Volume II of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

ORIGINAL

RECEIVED
JUN 13 2019
SC Court of Appeals

V.

JOHN WILLIAM MCCARTY,

APPELLANT

APPELLATE CASE NO. 2017-002377

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS FROM THE IMMUNITY HEARING DATED FEB. 23, 2017 ARE ON FILE WITH THIS COURT,

STATE'S EXHIBITS #1-7 (PHOTOGRAPHS); STATE'S EXHIBIT #8 (INTERVIEW CD); DEFENDANT'S EXHIBIT #2 (911 CALL).

1 taught Bradley Mercer would shoot deer when he's
2 hunting.
3 Then, after he shot, he walked back in his
4 room, put his gun up, and paced the floor. He
5 didn't check on Randy. He didn't check on Mitch.
6 He didn't call the cops himself. He went right
7 back in the room.
8 Now, murder involves calculated decisions.
9 I don't think there's any doubt from John
10 McCarty's testimony that what he did was a
11 calculated decision on his part. It was
12 calculated with malice and hatred in his heart.
13 Before he even knew what was going on, he got
14 his gun. He knew that it wasn't a live round in
15 the chamber, so he racked his slide and had the
16 safety on before he even walked to the door to
17 see what was going on.
18 Randy might have been hollering for some
19 other -- someone might have been messing with a
20 pet or something like that. But he got that gun.
21 Why? Because he was tired and he was frustrated
22 and he was angry that this situation kept on
23 going, even after the argument spilled into his
24 room, even after Randy told Jacob initially and
25 even after the cops came and left and refused to

1 do anything about it. The situation kept going.
2 Randy -- and John told you it frustrated him
3 when they disrespected him.
4 When he fired a warning shot at his own
5 house, they didn't even pay that any attention.
6 His testimony is that really frustrated him that
7 they disrespected him. He blamed Mitch. He had
8 hostility and hatred in his heart. He didn't
9 even know what was going on. He didn't know who
10 was at fault. He didn't know what had gone on --
11 what happened before this. He didn't know
12 anything about that.
13 He just said, by God, Mitch, you're
14 fighting with Randy. I'm tired of this. Didn't
15 say a word. Put two shots in him. Bang. Bang.
16 Shot the gun. Reacquired his target and shot him
17 again three inches from the first. Walked back
18 in the room and was pacing the floor.
19 If he was completely justified in doing
20 this, why did he lie to the police about what
21 had happened? Because he specifically knew
22 exactly what he did.
23 Now, I'll have the opportunity to come back
24 and talk to y'all after the defense has a chance
25 to address their side of the case. The State has

1 the burden in this case. The defense doesn't
2 have to prove anything. I want to be real clear
3 about what my burden is. I've got to prove he
4 was guilty of murder and I've got to disprove at
5 least one of the elements of self-defense. If I
6 disprove just one of the elements of self-
7 defense, that either Randy was at fault or that
8 Randy wasn't in imminent serious bodily injury
9 or Randy didn't believe he was in serious bodily
10 injury, then that defense fails.
11 And then it's the State's position there is
12 no legal justification to shoot him, that he did
13 it intentionally after thinking about it. He had
14 the sense to fire a warning shot and then he sat
15 there and assessed the situation and calculated
16 the malicious, evil decision to kill Mitchell
17 Bradley.
18 Now, I just want to make it clear, if I
19 didn't, that if the person you are defending
20 does not have the right to act in self-defense
21 because of the situation they are in, then
22 anybody defending them does not have the right
23 to defend them -- doesn't have the right to
24 shoot and kill somebody else.
25 So when John McCarty walked up to that

1 window and didn't know what was going on, he put
2 himself in that position. He took the, maybe
3 evil, decision, regardless of whether he knew
4 what was going on, to shoot and kill Mitch,
5 regardless of who started the fight. If that's
6 not malice, if that's not hostility towards
7 another person, then I don't know what is. But
8 realistically, if Randy only believed that he
9 did get himself in that altercation, if you
10 didn't think Randy, at that point in time, could
11 pull out a gun and shoot Mitch twice, then John
12 is not entitled to pull out the gun and shoot
13 Mitchell twice.
14 I ask you to look at the credible evidence.
15 I ask you to consider the law the judge is going
16 to give you. I ask you to listen carefully, even
17 though you're going to have a copy of the law
18 back in the jury room so you'll be able to
19 reference that. You're going to have all this
20 evidence back there. But really, the most
21 important evidence in this case is the testimony
22 and your belief of the witnesses.
23 I think when you assess the credibility
24 evidence in this case and you apply the two
25 versions or three versions of the story you've

1 heard against the credible evidence and through
2 the filter of your own common sense, you will
3 agree that you can't just walk up to a drunken
4 brawl, pick who you want to win, draw your gun
5 and shoot and kill someone, a 23-year-old, 154-
6 pound kid who's two and a half times the legal
7 limit of alcohol. Probably having a hard time
8 standing. If you can't do it, you must find John
9 McCarty guilty. Thank you.
10 **THE COURT:** Thank you.
11 Mr. Newton.
12 **MR. NEWTON:** Thank you, Your Honor. May it
13 please the Court.
14 **THE COURT:** Yes.
15 **MR. NEWTON:** Ladies and Gentlemen of the
16 jury, I appreciate your attention during this
17 trial. Obviously, this is a very important
18 charge -- case. There's no more serious crime
19 than murder. That's as serious as it gets.
20 The prosecutor was talking to you about
21 some of the law as he argued. I'm going to do
22 some of the same, but neither him, nor me, is
23 the authority on the law that you are to follow.
24 That is the judge. After we're done, the judge
25 will instruct you on the law that you are to

1 follow, so you listen to her. I trust my remarks
2 about the law will be what the judge will charge
3 you.
4 The prosecutor said you can't just walk up
5 to a drunken brawl -- a random drunken brawl and
6 shoot somebody. That's true. I agree with that,
7 but that's not what happened in this case, so I
8 don't know why he's going with that scenario.
9 That is not the scenario of this case.
10 Instead, what we have here is a person
11 defending a loved one with a weakened condition
12 that was susceptible because of his physical
13 condition from serious injury, serious bodily
14 harm. John McCarty would not have shot and
15 killed Mitchell Bradley unless he thought it was
16 absolutely necessary, under the circumstances,
17 to avoid great bodily injury or even death to
18 Randy Wilson. I don't think there's any
19 question, in this case, about what was going
20 through his mind. No question.
21 The prosecutor would have you to believe
22 this was a case of malice aforethought. In a
23 standard murder case, think about what you think
24 about with murder and what it means. Doesn't
25 that mean malice aforethought, wickedness in

1 your heart, that you're going to go and just
2 shoot somebody for no legitimate reason in your
3 own mind whatsoever? That's what it means.
4 The fact that he believed and had good
5 reason to believe he was defending Randy Wilson
6 demonstrates by itself that the prosecution's
7 case fails. That is not malice aforethought in
8 his mind. That is not wickedness in the heart.
9 That is not shooting for no good reason or no
10 reason at all, as is the case in a murder.
11 No malice aforethought; there's no murder.
12 The prosecution's case fails right from the
13 beginning because of that, if they can't prove
14 malice aforethought. Don't even have to go
15 anywhere.
16 But for the sake of argument, we can go
17 further and say, even if the prosecution might
18 make you think that maybe this was a murder,
19 maybe malice was there, well, defense of others
20 arises, which is a defense to such charges. The
21 prosecution has to prove, first, all the
22 elements of murder. Then they have to disprove
23 self-defense.
24 The defense does not have to prove anything
25 in any criminal case. The burden of proof is

1 entirely upon the prosecution to prove the guilt
2 of the defendant beyond any reasonable doubt.
3 Beyond any reasonable doubt. If you have any
4 reasonable doubt as to the guilt of John McCarty
5 on the charge of murder, it is your sworn duty
6 under your oath as jurors to find him not
7 guilty.
8 The situation that night, John McCarty was
9 lying in bed asleep while some argument -- and I
10 -- the testimony was pretty consistent. I'll
11 talk about consistency for a moment. The
12 prosecution has talked about some alleged
13 inconsistencies. As a matter of fact, it would
14 be a miracle if -- in any case involving a
15 traumatic incident that happened so fast, it
16 would be a miracle if all the witnesses agreed
17 on everything. That never happens. People
18 perceive things differently in fast-flowing
19 situations.
20 If everybody told the same story, all that
21 would mean is they got together and decided what
22 they were all going to say. That's the only way
23 that could happen realistically. In any
24 situation, traumatic event, fast-flowing events,
25 of course, there's going to be discrepancies in

1 perception. That's just human nature.
2 Regarding John McCarty's supposed
3 discrepancy in the video, the prosecutor kept
4 trying to use the word lie. That's not what he
5 was doing. He was under a great deal of stress,
6 trauma. The police we taking him down and asking
7 him what happened. He's trying to remember in
8 his own mind cause everything happened so fast.
9 The important thing to remember, the essential
10 thing, is that in his mind, Randy Wilson was in
11 danger of great bodily harm. A person in that
12 situation has an absolute right to use lethal
13 force to prevent that harm from occurring.
14 That's just the law. Self-defense is the law and
15 defense of others, same elements, basically.
16 Legal right to use lethal force.
17 Now, there was some agreement over how the
18 initial argument started. Randy Wilson was on
19 the phone. Jacob Kirk had been drinking, by his
20 own admission, at least 9 or 10 beers by that
21 time. Very drunk. And for whatever reason,
22 started an argument while Randy was on the
23 phone.
24 I'm glad that Randy had the foresight, when
25 he called the police, to leave it off the hook

1 for a while so that the 911 operator could hear
2 the mood and condition of Mr. Jacob Kirk. Were
3 it not for that, I suspect Mr. Kirk would have
4 taken the stand and said, oh, I was calm. Not my
5 fault. Y'all heard the 911 tape, and I encourage
6 you to listen to it again. Hear the tone of his
7 voice and shouting. That's just drunken rage,
8 Ladies and Gentlemen. That's just somebody out
9 of control.
10 The prosecutor will have you believe that
11 the fact that Mitchell Bradley was really drunk,
12 .20,two and a half times the legal limit, that
13 that works in his favor. No, it doesn't. If
14 somebody is that drunk, that makes them more
15 dangerous. It takes their judgement away. That's
16 why police have difficulty dealing with people
17 who are so drunk. If any of y'all had to deal
18 with people who were really drunk and really
19 belligerent over something, I mean, it's
20 horrible. It's terrible, out of control. You
21 don't see anything reasonably rational.
22 Randy Wilson was trying to defuse the
23 situation. He called the cops. Get the cops out
24 here. Make these people go away. Please. If you
25 don't do something, they're going to start back

1 up again as soon as you leave. And they did. The
2 prosecutor would have you believe that Randy
3 Wilson somehow brought this upon himself. He's
4 the one trying to get them to leave, trying to
5 stop this from escalating, trying to stop it
6 from happening.
7 He goes outside. Some things happened. The
8 testimony is contradictory. But it is clear that
9 Mitchell Bradley was really drunk and in a
10 hostile mood too, and he shoves Randy Wilson
11 down the steps, breaking his foot, breaking his
12 leg. Randy's then trying to -- with a broken
13 foot, trying to hobble upstairs, leaning against
14 the railing, get in the house. What does
15 Mitchell do? Does he let him go in the house?
16 No, he stands there and tries to block him.
17 Randy just -- I guess he yielded.
18 Then there was testimony about how Randy
19 knocked over a beer and then Mitchell attacked
20 him from behind, shoved him from behind into a
21 corner, pinned him up against the railing. He
22 was wailing on him, beating on him. He already
23 had a broken foot, trying to disengage, did not
24 want any part of this fight. There's no question
25 who the aggressor was. That's Mitchell Bradley.

1 He was the physical aggressor. At no point did
2 Randy try to start any physical fight. None. It
3 was Mitchell.
4 Randy is so terrified and so in fear that
5 he screams out, and that's what get John's
6 attention. Said he never heard Randy scream like
7 that before. He knew instantly that something
8 was seriously wrong.
9 I hope you do not consider that pouring out
10 some drunkard's beer is sufficient provocation
11 for an assault. That is not the law. The judge
12 will charge you -- as a matter of fact, somebody
13 needed to pour their beers out. They, obviously,
14 had too much to drink and didn't need to drink
15 anymore.
16 The judge will charge you the at fault --
17 the part of the self-defense or defense of
18 others says that the person being attacked or
19 being defended must be without fault. That's
20 sufficient with legal fault. Okay. That means
21 they must -- to be -- if they're at fault, that
22 would mean they had done something which a
23 reasonable person would expect to result in
24 being attacked to the point that their life was
25 in danger of great bodily injury. Clearly,

1 that's not the case.
2 Clearly, pouring out a drunkard's beer,
3 somebody who's out of control is what a sensible
4 person would do. Calling the police, asking them
5 to leave, and they refused to leave. Mitchell
6 Bradley doesn't even live there. Refuses to
7 leave because he wants to carry it on, wants to
8 escalate it on. Jacob Kirk tried to deny he was
9 -- during his testimony during this trial, that
10 he was encouraging his brother. Remember, I read
11 the transcript. He wanted to see them fight. He
12 wanted him to fight him. That means, he wanted
13 to see Mitchell attack Randy, because Randy
14 wasn't trying to fight.
15 That prosecutor told you you should,
16 basically, believe Jacob Kirk. Well, he's got
17 some serious motivation not to be honest. One,
18 I'm sorry for the loss of his brother. It's
19 tragic whenever any human being is killed. Of
20 course, it's terrible. Especially if it's
21 relative, of course, you'd feel upset about
22 that.
23 Ask yourself, knowing what you do about
24 what he was doing that night, what Jacob was
25 doing. He has some responsibility for his

1 brother's death. He admitted on the stand that
2 he could have called somebody to come and pick
3 them up. Instead, they chose to remain and try
4 to escalate Mitchell attacking Randy.
5 Pardon me. I don't mean to belabor y'all,
6 but this is the last time I'll get a chance to
7 talk to you. It is an extremely important case.
8 (Pause.)
9 The prosecutor was trying to claim this was
10 just a drunken tussle, just a drunken tussle.
11 No, I don't think that's what the evidence
12 shows. I think what it shows is that Mitchell
13 Bradley was assaulting Randy Wilson, who did not
14 want to fight. He was trying to defend himself.
15 He was trying to get back in his house. Again, I
16 don't think the fact that Mitchell was drunk was
17 in his favor at all. If anything, it makes him
18 more dangerous. It shows how irrational he was.
19 It shows what he was doing.
20 Again, listen to the judge's charges. My
21 understanding is she'll give you a written copy
22 of the charges, as well. The law is kind of
23 complex. If you do have any questions about it,
24 feel free to send a note to the judge. We'll be
25 happy to address them. But do keep in mind the

1 State has the burden of proof. They must prove
2 that John McCarty is guilty of murder beyond any
3 reasonable doubt. If you have a reasonable doubt
4 that he is guilty of murder, then it is your
5 duty to find him not guilty. Thank you.
6 **THE COURT:** Thank you.
7 Mr. Cleveland?
8 **MR. CLEVELAND:** Briefly, Your Honor.
9 Randy Wilson can't have it both ways. He
10 can't pick a fight, incite a fight, enrage
11 people already under the influence of alcohol
12 and pour out their beer. If you've ever been
13 around anybody under the influence, what better
14 way to enrage someone drinking than to get rid
15 of the beer that they're drinking. And then, on
16 the flip side, when a physical altercation
17 occurs, blame them. I'll illustrate what I mean
18 by that.
19 The defense said that they've got to have
20 -- when talking about without fault, they've got
21 to have legal fault, something that would amount
22 to bring about a deadly assault before they are
23 unable to claim self-defense. If Randy Wilson is
24 truly as weak as he says he is, any assault he
25 contributes to himself being involved with is a

1 deadly assault.

2 In this case, there's no question that he

3 admitted pouring out the beers, messing with his

4 stuff, calling the police. All of the things he

5 did, he contributed to this altercation. So to

6 believe Randy Wilson is as weak as he says he

7 is, he is with fault in bringing about this

8 difficulty and defense of others fails. Self-

9 defense would have failed, defense of others

10 fails and the responsibility for killing

11 Mitchell Bradley is squarely upon John McCarty.

12 On the flip side of that, if Randy Wilson

13 is not as weak, if he is the man that survived

14 the 25-mile-an-hour wreck, if he's the man that

15 worked for -- in heating and air, lifting

16 appliances and stuff for some number of years

17 and everything else and this weakness is the

18 excuse that John McCarty is using to justify

19 what he knows is intentional murder, then sure,

20 maybe a provocation might not rise to the level

21 of legal fault in a fight. But if that's the

22 case, then he was not in imminent bodily --

23 imminent danger of serious bodily injury or

24 death. It was not right about to happen.

25 If it was right about to happen, John

1 McCarty wouldn't have hesitated. He wouldn't
2 have fired a warning shot. He wouldn't have
3 tried to get out of the door. Doesn't it stand
4 to reason if you are defending a loved one who
5 is truly in that much danger, if you see it
6 happening, there's no time in defense of others
7 to stop, assess the situation, try to defuse it
8 and let's see if I can do this or let's do that?
9 If it's really that serious, you come and say,
10 oh, my God, this is about to happen. That's
11 imminent. That is what imminence means. It means
12 it is happening right now.
13 Either way, either way you cut it, Randy
14 Wilson is as fragile as an egg or Randy Wilson
15 was using fragility as an excuse when he's
16 really not that fragile, defense of others in
17 this case is --
18 **MR. NEWTON:** This is not reply, Judge.
19 **THE COURT:** All right. Are we going far
20 afield of reply?
21 **MR. CLEVELAND:** I was just addressing what
22 he did.
23 **THE COURT:** All right.
24 **MR. CLEVELAND:** Moving forward.
25 **THE COURT:** Thank you.

1 **MR. CLEVELAND:** The defense mentioned that
2 Randy was trying to defuse the situation,
3 pushing Mitch, pouring out beers, coming back
4 into the same area as two people were that just
5 threw him down the stairs and broke his leg, ask
6 yourself, what does your common sense tell you?
7 Is that Randy Wilson trying to defuse the
8 situation?
9 Randy leaving his phone open, the defense
10 wants you to believe that is planning to do
11 everything. Was he anticipating this murder to
12 happen? I mean, what was he planning for by
13 leaving the phone open for the cops? I think, if
14 anything, it shows that Randy was frustrated
15 with these folks. He's trying to build a case
16 and get them to leave when he knew that deep
17 down inside, they probably weren't to make it.
18 The defense talks about, on that end, Jake
19 would have just said it was a normal argument. I
20 wasn't screaming. Jake is not the one who's dead
21 in this case. Jake is not the one who supposedly
22 brought the fight on with Randy. It was Mitch.
23 By Jake's own testimony, Mitch then was not
24 involved.
25 The defense -- I want to talk about the

1 self-defense just to illustrate real quick. The
2 defense said you're legally justified if you see
3 someone in danger. That's not the law. If --
4 even if you're in imminent danger at someone
5 else's hand, if you're at fault about bringing
6 about that difficulty, you can't claim self-
7 defense. If you got yourself into it, the law
8 says you've got to get yourself out. You don't
9 have -- you can't egg on a fight and then when
10 you're getting -- ended up on the wrong end of
11 it, you can't claim self-defense to shoot
12 someone. That's not the law. It's got to be a
13 perfect situation without fault and truly in
14 imminent bodily harm.
15 The defense finally says discrepancies, the
16 State wants to add, wants to argue were lies. I
17 don't think there's any argument about that at
18 all. John McCarty said the gun just hit the
19 glass and it just went off to the police. And
20 the last -- one of the last things he said on
21 that stand was I intentionally shot Mitchell
22 Bradley. Weigh this. Weigh the evidence. Use
23 your common sense. Find him guilty of murder.
24 Thank you.
25 **THE COURT:** A couple of housekeeping

1 matters. You heard the attorneys reference, both
2 of them, that you will have my written charge on
3 the law in the jury deliberation room with you,
4 and that is correct. You will. Both sides have
5 agreed, very graciously agreed to allow you to
6 do that. I'm going to send back one copy.
7 Madam Foreperson, if you all, at any time,
8 feel like you need more than one copy, let me
9 know. I can -- I will provide as many as needs
10 be.
11 Secondly, I'm cognizant of the fact that I
12 am standing between you and lunch. Your lunch
13 should be here by the time we break. We had
14 planned for it to be about 1 o'clock. These
15 attorneys are pretty much dead on.
16 Then, finally, you will have the recordings
17 and videos that were introduced into evidence.
18 You will have a laptop back there. That laptop
19 is not functional in terms of it can't access
20 the internet or do anything like that. Please do
21 not use it for any other purpose than to watch
22 these videos or listen to these recordings.
23 They've pretty well got everything locked so
24 that you couldn't do that, but just so that you
25 know.

1 I've also told you before we've got the
2 gun. If you all -- if you all would like to
3 inspect it, my plan is that I'm going to leave
4 it here in the courtroom. If you all wanted to
5 inspect, all you have to do is ask. So those are
6 just some basic housekeeping things. I will tell
7 you I read my charge on the law to you because
8 I'm required to do so under the law, also
9 because I am giving you this in written form, I
10 want it to be what you get back there. All
11 right. So excuse my reading to you.
12 Madam Foreperson, Ladies and Gentlemen of
13 the jury, you have seen and heard the evidence
14 presented, as well as the arguments of counsel.
15 It now becomes my duty and obligation to
16 instruct you on the law applicable in this case.
17 It will then be your duty and obligation to
18 begin your deliberations, through which process
19 you will decide the facts, apply the law as
20 instructed by the court, and determine whether
21 or not the State has met its burden of proof in
22 this case.
23 It is your exclusive duty to determine the
24 facts in this case. You do that based upon your
25 own commonsense examination and evaluation of

1 the testimony and other evidence received during
2 the trial of the case. You twelve jurors alone
3 will decide what weight, value, and effect that
4 is to be given to any particular testimony or
5 other evidence received. Your ultimate goal is
6 to determine whether the State has met its
7 burden of proof in this case. And in so doing,
8 you will have fulfilled your obligations as
9 jurors, and that is to give both the State and
10 the defendant a fair and impartial trial based
11 upon the evidence presented and the law
12 applicable in this case.
13 In this case the State of South Carolina,
14 through the circuit solicitor, has charged the
15 defendant with the criminal offenses known as
16 Murder and Possession of a Weapon during the
17 Commission of a Violent Crime. The allegations
18 charging the defendant with these crimes are set
19 forth in the indictments that had been
20 previously explained to you. The indictments
21 are not evidence in this case and may not be
22 considered by you as evidence against the
23 defendant.
24 As to each of the charges set forth in the
25 indictments, the defendant has entered a plea of

1 not guilty. That plea of not guilty has
2 therefore placed upon the State the burden of
3 proving the allegations that are set forth in
4 the indictments; the burden of proving each of
5 the essential elements of any crimes charged;
6 and, therefore, the burden of proving the guilt
7 of the defendant to the satisfaction of you
8 twelve jurors beyond a reasonable doubt before a
9 verdict of guilty could be returned as to any
10 indictment.
11 The burden is never upon a defendant to
12 prove that he is not guilty or to prove that he
13 is innocent, because in some cases that might
14 not be possible. The burden is always upon the
15 State, because they have made the allegations,
16 to prove the defendant guilty beyond a
17 reasonable doubt.
18 You are further instructed that it is a
19 vital, important, and cardinal rule of law that
20 every defendant in a criminal trial, no matter
21 how serious the offense might be for which he
22 stands charged, shall always be presumed
23 innocent of that charge, and that presumption of
24 innocence shall be with the defendant from the
25 moment of his arrest, and throughout the course

1 of the criminal process, and even throughout the
2 course of the actual trial.
3 The presumption of innocence shall be with
4 the defendant even as you go into the jury room
5 to begin your deliberations, and that
6 presumption of innocence shall be with him there
7 and be with him forever, unless you twelve
8 jurors determine that he is no longer entitled
9 to that presumption of innocence. It is only if,
10 unless, and until you are satisfied of the
11 defendant's guilt beyond a reasonable doubt,
12 that he would no longer be entitled to that
13 presumption of innocence.
14 I remind you that, during this trial, you
15 and I have certain duties to perform. As the
16 trial judge, it is my responsibility to preside
17 over the trial of this case, and I also have the
18 duty to rule on the admissibility of the
19 evidence offered during the trial. You are to
20 consider only the competent evidence before you.
21 If there was any testimony ordered stricken from
22 the record, you must disregard that testimony.
23 You are to consider only the testimony which has
24 been presented from this witness stand, any
25 exhibits which have been made a part of the

1 record in this case, and any stipulations of
2 counsel.
3 I have the additional duty to charge you
4 the law applicable to this case. As the
5 presiding judge, I am the sole judge of the law
6 of this case, and it is your duty as jurors to
7 accept and apply the law as I now state it to
8 you. If you already have any idea as to what
9 the law is or what the law ought to be and it
10 does not agree with what I tell you now the law
11 is, you must abandon this idea because you are
12 sworn to accept the law and apply it exactly as
13 I state it to you.
14 In every case tried in this court before a
15 jury, the jury becomes the sole and exclusive
16 judge of the facts in a case. A trial judge
17 cannot comment on or make any statement to a
18 trial jury about the facts in a case. Since
19 you, the jury, are the sole judge of the facts
20 in this case, you are not to infer from anything
21 that I have said during the progress of this
22 trial in ruling upon the admissibility of
23 evidence, or otherwise, or anything that I say
24 now during the course of this instruction to
25 you, that I have any opinion about the facts in

1 this case. I do not. The law does not allow me
2 to have an opinion about the facts in this case.
3 This is a matter solely for you, the jury, to
4 determine. As jurors, it is your duty to
5 determine the effect, value, weight, and truth
6 of the evidence presented during this trial.
7 The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt.
9 Some of you may have served as jurors in civil
10 cases, where you were only told that it is only
11 necessary to prove that a fact is more likely
12 true than not true, such as by the greater
13 weight or preponderance of the evidence. In
14 criminal cases, the State's proof must be more
15 powerful than that. It must be beyond a
16 reasonable doubt. Reasonable doubt is the kind
17 of doubt that would make a reasonable person
18 hesitate to act.
19 Proof beyond a reasonable doubt is proof
20 that leaves you firmly convinced of the
21 defendant's guilt. There are very few things in
22 this world that we know with absolute certainty,
23 and in criminal cases the law does not require
24 proof that overcomes every possible doubt. If,
25 based on your consideration of the evidence, you

1 are firmly convinced that the defendant is
2 guilty of the crime charged, you must find the
3 defendant guilty. If, on the other hand, you
4 think there is a real possibility that the
5 defendant is not guilty, you must give the
6 defendant the benefit of the doubt and find him
7 not guilty. Facts and circumstances that merely
8 place upon the defendant a grave suspicion of
9 the crime charged or that merely raise a
10 speculation or conjecture of the defendant's
11 guilt are not sufficient to authorize a
12 conviction of the accused.
13 There are two types of evidence which are
14 generally presented during a trial: direct
15 evidence and circumstantial evidence. Direct
16 evidence is the testimony of a person who claims
17 to have actual knowledge of a fact, such as an
18 eyewitness. It is evidence which immediately
19 establishes the main fact to be proved.
20 Circumstantial evidence is a proof of a
21 chain of facts and circumstances indicating the
22 existence of a fact. It is evidence which
23 immediately establishes collateral facts from
24 which the main fact may be inferred.
25 Circumstantial evidence is based on inference

1 and not on personal knowledge or observation.
2 The law makes absolutely no distinction
3 between the weight or value to be given to
4 either direct or circumstantial evidence. Nor
5 is a greater degree of certainty required of
6 circumstantial evidence than of direct evidence.
7 You should weigh all of the evidence in a case.
8 After weighing all of the evidence, if you are
9 not convinced of the guilt of the defendant
10 beyond a reasonable doubt, you must find the
11 defendant not guilty.
12 Necessarily, you must determine the
13 credibility of witnesses who have testified in
14 this case. Credibility simply means
15 believability. It becomes your duty as jurors
16 to analyze and to evaluate the evidence and
17 determine if the State has met its burden of
18 proof in this case.
19 In determining the believability of
20 witnesses who have testified in this case, you
21 may believe one witness over several witnesses
22 or several witnesses over one witness. You may
23 believe a part of the testimony of a witness and
24 reject the remaining part of the testimony of
25 that same witness. You may believe the

1 testimony of a witness in its entirety or reject
2 the testimony of a witness in its entirety. You
3 may consider whether any witness has exhibited
4 to you any interest, bias, prejudice, or other
5 motive in this case. You may also consider the
6 appearance and manner of a witness while on the
7 witness stand.
8 The rules of evidence ordinarily do not
9 permit witnesses to testify as to opinions or
10 conclusions. An exception to this rule exists
11 for witnesses we call expert witnesses. A
12 witness who, by education and experience, has
13 become expert in some art, science, profession,
14 or calling may state an opinion as to relevant
15 and material matter, in which the witness claims
16 to be an expert, and may also state the reasons
17 for that opinion.
18 You should consider any expert opinion
19 received in evidence in this case and, like any
20 other evidence, give it the weight you think it
21 deserves. If you decide that the opinion of an
22 expert witness is not based on sufficient
23 education and experience, or if you conclude
24 that the reasons given in support of the opinion
25 are not sound, or that the opinion is outweighed

1 by other evidence, you may disregard the opinion
2 entirely. An expert witness' testimony is to be
3 given no greater weight than that of other
4 witnesses simply because the witness is an
5 expert. Further, you are not required to accept
6 an expert's opinion, even though it is not
7 contradicted.
8 In order to establish criminal liability,
9 the State must also prove criminal intent. For
10 a particular crime, the mental state required
11 might be purpose, intent, knowledge,
12 recklessness, or criminal negligence. The State
13 must prove criminal intent beyond a reasonable
14 doubt. Criminal intent is a matter that must be
15 determined by the jury from the facts of the
16 case.
17 There is no way to prove criminal intent to
18 a mathematical certainty, so the law says that
19 criminal intent may be inferred from the
20 circumstances shown to have existed. This is
21 how you determine whether or not the element
22 requiring intent was present. It is not
23 necessary to establish intent by direct
24 evidence. Intent may be established by
25 circumstantial evidence or by taking into

1 consideration the acts of the parties and all
2 the facts and circumstances of the case.
3 Criminal intent is a mental state of
4 conscious wrongdoing. It is up to you to
5 determine what the defendant intended to do
6 based on the circumstances shown to have existed
7 in this case.
8 The defendant is charged with murder. The
9 state must prove beyond a reasonable doubt that
10 the defendant killed another person with malice
11 aforethought.
12 Malice is hatred, ill will, or hostility
13 towards another person. It is the intentional
14 doing of a wrongful act without just cause or
15 excuse and with an intent to inflict an injury
16 or under circumstances that the law will infer
17 an evil intent. Malice aforethought does not
18 require that malice exists for any particular
19 time before the act is committed, but malice
20 must exist in the mind of the defendant just
21 before and at the time of the act is committed.
22 Therefore, there must be a combination of the
23 previous evil intent and the act.
24 Malice aforethought may be express or
25 inferred. These terms, express or inferred do

1 not mean different kinds of malice, but merely
2 the manner in which malice may be shown to
3 exist. That is either by direct evidence or by
4 inference from the facts and circumstances which
5 are proved. Express malice is shown when a
6 person speaks words which express hatred or ill
7 will for another or when the person prepared
8 beforehand to do the act which was later
9 accomplished. For example, lying in wait for a
10 person or any other acts of preparation going to
11 show that the deed was within the defendant's
12 mind would be express malice.
13 The defendant is also charged with
14 Possession of a Weapon During the Commission of
15 a Violent Crime. The State must prove beyond a
16 reasonable doubt that the defendant was in
17 possession of a firearm arm or visibly displayed
18 what appeared to be a firearm during the
19 commission of a violent crime or the attempt to
20 commit a violent crime.
21 A firearm means any machine gun, automatic
22 rifle, revolver, pistol, or any weapon which
23 will, is designed to, or may be readily
24 converted to expel a projectile.
25 In order to find the defendant guilty of

1 possession of a weapon during the commission of
2 a violent crime or an attempt to commit a
3 violent crime, you must first find the defendant
4 guilty of either committing a violent crime or
5 attempting to commit a violent crime. Murder is
6 defined as a violent crime.
7 The State must prove beyond a reasonable
8 doubt that the weapon furthered, advanced, or
9 helped in the commission of the crime.
10 The defendant has raised the defense of
11 others. Under the law of self-defense, the
12 defendant may take another's life in the defense
13 of others. Self-defense is a complete defense
14 and, if it is established, you must find the
15 defendant not guilty. The State has the burden
16 of disproving self-defense by proof beyond a
17 reasonable doubt. If you have a reasonable doubt
18 of the defendant's guilt after considering all
19 the evidence, including the evidence of
20 self-defense, then you must find the defendant
21 not guilty. On the other hand, if you have no
22 reasonable doubt of the defendant's guilt after
23 considering all the evidence, including the
24 evidence of self-defense, then you must find the
25 defendant guilty.

1 The right to intervene to protect another
2 person is subject to the same rights and
3 limitations as the right of self-defense. The
4 defendant may take the life of person who
5 assaults a friend, relative, or bystander if
6 that friend, relative, or bystander would have
7 had the right of self-defense.
8 All of the following elements are required
9 to establish self-defense. To show that the
10 person being defended had the right of
11 self-defense, it must first be shown that the
12 person being defended and the defendant were
13 both without fault in bringing on the
14 difficulty, that the person being defended is in
15 imminent danger, and that the defendant had no
16 other probable way to avoid the danger of death
17 or serious bodily injury of the person being
18 defended than to act as the defendant did in
19 this particular instance.
20 If the conduct of the person defended or
21 the defendant was the type which was reasonably
22 calculated to, and did, initiate a deadly
23 assault, the person would be at fault in
24 bringing on the difficulty and would not have
25 the right of self-defense unless the initial

1 aggressor decided to withdraw from the conflict
2 and communicated that decision to the other
3 party. The decision to withdraw from the
4 conflict can be communicated by words or
5 conduct. Therefore, the defendant would acquire
6 the right to use deadly the force -- deadly
7 force in defending that person. When a person is
8 justified under the law of self-defense in
9 firing the first shot, he is justified in
10 continuing to shoot until it is apparent that
11 the danger to his life and body has ceased.
12 In deciding whether the person defended
13 actually was, or that the person -- that the
14 defendant actually believed the person was --
15 excuse me. I'm going to need to read that one
16 again. I messed it up. I apologize. In deciding
17 whether the person defended actually was, or
18 that the defendant actually believed the person
19 was in imminent danger of death or serious
20 bodily injury, you should consider all of the
21 facts and circumstances surrounding the crime,
22 including the physical condition, age, and
23 characteristics of the parties.
24 I will give you a copy of these
25 instructions in written form. During your

1 deliberations, you may refer to my instructions
2 to guide your decision-making. You must consider
3 the instructions as a whole and may not follow
4 some and ignore others. Please return the copy
5 of the instructions to the Court at the time
6 your verdict is rendered.
7 Madam Foreperson, I told you, if you need
8 extra copies, I am happy to do that.
9 I also want to talk to you for just a
10 moment about your notetaking. I noticed some of
11 you have been taking notes and some of you
12 appear to have been diligent notetakers. Some
13 people take notes and listen differently than
14 others do. I want -- just because something is
15 written down in notes does not mean that that
16 overrides or trumps any -- any recollection of
17 each individual jurors. It just means that that
18 is the method in which each of you have chosen
19 to recollect the events of the trial. So I
20 encourage you not to necessarily take what's
21 written down by someone as the final word on
22 what was said that do rely on your recollection
23 as well.
24 Ladies and gentlemen, your verdicts must be
25 unanimous.

1 Madam Foreperson, when the jury agrees on
2 the verdicts, you will write the verdict on the
3 verdict form and sign your name as foreperson.
4 I think this verdict form is very self-
5 explanatory. Then knock on the door of your jury
6 deliberation room to signal to the bailiff
7 you've reached a verdict. At that time, we'll
8 receive you back into the courtroom.
9 I ask that you now return to your jury room
10 but do not begin deliberations until you are
11 told to do so by the bailiff. There are some
12 matters that I must discuss with the attorneys.
13 If your lunch is already here, then you are
14 welcome to begin eating lunch or to take a break
15 to do anything you need to do. It will be your
16 signal to begin deliberating when you get the
17 exhibits, my charge on the law and the verdict
18 form. All right. Thank you so much for your
19 service. I'll speak to our alternates in just
20 one moment.
21 (Jury exits at approximately 1:01 p.m.)
22 **THE COURT:** All right.
23 **THE BAILIFF:** The jury is secure.
24 **THE COURT:** Thank you. All right. Will you
25 all take a look at the exhibits and make sure

1 we've got them all together? Is there a -- oh,
2 I'm sorry.
3 Will you take our alternates just outside
4 the door for just a moment?
5 I'll be right with you.
6 (Alternate jurors exit the courtroom.)
7 **THE COURT:** Any objection to my charge on
8 the law from the State?
9 **MR. CLEVELAND:** None from the State.
10 **THE COURT:** Any from the defense?
11 **MR. NEWTON:** Your Honor, I believe you did
12 leave out a sentence toward the end there. When
13 you were talking about when a person is
14 justified under the law of self-defense firing
15 the first shoot, if he's justified at the
16 beginning of the shooting, et cetera. You
17 skipped what I have in the proposal and you went
18 straight down to "in deciding whether the person
19 the defendant actually was or defendant actually
20 believed the person was in imminent danger" --
21 **THE COURT:** I didn't skip it. I took that
22 sentence out because I felt like it made it
23 sound -- I felt like it made it sound -- I'm
24 trying to recall the sentence. Will you read the
25 sentence to me?

1 **MR. NEWTON:** The defense of another person
2 is excusable if the defendant had reasonable
3 grounds to believe and in good faith did believe
4 that the person being defended was in imminent
5 danger of death or serious bodily harm.
6 **THE COURT:** I felt that made it sound as
7 if that were the only element of self-defense
8 that needed -- that that were the only element
9 of self-defense, so I took that out. I feel like
10 I hovered that -- I feel like I hovered all that
11 in there, but I did take that out before I did
12 my written charge in reworking it because we set
13 forth the three elements up above. I did -- I
14 actually went into that a little bit more. We
15 just reworked it to make it a little plainer,
16 but I did leave that sentence out. So you were
17 right. But your objection is noted as to that,
18 it's noted for the record.
19 **MR. NEWTON:** Okay. Thank you.
20 **THE COURT:** Just to say to you, let me
21 just go to it. I'm going to read what I actually
22 did read. We did make that change. My law clerk
23 is so good, she knows where I'm trying to look
24 too, even before I do. Okay. All of the
25 following elements are required to establish

1 self-defense to show that a person being
2 defended had the right of self-defense, it must
3 first be shown that the person being defended
4 and the defendant were both without fault in
5 bringing on the difficulty, that the person
6 being defended is in imminent danger and that
7 the defendant had no other probable way to avoid
8 the danger of death or serious bodily injury of
9 the person being defended, than to act as the
10 defendant did in this particular incidence. So
11 we fleshed it out and, I believe, set -- I
12 believe more reflected the actual law in this
13 case. So although I do agree with you, I'd want
14 that sentence in there too. All right. If y'all
15 will take a look at the exhibits in this case
16 and make sure it's all together, then we'll be
17 in recess pending a verdict once we get all that
18 together. I'm going to step out here and let our
19 alternates go.
20 (Court goes off the record at approximately
21 1:05 p.m.)
22 (Court goes on the record at approximately
23 1:06 p.m.)
24 **THE COURT:** We've got everything together?
25 **MR. CLEVELAND:** I think everything is in

1 **THE COURT:** Madam Foreperson, it's my
2 understanding that the jury has reached a
3 verdict; is that correct?
4 **THE JUROR:** Yes, ma'am.
5 **THE COURT:** All right. Would you please
6 hand the verdict form to the bailiff?
7 (Verdict form is handed to the Court.)
8 **THE COURT:** All right. The verdict form
9 appears to be in order.
10 (Verdict form is handed to the clerk.)
11 **THE CLERK:** In the case of the State of
12 South Carolina versus John William McCarty, as
13 to the charge of Murder Resulting in Death, we,
14 the jury, unanimously find the defendant guilty
15 of Murder. As to the charge of Possession of a
16 Weapon During the Commission of a Violent Crime,
17 we, the jury, unanimously find the defendant
18 guilty of Possession of a Weapon During the
19 Commission of a Violent Crime.
20 If this was your verdict and still your
21 verdict, please raise your right hand.
22 (Each juror responds.)
23 **THE COURT:** Any motions from the State or
24 anything we need to take up before I let the
25 jury go from the State?

1 All right. You ready?
2 **MR. CLEVELAND:** The State's ready, Your
3 Honor.
4 **THE COURT:** All right.
5 **MR. NEWTON:** Yes, Your Honor. All right.
6 Is there anything from the State?
7 **MR. CLEVELAND:** Just briefly, Your Honor.
8 His only prior criminal history is a 2001
9 Assault and Battery. That's a magistrate level
10 offense. He served 154 days in jail when he was
11 originally arrested on this charge. He was,
12 subsequently, released on ankle monitor, and he
13 did 671 days on that. He has 825 days total
14 which he could be given credit for.
15 Tonya Bradley, Mitchell's mother, is not
16 here. She's already left to go home. I think she
17 thought this was going to be in the next day.
18 Quite frankly, I think that might be for the
19 best. This has been extremely difficult on her,
20 the loss of her son, as well as his brother,
21 Jacob Kirk. But at the end of the day,
22 Mr. McCarty made a decision and took Mitchell's
23 life. We ask you to pose a sentence that
24 reflects the jury's verdict and his actions in
25 this case.

1 **THE COURT:** Yes, sir.

2 **MR. NEWTON:** There's not much left to be

3 said. You are very familiar with the case and

4 heard everything.

5 **THE COURT:** In light of all the

6 circumstances, I will say, Mr. McCarty, I know

7 this is very little solace for you as you stand

8 here today. It as a very legally complex set of

9 circumstances and one that I believe the jury

10 really struggled with. Really, truly struggled

11 with. This is, in no way, a nod to, in any way,

12 say that the life you took was not truly -- it's

13 just a horrible loss. But in light of the

14 particular circumstances of this case, the

15 sentence of the Court is 30 years, credit for

16 825 days. Concurrent to that, five years, credit

17 for 825 days.

18 **MR. NEWTON:** Thank you, Your Honor.

19 **MR. CLEVELAND:** Thank you, Your Honor.

20 **THE COURT:** Thank you.

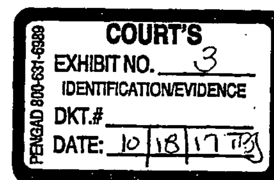
21 And Mr. Newton, I'll give you 10 days for

22 any post-trial motions.

23 **MR. NEWTON:** Thank you, Your Honor.

24 **THE COURT:** All right. Thank you.

25



STATE OF SOUTH CAROLINA V. JOHN WILLIAM MCCARTY

MADAME FOREPERSON, LADIES AND GENTLEMEN OF THE JURY, YOU HAVE SEEN AND HEARD THE EVIDENCE PRESENTED AS WELL AS THE ARGUMENTS OF COUNSEL. IT NOW BECOMES MY DUTY AND OBLIGATION TO INSTRUCT YOU ON THE APPLICABLE LAW IN THIS CASE. IT WILL THEN BE YOUR DUTY AND OBLIGATION TO BEGIN YOUR DELIBERATIONS, THROUGH WHICH PROCESS YOU WILL DECIDE THE FACTS, APPLY THE LAW AS INSTRUCTED BY THE COURT, AND DETERMINE WHETHER THE STATE MET ITS BURDEN OF PROOF.

IT IS YOUR EXCLUSIVE DUTY TO DETERMINE THE FACTS IN THIS CASE. YOU DO THAT BASED UPON YOUR OWN COMMON SENSE EXAMINATION AND EVALUATION OF THE TESTIMONY AND OTHER EVIDENCE RECEIVED DURING THE TRIAL OF THE CASE.

YOU TWELVE JURORS ALONE WILL DECIDE WHAT WEIGHT, VALUE, AND EFFECT THAT IS TO BE GIVEN TO ANY PARTICULAR TESTIMONY OR OTHER EVIDENCE RECEIVED. YOUR ULTIMATE GOAL IS TO DETERMINE

WHETHER THE STATE HAS MET ITS BURDEN OF PROOF IN THIS CASE AND IN SO DOING YOU WILL HAVE FULFILLED YOUR OBLIGATIONS AS JURORS AND THAT IS TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED UPON THE EVIDENCE PRESENTED AND THE LAW APPLICABLE TO THIS CASE.

IN THIS CASE THE STATE OF SOUTH CAROLINA, THROUGH THE CIRCUIT SOLICITOR, HAS CHARGED THE DEFENDANT WITH THE CRIMINAL OFFENSES KNOWN AS:

MURDER

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

THE ALLEGATIONS CHARGING THE DEFENDANT WITH THESE CRIMES ARE SET FORTH IN THE INDICTMENTS THAT HAVE BEEN PREVIOUSLY EXPLAINED TO YOU. THE INDICTMENTS ARE NOT EVIDENCE IN THIS CASE AND MAY NOT BE CONSIDERED BY YOU AS EVIDENCE AGAINST THE DEFENDANT.

AS TO EACH OF THE CHARGES SET FORTH IN THE INDICTMENTS THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THAT PLEA OF NOT GUILTY HAS THEREFORE PLACED UPON THE STATE THE BURDEN OF PROVING THE ALLEGATIONS THAT ARE SET FORTH IN THE INDICTMENTS; THE BURDEN OF PROVING EACH OF THE ESSENTIAL ELEMENTS OF ANY CRIMES CHARGED; AND THEREFORE THE BURDEN OF PROVING THE GUILT OF THE DEFENDANT TO THE SATISFACTION OF YOU TWELVE JURORS BEYOND A REASONABLE DOUBT BEFORE A VERDICT OF GUILTY COULD BE RETURNED AS TO ANY INDICTMENT.

THE BURDEN IS NEVER UPON A DEFENDANT TO PROVE THAT HE IS NOT GUILTY OR TO PROVE THAT HE IS INNOCENT BECAUSE IN SOME CASES THAT MIGHT NOT BE POSSIBLE. THE BURDEN IS ALWAYS UPON THE STATE, BECAUSE THEY HAVE MADE THE ALLEGATIONS, TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

YOU ARE FURTHER INSTRUCTED THAT IT IS A VITAL, IMPORTANT, AND CARDINAL RULE OF LAW THAT EVERY DEFENDANT IN A CRIMINAL

TRIAL, NO MATTER HOW SERIOUS THE OFFENSE MIGHT BE FOR WHICH HE STANDS CHARGED, SHALL ALWAYS BE PRESUMED INNOCENT OF THAT CHARGE, AND THAT PRESUMPTION OF INNOCENCE SHALL BE WITH THE DEFENDANT FROM THE MOMENT OF HIS ARREST, AND THROUGHOUT THE COURSE OF THE CRIMINAL PROCESS, AND EVEN THROUGHOUT THE COURSE OF THE ACTUAL TRIAL. THE PRESUMPTION OF INNOCENCE SHALL BE WITH THE DEFENDANT EVEN AS YOU GO INTO THE JURY ROOM TO BEGIN YOUR DELIBERATIONS, AND THAT PRESUMPTION OF INNOCENCE SHALL BE WITH HIM THERE AND BE WITH HIM FOREVER, UNLESS YOU TWELVE JURORS DETERMINE THAT HE IS NO LONGER ENTITLED TO THAT PRESUMPTION OF INNOCENCE. IT IS ONLY IF, UNLESS, AND UNTIL YOU ARE SATISFIED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, THAT HE WOULD NO LONGER BE ENTITLED TO THE PRESUMPTION OF INNOCENCE.

DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT

DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. I DO NOT. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO

DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT. REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD MAKE A REASONABLE PERSON HESITATE TO ACT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT

OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY. FACTS AND CIRCUMSTANCES THAT MERELY PLACE UPON THE DEFENDANT A GRAVE SUSPICION OF THE CRIME CHARGED OR THAT MERELY RAISE A SPECULATION OR CONJECTURE OF THE DEFENDANT'S GUILT ARE NOT SUFFICIENT TO AUTHORIZE A CONVICTION OF THE ACCUSED.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE

DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE IF THE STATE HAS MET ITS BURDEN OF PROOF IN THIS CASE.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS,

PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE

OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

CRIMINAL INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, THE STATE MUST ALSO PROVE CRIMINAL INTENT. FOR A PARTICULAR CRIME, THE MENTAL STATE REQUIRED MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. THE STATE MUST PROVE CRIMINAL INTENT BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE FACTS OF THE CASE. THERE IS NO WAY TO PROVE CRIMINAL INTENT TO A MATHEMATICAL CERTAINTY, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE

EXISTED. THIS IS HOW YOU DETERMINE WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT EVIDENCE. INTENT MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE OR BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE OF CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED IN THIS CASE.

MURDER

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 CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS 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 OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY

OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

THE DEFENDANT IS CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM ARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME OR THE ATTEMPT TO COMMIT A VIOLENT CRIME.

A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL, IS DESIGNED TO, OR MAY BE READILY CONVERTED TO EXPEL A PROJECTILE.

IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME OR AN ATTEMPT TO COMMIT A VIOLENT CRIME, YOU MUST FIRST FIND THE

DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR ATTEMPTING THE COMMIT A VIOLENT CRIME.

MURDER IS DEFINED AS A VIOLENT CRIME.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE WEAPON FURTHERED, ADVANCED, OR HELPED IN THE COMMISSION OF THE CRIME.

DEFENSE OF OTHERS

THE DEFENDANT HAS RAISED THE DEFENSE OF OTHERS. UNDER THE LAW OF SELF-DEFENSE, THE DEFENDANT MAY TAKE ANOTHER'S LIFE IN THE DEFENSE OF OTHERS. SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. ON

THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

THE RIGHT TO INTERVENE TO PROTECT ANOTHER PERSON IS SUBJECT TO THE SAME RIGHTS AND LIMITATIONS AS THE RIGHT OF SELF-DEFENSE. THE DEFENDANT MAY TAKE THE LIFE OF PERSON WHO ASSAULTS A FRIEND, RELATIVE, OR BYSTANDER IF THAT FRIEND, RELATIVE, OR BYSTANDER WOULD HAVE HAD THE RIGHT OF SELF-DEFENSE.

ALL OF THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-DEFENSE. TO SHOW THAT THE PERSON BEING DEFENDED HAD THE RIGHT OF SELF-DEFENSE, IT MUST FIRST BE SHOWN THAT THE PERSON BEING DEFENDED AND THE DEFENDANT WERE BOTH WITHOUT FAULT IN BRINGING ON THE DIFFICULTY, THAT THE PERSON BEING DEFENDED IS IN IMMINENT DANGER, AND THAT THE

DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY OF THE PERSON BEING DEFENDED THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR INSTANCE. IF THE CONDUCT OF THE PERSON DEFENDED OR THE DEFENDANT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, INITIATE A DEADLY ASSAULT, THE PERSON WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT HAVE THE RIGHT OF SELF-DEFENSE *UNLESS* THE INITIAL AGGRESSOR DECIDED TO WITHDRAW FROM THE CONFLICT AND COMMUNICATED THAT DECISION TO THE OTHER PARTY. THE DECISION TO WITHDRAW FROM THE CONFLICT CAN BE COMMUNICATED BY WORDS OR CONDUCT. THEREFORE, THE DEFENDANT WOULD ACQUIRE THE RIGHT TO USE DEADLY FORCE IN DEFENDING THAT PERSON. WHEN A PERSON IS JUSTIFIED UNDER THE LAW OF SELF-DEFENSE IN FIRING THE FIRST SHOT, HE IS JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT THE DANGER TO HIS LIFE AND BODY HAS CEASED.

IN DECIDING WHETHER THE PERSON DEFENDED ACTUALLY WAS, OR THAT THE DEFENDANT ACTUALLY BELIEVED THE PERSON WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION, AGE, AND CHARACTERISTICS OF THE PARTIES.

COPY OF CHARGE

I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS IN WRITTEN FORM. DURING YOUR DELIBERATIONS, YOU MAY REFER TO MY INSTRUCTIONS TO GUIDE YOUR DECISION-MAKING. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND MAY NOT FOLLOW SOME AND IGNORE OTHERS. PLEASE RETURN THE COPY OF THE INSTRUCTIONS TO THE COURT AT THE TIME YOUR VERDICT IS RENDERED.

JURY VERDICT

LADIES AND GENTLEMEN, YOUR VERDICTS MUST BE A UNANIMOUS ONE. MADAME FOREPERSON, WHEN THE JURY AGREES ON THE

VERDICTS, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE DOOR OF YOUR JURY DELIBERATION ROOM TO SIGNAL THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

10/18/17

WITNESSES

J Art Taylor

Pickens County Sheriff's Office

7/17/2015

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

SSN: 270-66-6294

DOB: 9/6/1968

ACTION OF GRAND JURY

TRUE BILL

Date DEC 08 2015

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-39-2275
JBC

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 08 2015 TERM 2015

THE STATE

vs.

JOHN WILLIAM MCCARTY

Indictment for

0116

MURDER

VIOLATION § 16-03-0010, 0020

Certified Copy

Clerk of Court
Pickens County, SC
Dated 12/17/15

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on DEC 0 8 2015 the Grand Jurors of Pickens County present upon their oath:

That JOHN WILLIAM MCCARTY did in Pickens County, on or about the 15th day of July, 2015, unlawfully and with malice aforethought kill MITCHELL AARON BRADLEY, DECEASED by means of gunshot, and that MITCHELL AARON BRADLEY, DECEASED died as a proximate result thereof. This is in violation of §16-3-10 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 BAR # 78744

566

STATE OF SOUTH CAROLINA) **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF Pickens)

STATE VS.) INDICTMENT/CASE#: 2015GS3902275

John W Mccarty) A/W#: 2015GS3902275

AKA:) Date of Offense: 7/15/2015

Race: WHITE Sex: M Age: 49) S.C. Code § : 16-03-0010, 0020

DOB: [redacted] SS#: [redacted]) CDR Code #: 0116

Address: [redacted])

City,State,Zip: ~~Easley, SC 29681~~ Liberty SC 29657) **SENTENCE SHEET**

DL#: [redacted] SID#:) 30/life

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder / Murder

in 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) ☐ §17-25-45

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: [signature]

Cleveland, Baker	78744 SC Bar#	Defendant	NEWTON, ROBERT	08893 SC Bar#

WHEREFORE, the Defendant is commited 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: ______

☒ 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. 835 days

☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

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, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Harold P. Welborn, Jr.

Court Reporter: Teresa Johnson

Presiding Judge [signature]

Judge Code: 2118

Sentence Date: 10/18/17

SCCA/217 (07/2016)

WITNESSES

J Art Taylor

Pickens County Sheriff's Office

7/17/2015

ARREST WARRANT NUMBER

REF: 2015A3910500367

ACTION OF GRAND JURY

TRUE BILL

Date DEC 0 8 2015

[signature]

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-39- 2276

JBC

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

DEC 0 8 2015 **TERM 2015**

THE STATE

vs.

JOHN WILLIAM MCCARTY

Indictment for

0549

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-23-0490

Certified Copy

[signature: Harold P. Wallace]

Clerk of Court

Pickens County, SC

Dated 12/17/15

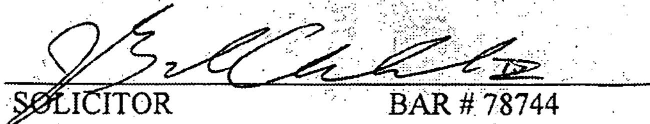
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on DEC 08 2015 the Grand Jurors of Pickens County present upon their oath:

That JOHN WILLIAM MCCARTY did in Pickens County, on or about the 15th day of July, 2015, 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 BAR # 78744

STATE OF SOUTH CAROLINA) **IN THE COURT OF GENERAL SESSIONS**

569

COUNTY OF Pickens

STATE VS. INDICTMENT/CASE#: 2015GS3902276

John William Mccarty

A/W#: 2015A3910500367

AKA:

Date of Offense: 7/15/2015

Race: WHITE Sex: M Age: 49

S.C. Code § : 16-23-0490

DOB: [redacted] SS#: [redacted]

CDR Code #: 0549

Address: [redacted]

City,State,Zip: Liberty, SC 29657-9794

DL#: [redacted] SID#:

SENTENCE SHEET

*CDL Yes ☒ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

5 yrs

TO: Weapons / Poss. Weapon During Violent Crime

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: [signature]

Cleveland, Baker 78744 SC Bar# | Defendant | NEWTON, ROBERT 08893 SC Bar#

WHEREFORE, the Defendant is commited 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 ___ 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. 825 days

☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
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§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP

___ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E begining

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, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Harold P. Welborn, Jr.

Court Reporter: Teresa Johnson

Presiding Judge: [signature]

Judge Code: 2169

Sentence Date: 10/18/17

SCCA/217 (07/2016)

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 13th day of June, 2019.

RECEIVED
JUN 13 2019
SC Court of Appeals