable doubt. Tran. 638-39. The trial court began its instruction on voluntary manslaughter by charging the jury that:

The State must prove beyond a reasonable doubt that the Defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Tran. 639.

The court then went on to give explanations of both the sudden heat of passion and legal provocation required by voluntary manslaughter, as well as whether a reasonable person would have had sufficient time to cool off before the killing. Tran. 639-40.

This Court finds Applicant has failed to show his attorneys should have objected to the instructions on the *mens rea* of either voluntary manslaughter or murder due to inadequacy. Jones testified he believed the trial court adequately covered the law on these issues. Applicant presented no evidence that there was anything inadequate about these jury charges or that the outcome of his conviction for murder would have been different had his attorneys objected to these instructions on the ground of inadequacy.

This Court finds Applicant has failed to demonstrate his attorneys were constitutionally ineffective for failing to object to the trial court's jury instructions on criminal intent in regards to voluntary manslaughter and murder because he has failed to show any deficiency in his attorneys' performance and resulting prejudice. This allegation is denied and dismissed with prejudice.

Applicant's attorneys were constitutionally ineffective for failing to request a jury instruction on transferred intent as it relates for self-defense.

Applicant argues his attorneys were constitutionally ineffective for failing to request a jury instruction on the theory of "transferred self-defense". The South Carolina Supreme Court has noted that the theory of transferred self-defense is recognized in some jurisdictions outside of South Carolina, and that it "absolve[s] a defendant who injures an innocent third party while attempting to defend himself from bodily harm." State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977).

This Court finds Applicant has failed to establish his attorneys' performance was deficient according to the prevailing professional norms because he has not shown that they should have requested a jury instruction on transferred self-defense. When asked to recognize the theory in Porter, the Supreme Court declined to decide whether the theory is viable in the courts of South Carolina. Id. Our appellate courts have not recognized the theory since. Jones and Warder were acting reasonably under the prevailing professional norms when they did not request a jury instruction, the viability of which the Supreme Court declined to address almost four decades before Applicant's trial. Furthermore, the Supreme Court has explained that it "has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes at 309-10, 426 S.E.2d at 765-66 (citing Robinson, 308 S.C. 74, 417 S.E.2d 88 (1992) (holding that counsel was not constitutionally ineffective in failing to make use of a defense that would not receive acceptance for years afterwards). It is not a requirement of constitutional effectiveness that a defense attorney be the trailblazer in the courts' acceptance of a new legal theory, and Jones and Warder were not ineffective for not raising the issue with the trial court.

This Court finds Applicant has failed to demonstrate any prejudice from his attorneys' not requesting the instruction. In light of the testimony from Applicant's date at trial about Applicant's post-killing behavior on the night of the murder, Wilson's testimony about Applicant's arrival at the victim's home and his shooting at him, and the victim's son's testimony about Applicant's attack on the victim and Wilson, as well as the testimony about Applicant's flight from police after the killing and his suicide attempt in stabbing himself in the chest, it is unlikely that the jury would have reached a different conclusion even had it received a jury instruction about transferred self-defense because the evidence did not tend to support Applicant's version of events at the victim's home.

This Court finds Applicant has failed to show Jones and Warder were constitutionally ineffective for failing to request that the trial court instruct the jury on the legal theory of transferred self-defense as he has not shown any deficiency in their performances with respect to this allegation and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has established constitutional violations or deprivations that requires this Court to grant his application for post-conviction relief. Therefore, this application is granted.

This Court notes the parties must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is granted;
2. The conviction of Willie M. Williams is overturned and a new trial granted; and
3. Custody shall be remanded to the Greenville County Detention Center pending issuance of any appropriate bond.

AND IT IS SO ORDERED this 31 day of MARCH, 2020.

Greenville, South Carolina

ROBIN B. STILWELL

Copy mailed to	Attorney General / R. M. Hise
dated	on 4/12/2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Willie Marvin Williams, #167044,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

) Case No. 2016-CP-23-7610
)

) **MOTION TO ALTER OR**
) **AMEND THE JUDGMENT**
)

) ENTERED COMPUTER
)
)

FILED
CLERK OF COURT
JUDICIAL CIRCUIT
THIRTEENTH

2020 APR 17 AM 9:21

The State (Respondent), by and through undersigned counsel, moves, pursuant to Rule 59(e), SCRCP, to alter or amend this Court's grant of post-conviction relief to Willie Marvin Williams (Applicant), and would respectfully show unto this Court:

I. Procedural History

An evidentiary hearing was held before this Court on December 18, 2019. C. Rauch Wise, Esquire, was present on behalf of Applicant, was also present. The undersigned was present on behalf of Respondent. At the conclusion of the hearing, the Court took the matter under advisement, asked later for proposed orders from each party, and then issued an Order Granting Application on March 31, 2020. In that order, the Court denied relief to Applicant on all grounds raised, save for one: that Applicant's defense attorneys were constitutionally ineffective for failing to object to the trial court's jury instruction on mutual combat. Respondent received notice of and a copy of that Order Granting Application on April 7, 2020. This motion follows.

II. Argument

First, this Court should alter or amend its judgment in order to be clear about which of Applicant's convictions are affected by the grant of post-conviction relief. Applicant was convicted of murder (2013-GS-23-3238), attempted murder (2013-GS-23-3239), unlawful

conduct towards a child (2013-GS-23-3240), and possession of a weapon during the commission of a violent crime (2013-GS-23-3238). In its Order Granting Applicant, this Court found that Applicant's defense attorneys should have objected to the jury instruction on mutual combat as there was no evidence admitted at trial that Wilson and Applicant intended to engage each other in mutual combat. Order at 17. The Court found that the mutual combat instruction negated the self-defense instruction that the trial court had given. Order at 16. This Court found Applicant has met his burden of proof "with respect to the Mutual Combat charge." Order at 17. In the enumerated conclusion of the order, the Court wrote that "[t]he conviction of [Applicant] is overturned and a new trial granted . . ." Order at 25. The Court's findings do not make it clear whether it is granting Applicant a new trial with respect to one of his convictions or more than one.

Respondent submits that, if the Court does not accept the second argument found in this motion, it should clarify that its grant of a new trial is limited only to Applicant's murder conviction. Because the trial court's jury instruction on mutual combat was concerned with the death of Applicant's wife, even if the instruction negated some aspect of the self-defense instruction, it could only have done so with respect to the jury's finding Applicant guilty of the murder of his wife. This mutual combat instruction, which this Court quoted in its entirety, was as follows:

If the Defendant voluntarily participated in mutual combat for purposes other than protection, **the killing of the victim would not be self-defense**. This is true if even during the combat the Defendant feared death or serious bodily injury. However, **if before the killing is committed**, the Defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by

the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

Transcript at 644-45 (emphasis added). It was clear from the trial court's instruction that, if the jury found Applicant and Wilson to have engaged in mutual combat, self-defense would not be a defense against the State's case that Applicant murdered his wife. Because the instruction explicitly linked mutual combat to the death of Applicant's wife, the only person who died at the scene, and not to any other crime, the mutual combat instruction could not have had any affect as to any of the remaining offenses for which Applicant was tried.

Second, this Court should alter or amend its judgment by finding Applicant failed to show his defense attorneys were constitutionally ineffective with respect to the mutual combat jury instruction.

In the general citation to applicable law in post-conviction relief cases in the Order of Dismissal, this Court correctly stated the nature of the burden placed on Applicant. A court reviewing an application for post-conviction relief has to consider whether the applicant has shown that his defense attorney's performance was deficient according to the prevailing professional norms and, if the attorney's performance was deficient in some way, whether that deficiency prejudiced the applicant to such an extent that there is a reasonable probability that the outcome of the trial would have been different in its absence. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). As the Court also noted, the applicant has the burden of proving the allegations in his application for post-conviction relief. Strickland, at 686. There is a strong presumption that a defense attorney "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814

(1985) (citing Strickland, at 690). An applicant has to overcome that presumption in order to receive post-conviction relief. Cherry, at 118, 386 S.E.2d at 625.

Respondent submits, however, that this Court overlooked the burden these aforementioned authorities placed upon Applicant by finding Applicant met his burden in establishing that he was prejudiced by his attorneys' performance. The Court cited in its order State v. Taylor, 356 S.C. 227, 589 S.E.2d. 1 (2003), in which case the South Carolina Supreme Court found that the trial court improperly instructed the jury on mutual combat. Perhaps, however, this Court overlooked the fact that the Supreme Court emphasized the centrality of self-defense to Taylor's defense at trial in finding that a new trial was required. In finding that Taylor had suffered prejudice due to the trial court's instructing the jury on mutual combat, the Supreme Court noted that Taylor had "relied entirely on self-defense at trial." Id. at 235, 589 S.E.2d at 5. The Supreme Court also cited cases in Taylor emphasizing that a defendant's ability to argue self-defense, as a central component to his trial strategy, should not be impeded. Id.

Self-defense was not a central component to Applicant's defense at trial. Unlike the defendant in Taylor, Applicant's defense to his wife's death was that her death was an accident resulting from his struggle with Wilson. One of Applicant's defense attorneys testified at the PCR hearing that the defense relied more upon their argument that the death of Applicant's wife was an accident then in arguing that her death was justified due to Applicant's acting in self-defense in engaging with Wilson in front of the wife's home. Applicant's testimony at trial was that, when he engaged with Wilson, "the gun went off, pow." Tran. 536. The trial court initially disagreed with the defense's request for an instruction on accident, but later agreed to so charge the jury because "the Defendant testified the gun went off accidentally" Tran. 581-82, 601. The trial

court again reiterated its understanding of Applicant's testimony, that the fatal shot to the victim was an accident. Tran. 602-03. During his closing argument, another of Applicant's defense attorneys argued to the jury that the victim's death was "not a case of murder. This [was] a case of a terrible accident that resulted out of a fight." Tran. 616. In accordance with the wishes of the defense attorneys, the trial court instructed the jury that Applicant was raising the defense of accident, and that the burden was on the State to prove beyond a reasonable doubt that the victim's death was not an accident. Tran. 647-48.

The Supreme Court was concerned in Taylor that burden-shifting caused by an improper jury charge on mutual combat when self-defense was central to a defendant's defense shifted the burden of proof from the State to the defendant. In this case, Applicant has not shown that any such burden shifting in this case caused by the mutual combat instruction impeded his ability to assert his main defense, that of accident; this is especially true since the trial court's instruction to the jury on accident informed the jury that the State had to prove beyond a reasonable doubt that the victim's death was not an accident.

Furthermore, though this Court based its finding that Applicant's defense attorneys were constitutionally ineffective in not objecting to the instruction on mutual combat because it interfered with his ability to present his defense of self-defense at trial, Applicant was likely not entitled to a jury instruction on self-defense in the first place. This Court found elsewhere in its Order Granting Application that Applicant's attorneys were not ineffective for failing to request a jury instruction on the theory of "transferred self-defense." Order at 24-25. The theory "absolve[s] a defendant who injures an innocent third party while attempting to defend himself from bodily harm. State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977). As this Court noted in its

order, the courts of this State have not recognized the theory. Order at 24. As it stands now, this Court's Order Granting Application seems to find Applicant was prejudiced because the trial court gave a jury instruction on mutual combat that potentially limited the applicability of self-defense with regard to the death of Applicant's wife—an innocent, third-party victim, even by Applicant's own testimony—while also finding that the theory that would justify the giving of the self-defense instruction is not recognized in South Carolina. Those findings are at odds. If Applicant was not entitled to the self-defense instruction with regard to his wife, then it should not matter whether the mutual combat instruction came into some tension therewith. Likewise, self-defense was of no use to Applicant in his conviction for unlawful conduct towards a child.

As the trial court instructed the jury during its charge at Applicant's trial, if the jury found Applicant had actually been in imminent danger, "it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury." Tran. 645. In this case, as this Court noted elsewhere in its Order Granting Application, Applicant did not testify as to firing any shots at Wilson or his wife; rather, the gun supposedly discharged during the struggle between Wilson and Applicant.

III. Conclusion

WHEREFORE, having made its motion to alter or amend the judgment, Respondent respectfully requests that the Court alter or amend its order so as to find Applicant has failed to demonstrate any prejudice from his attorneys' not objecting to the mutual combat instruction; or, if the Court declines to do that, clarify which of Applicant's convictions is being overturned; and

grant Respondent such further relief as the Court finds just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
SC Bar No.: 103282

BY: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

April 17, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Willie Marvin Williams, #167044,	)	
	)	Case No.: 2016-CP-23-7610
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020, and amended April 14, 2020, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Motion to Alter or Amend the Judgment** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Clarence Rauch Wise, Esquire
rauchwise@gmail.com

4. Undersigned has served a copy of the **Motion to Alter or Amend the Judgment** in the

above-captioned matter on the PCR court by emailing a copy to the email address as listed in the AIS:

The Honorable Robin B. Stilwell
rstilwellj@sccourts.org

DATED this 17th day of April, 2020.

s/Taylor Zane Smith
ATTORNEY NAME
Assistant Attorney General
S.C. Bar No.: 103282
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
TSmith@scag.gov

From: Taylor Smith
To: "Stilwell, Robin B."
Cc: Lilly Meadows; Judy Carey; Rauch Wise; Stilwell, Robin B. Law Clerk (Kamairi Fayall); Stilwell, Robin B. Secretary (Carole Ring)
Subject: Motion to alter or amend for Willie Williams' PCR.
Date: Friday, April 17, 2020 8:57:00 AM
Attachments: [02259646.pdf](#)
[02252675.pdf](#)

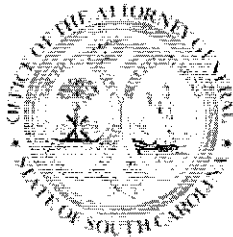
Judge Stilwell,

I represented the State at the PCR hearing in Williams v. State, 2016-CP-23-7610, which was held before Your Honor in Greenville County back in December. Your Honor granted post-conviction relief to Mr. Williams and, respectfully, I am moving to alter or amend in accordance with Rule 59(e), SCRPC. The motion and Order Granting Application are attached for Your Honor's consideration.

I will send the motion to the Greenville County Clerk of Court today for filing. By copying Mr. Williams' PCR attorney, Rauch Wise, I am serving him with the motion as well. I will save a copy of this email as an attachment to the motion when I file it, as required by the Supreme Court's recent order.

Please let me know if I may be of further aid to the Court.

Thank you,
Taylor Smith



Taylor Zane Smith
Assistant Attorney General
Post-Conviction Relief Section
SC Attorney General's Office
(803) 734-0904 Desk
Rember C. Dennis Bldg.
1000 Assembly St.
Columbia, SC 29201

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Willie Marvin Williams, #167044,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

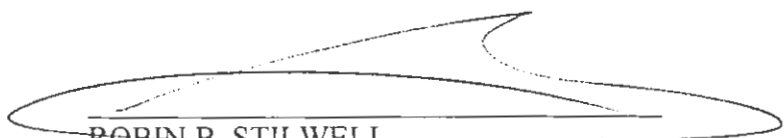
IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-07610

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**20 MAY 7 PM 4:00
CLERK OF COURT
COURT HOUSE
GREENVILLE, SC

This matter comes before the Court pursuant to the Respondent's Motion to Alter or Amend the Court's March 31, 2020, Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. After having had the opportunity to carefully review the Motion, this Court respectfully denies the same.

AND IT IS SO ORDERED.


 ROBIN B. STILWELL

ms
 April 7, 2020
 Greenville, South Carolina

mailed to

Atty General / R. Wise

5 1 7 2020

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Trial Court Judge
The Honorable Robin B. Stilwell, PCR Court Judge

Case No. 2016-CP-23-7610

RECEIVED

May 22 2020

S.C. SUPREME COURT

Willie Marvin Williams, #167044, ...Respondent,

v.

State of South Carolina, ...Petitioner.

NOTICE OF APPEAL

Petitioner appeals the order of the Honorable Robin B. Stilwell, dated March 31, 2020, and filed April 2, 2020, granting post-conviction relief to Respondent. Petitioner received notice of entry of the order granting relief on April 7, 2020. Petitioner filed a motion to alter or amend the judgment in accordance with Rule 59(e), SCRCP, on April 17, 2020, and served Mr. Williams therewith and provided a copy thereof to Judge Stilwell on the same. Thereafter, Judge Stilwell denied Petitioner's motion by an order issued and filed on May 7, 2020. Petitioner was served with a copy of the order on May 7, 2020, and received notice of entry of that order on May 13, 2020. Petitioner appeals that order as well.

Copies of the both orders on appeal are attached to this notice.

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
S.C. Bar # 103282

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: s/Taylor Zane Smith
Attorneys for the Petitioner

Columbia, South Carolina

May 21, 2020

Other counsel of record:

Clarence Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

May 22 2020

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, Trial Court Judge
The Honorable Robin B. Stilwell, PCR Court Judge

Case No. 2016-CP-23-7610

Willie Marvin Williams, #167044, ...Respondent,

v.

State of South Carolina, ...Petitioner.

PROOF OF SERVICE

I, Taylor Zane Smith, certify that I have today served the within notice of appeal upon the Respondent, as shown by the attached email, by emailing a copy thereof to his counsel of record:

Clarence Rauch Wise, Esquire
rauchwise@gmail.com

I further certify that all parties required by Rule to be served have been served this 21st day of May, 2020.

s/Taylor Zane Smith
Taylor Zane Smith
Assistant Attorney General
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 27 2020

APPEAL FROM GREENVILLE COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Hon. Deadra L. Jefferson, Trial Court Judge

Hon. Robin B. Stilwell, Post-Conviction Relief Judge

Case № 2016-CP-23-7610

Willie Marvin Williams, #167044 Respondent-Appellant,

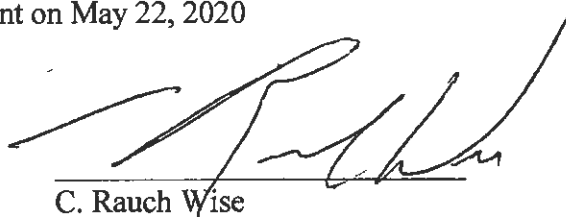
vs.

The State of South Carolina Appellant-Respondent.

NOTICE OF INTENT TO APPEAL

Willie Williams appeals the Order of the Honorable Robin B. Stilwell, dated March 31, 2020, reconsidering in part the Order granting post-conviction relief filed on April 7, 2020. This Notice of Appeal is filed pursuant to SC Court Rule 203(c). Respondent-Appellant received a copy of the Notice of Appeal from Appellant-Respondent on May 22, 2020

May 22nd, 2020



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Respondent-Appellant

OTHER COUNSEL OF RECORD

Taylor Z. Smith, Asst. Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 27 2020

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Hon. Deadra L. Jefferson, Trial Court Judge
Hon. Robin B. Stilwell, Post-Conviction Relief Judge

Case No 2016-CP-23-7610

Willie Marvin Williams, #167044 Respondent-Appellant,

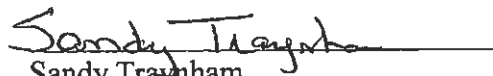
vs.

The State of South Carolina Appellant-Respondent.

CERTIFICATE OF SERVICE

I hereby Certify that I am the Secretary for C. Rauch Wise, Attorney for the Respondent-Appellant in the above entitled case. That on May 22, 2020, I did deposit in the United States Mail with proper postage affixed thereto, a copy of the Notice of Intent to Appeal in the above case addressed to Taylor Z. Smith, Rembert C. Dennis Building, P.O. Box 11549, Columbia, SC 29211-1549; Paul B. Wichensimer, Clerk, Greenville County Courthouse, 305 E. North Street, Ste. 232, Greenville, SC 29601; Honorable Robin B. Stilwell, 305 E. North St., Greenville, SC 29601; Walt Wilkins, Solicitor Thirteenth Judicial Circuit, 305 E. North Street, Greenville, SC 29601.

May 22, 2020


Sandy Traynham
Secretary

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 006188

Attorney for Respondent-Appellant