

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Georgetown County

Honorable Paul M. Burch, Circuit Court Judge

S.C. SUPREME COURT

DOMINIC A. LEGGETTE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001793

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Leggette's directed verdict motion when the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)?

STATEMENT OF THE CASE

On November 12, 2008, the Georgetown County Grand Jury indicted Dominic Alexander Leggette on the charges of murder and assault and battery with intent to kill (ABWIK). On March 29 – April 1, 2010, Leggette proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. He was represented by Scott Hixson, and the state was represented by Ronald Hazzard. The jury found Leggette guilty of the lesser charge of voluntary manslaughter and assault and battery of a high and aggravated nature (ABHAN). Judge Culbertson sentenced Leggette to thirty years on the voluntary manslaughter and ten years on the ABHAN. R. 274, ll. 15 – 25; R. 275, ll. 1 – 12. Leggette's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in denying Leggette's directed verdict motion when the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998).

Dominic Leggette lived in the Uptown section of Andrews, South Carolina. Al Ingram and Antonio Tisdale were from the Jones section of Andrews. The two groups did not get along according to Al Ingram, one of the victims who was shot in the foot. R. 19, ll. 1 – 25; R. 70, ll. 1 – 25; R. 71, ll. 1 – 3. On August 13, 2008, Al Ingram and Antonio Tisdale went to hang out with their friends at the regular places including the Super Chic, a club called Blue's, and the club Carnell's which were all in close proximity of each other. R. 66, ll. 1 – 25; R. 67, ll. 1 – 25; R. 68, ll. 1 – 25; R. 69, ll. 1 – 25.

When Ingram arrived, he saw "words being exchanged between people from his side of town" and Dominic Leggette. People in Ingram's group told him Dominic Leggette was right there. When Leggette saw Ingram, Leggette started walking away towards the Super Chic according to Ingram's testimony. R. 71, ll. 1 – 25. At that point, Ingram's story was that he and Tisdale started walking towards the Super Chic to buy cigarettes. R. 72 – R. 201.

Ingram's story was that Leggette was walking in front of them. Suddenly, Leggette turned and started shooting towards Ingram and Tisdale; Ingram said Leggette fired three or four times. Ingram was hit in the foot by a bullet that ricocheted off of the ground. Ingram and Tisdale started running towards their car. R. 76 – R. 79. Tisdale collapsed in front of Blue's and Carnell's; he was shot in the chest. R. 173, ll. 1 – 25. Ingram went back and realized Tisdale was fighting for his life. R. 82 – R. 84.

Dr. Cynthia Anna Shandl, the forensic pathologist, completed the autopsy on the body of Antonio Tisdale. R. 50, ll. 1 – 25; R. 53, ll. 1 – 4. She testified that he died from a gunshot wound to the left chest. He also had a blood alcohol of 0.106, and had marijuana and nicotine in his system. R. 63, ll. 1 – 25.

Dominic Leggette testified that he and Ingram had fought in the past about a year before at the Take a Break Club concerning Ingram's treatment of Leggette's then girlfriend. A bigger fight ensued between Ingram's people and Leggette's people. The "confrontations, jumpings, and lynchings" went on throughout the neighborhood from then until the incident in August 13, 2008. Leggette's group was usually outnumbered, but they "licked their wounds and went on about their business." R. 185 – R. 190.

Leggette said that there were two altercations in the few days before the shooting incident. On Saturday, August 9, 2008, Leggette and his people were at Take a Break. Leggette and Ingram got into a physical altercation again concerning a girl. R. 191 – R. 331. Then again, on Monday, August 11, 2008, another incident where Ingram said some things to Leggette that caused Leggette to be fearful of Ingram. Leggette was aware that Ingram had weapons charge when he was only thirteen as this was common knowledge in the community. R. 195, - R. 195.

Ingram admitted on the witness stand that he served time in DJJ when he was thirteen for possession of a .22 caliber handgun. He was sixteen at the time of this incident on August 13, 2008. R. 91, ll. 1 – 23; R. 92, ll. 1 – 7.

Leggette testified that on August 13, 2008, his then girlfriend, Rhonda Brown, called him to bring her his phone charger as she needed to use it. She was at the club, Carnell's. His friend, Ron Gardner who was visiting from out of town, went with him. Leggette had

obtained a gun for protection, and he showed Gardner the gun on the way. R. 195, ll. 19 – 25; R. 196, ll. 1 – 25; R. 197 – R. 199.

When they got to Carnell's, he saw people from Jones Avenue there so Leggette moved away. He did not want a confrontation. R. 199, ll. 15 – 25. However, two people from the Jones group confronted him, and soon several of the group were around him in a semi-circle. He knew he was going to be jumped. He called his cousin, Eric Collins, to come get him. He saw Ingram and Tisdale arrive in their car, so he started walking towards the Super Chic. He heard footsteps running behind him, and heard some one say: "What's up now?" When Leggette turned, he saw Ingram's hand reaching for something in his waist. Leggette was scared from all that had happened so he thought Ingram was reaching for a gun. Leggette then pulled out his gun and started shooting. He shot two or three times. R. 200, ll. 1 – 25; R. 201, ll. 1 – 25; R. 202, ll. 1 – 21.

Leggette took off running, and left Andrews. He did not know Tisdale died until he was arrested. R. 202, ll. 22 – 25; R. 203, ll. 1 – 16. Leggette heard that the U.S. Marshal was looking for him so he called the marshal and turned himself in. R. 203, ll. 17 – 25; R. 204, ll. 1 – 21.

Ron Gardner, who testified for the state, said he moved away from Andrews, and returned to visit on August 13, 2008. He went to visit Leggette. R. 137, ll. 10 – 25; R. 138, ll. 1 – 25; R. 139, ll. 1 – 25. He went with Leggette to take the charger to the girlfriend. Leggette showed him the gun he had on the way. R. 140, ll. 1 – 25.

When they reached Carnell's, a "bunch of people just rushed up on us out of nowhere out of the blue." Gardner said he was scared. Leggette started running; Tisdale and

Ingram started running after Leggette, and then Gardner heard gunshots. R. 141, ll. 1 – 25; R. 142, ll. 1 – 25; R. 143, ll. 1 – 25.

Gardner saw Tisdale and Ingram run back, and Tisdale collapsed in Gardner's arms. R. 144, ll. 1 – 25; R. 145, ll. 1 – 25.

Craig Jackson also testified for the state. He was at Carnell's having some drinks on August 13, 2008. He stepped outside and saw a group of about ten guys all wearing white T-shirts. He heard one of them say: "That's Dominic right there!" Ingram and Tisdale took off walking with Dominic in front of them. Jackson thought there was going to be a fight. R. 160, ll. 9 – 25; R. 161, ll. 1 – 25; R. 162, ll. 1 – 25; R. 178, ll. 1 – 25.

Jamar Mitchum, brother of Antonio Tisdale, testified for the state that he was at Blue's and Carnell's when Antonio was shot. His testimony was that he saw Dominic Leggett walk by Blue's, where Mitchum was, on his way to meet a girl. Ingram and Tisdale decided at that time to walk to Super Chic to buy cigarettes. Ingram and Tisdale were walking behind Leggette. R. 150, ll. 1 – 25; R. 151, ll. 1 – 25. Mitchum heard shots fired. Then Tisdale came running back down the street, and told Mitchum that Dominic shot him. R. 152, ll. 1 – 7.

Steven Brown, investigator with the Fifteenth Solicitor's Office, testified that Leggette did not have a concealed weapons permit. R. 159, ll. 11 – 25; Supp. R. 1, ll. 1 – 19.

At the close of the state's case and again at the close of the defense case, defense counsel made two motions for a directed verdict. The first motion was based on the insufficiency of the evidence to prove the charge of murder against Leggette as no evidence of malice aforethought was admitted. The second motion for a directed verdict was based on the fact that the state did not disprove self-defense as was required pursuant to State v.

Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). R. 183, ll. 1 – 25; R. 184, ll. 1 – 24; R. 205, ll. 23 – 25; R. 206, ll. 1 – 4.

The judge denied both motions both times. R. 184, ll. 16 – 22; R. 206, ll. 1 – 4.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006).

When this Court reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the non-moving party. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). When ruling on a motion for directed verdict, the trial judge is concerned with the existence of evidence, not its weight. Id. If there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, it is the trial court's duty to submit the case to the jury. Id. In a self defense case, a directed verdict should be granted if the State fails to provide sufficient evidence to negate the self-defense claim.

The basic definition of when a person is justified in using deadly force in self-defense is comprised of four elements: (1) That he was without fault in bringing on the difficulty; (2) That he actually believed he was in imminent danger of losing his life or of sustaining serious bodily injury, or he actually was in imminent danger of losing his life or of sustaining serious bodily injury; (3) If his defense is based on his actual belief of imminent danger, that a reasonable prudent man of ordinary firmness and courage would have entertained the same belief, or if his defense is based on his being in actual and imminent danger, that the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm, or losing his own life; and (4) That he had no other probable means

of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-58, 244 S.E.2d 503, 505-06 (1978).

The State is required to disprove self-defense beyond a reasonable doubt when the issue is raised by the defendant. State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998).

Murder is statutorily defined as the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. Section 16-3-10 (2003); In the Interest of Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. Id.

No evidence was presented that Leggette went to the club intended on harming anyone. The state's witness, Gardner, testified that Leggette received the call from his girlfriend to bring her the charger. R. 140, ll. 1 – 12. When Leggette arrived at the club, he tried to leave as soon as he saw the group of people from Jones town. Leggette and Gardner testified that they were scared. Leggette was walking away and then running when Ingram and Tisdale started to pursue him. There was evidence of prior and recent physical altercations between Ingram and Leggette. Leggette knew Ingram had possessed a gun in the past. Leggette bought his own gun for protection. Leggette believed Ingram was about to pull a gun from his waistband when Leggette fired. Leggette believed his life was in danger. He testified that he knew he was about to be attacked that night at the club, and that was why he tried to leave.

Leggette addressed the court at sentencing, and said that he was sorry for what had happened but he was “scared to the point that he had to defend himself.” He said it was at the point where he thought his family would have been burying him. R. 266, ll. 12 – 25; R. 267, ll. 1 – 25; R. 268, ll. 1 – 25; R. 269, ll. 1 – 13.

The jury believed that Leggette was upset as they found him guilty of voluntary manslaughter and not murder. R. 263. Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion resulting from sufficient legal provocation. Id.; State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).


The jury struggled with the issue of guilt as seen from the numerous questions they asked, and the testimony they asked to hear again. They asked for the charges on voluntary manslaughter and self-defense again. At one point, the jury said they were at an impasse. The judge gave then an *Allen* charge and sent them back to deliberate more. Supp. R. 42, ll. 1 – 25; R. 261 – R. 262.

The evidence presented at trial was that Leggette fired his gun in self-defense. The state did not disprove self-defense. The directed verdict should have been granted.

CONCLUSION

Based on the above, the case should be remanded and a directed verdict granted, and the convictions and sentences should be reversed.

Respectfully submitted,

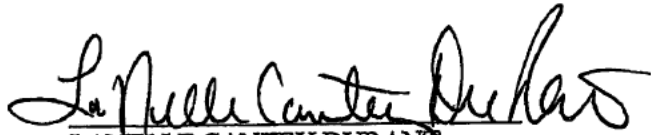

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of August, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,


v.

DOMINIC LEGGETTE,

APPELLANT

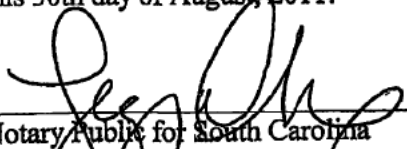
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 30th day of August, 2011.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of August, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County
 Hon. Benjamin H. Culbertson, Circuit Court Judge

The State,

Respondent,

v.

Dominic Leggette,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence the shooting was not in self-defense.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence the shooting was not in self-defense.**

Appellant contends the State failed to present any evidence to disprove the shooting was in self-defense. The testimony of the State's witnesses, when taken in the light most favorable to the State, provided ample evidence to disprove self-defense. Because it cannot be said as a matter of law that self-defense was established, it was not error for the trial court to submit the case to the jury.

Appellant maintains under State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998) he was entitled to a directed verdict of acquittal based on his acting in self-defense. The State is required to disprove self-defense, once raised by the defendant, beyond a reasonable doubt. Id. When ruling on a motion for a directed verdict, the trial judge is concerned with the existence, and not the weight, of the evidence. See State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). When the appellate court reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the State, and if there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, refusal by the trial judge to direct a verdict is not error. See Id.

Additionally, unless it can be said as a matter of law that self-defense was established, it was not error for the trial court to submit the case to the jury. State v. Strickland, 389 S.C. 210, 214, 697 S.E.2d 681, 683 (Ct. App. 2010), *cert. denied* (Apr. 7,

2011); see also, State v. Hendrix, 270 S.C. 653, 657, 244 S.E.2d 503, 505 (1978) (“[U]nless it can be said as a matter of law that self-defense was established, it was not error to submit the case to the jury.”). If the State provides evidence sufficient to negate a defendant's claim of self-defense, a motion for directed verdict should be denied. Strickland, 389 S.C. at 214, 697 S.E.2d at 683.

To establish self-defense, four elements must be present:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

Id. at 214-15, 697 S.E.2d at 683-84 (citing Hendrix, 270 S.C. at 657-58, 244 S.E.2d at 505-06).

Al Ingram, one of the victims in this case, testified he was at a nightclub with Antonio Tisdale, the deceased victim. (T.196-197; R. 70-71). The two left the nightclub, but returned a short time later. When they returned several people were exchanging words with Appellant. (T.197-198; R. 71-72). Ingram explained Appellant was from a different part of town and people from Ingram's neighborhood typically do not get along with people from Appellant's neighborhood. (T.197-198; R.71-72).

Ingram testified he did not speak to Appellant during the exchange or as Appellant left. He also stated about a year prior to this incident he was involved in a fight with Appellant but only because Appellant was helping others that he had a dispute with at the time. (T.198; 200; R. 72-74). He stated no weapons were involved in the prior dispute and everyone went home when it was over. (T.199; R. 73). Ingram testified he and Appellant had no fights and did not exchange threats prior to the incident in which Appellant shot Ingram. (T.199; R. 73).

Appellant walked away from the group and headed towards the Super Chic convenience store. Ingram and Tisdale headed in the same direction a couple minutes later to purchase cigarettes. (T.200-201; 222; R. 74-75; 96). Ingram testified at the time of the incident, Appellant was walking 10 to 15 feet in front of them. (T.206; R. 80). According to Ingram, Appellant tied something over his face like he was trying to hide his face, then reached in his waistband and pulled out a gun. Ingram testified Appellant turned around and "just started firing the gun maybe three to four times." (T.203-204; R. 77-78). Ingram testified neither he nor Tisdale had any kind of weapon. He also testified they were not within striking or punching distance of Appellant. (T.206; R. 80). Craig Jackson, an observer, also testified neither Ingram nor Tisdale had any kind of weapon or did anything to provoke the shooting by Appellant. (T.298-304; R. 166-172). Investigator Thacker, who helped process the crime scene, indicated the evidence could be consistent with an ambush style killing. (T.173; R. 47).

Ingram was shot in the ankle and Tisdale was shot in the chest. Tisdale died as a result of the gunshot to his chest. When Officer Cumbee arrived on scene, numerous

witnesses told him Appellant shot Tisdale. (T.140; R. 14). Later Ingram identified Appellant in a photo-lineup as the person who shot him and Tisdale. (T.214-215; R. 88-89). Finally, Appellant fled the area and was not taken into custody until nearly a month after the shooting when he was found near the North Carolina line by U.S. Marshals. (T.249-250; R. 123-124).

The evidence presented through the testimony of Ingram, indicates Appellant was not entitled to a directed verdict as to self-defense because the State produced evidence to show Appellant was at fault in bringing on the difficulty and had other means of avoiding any possible danger. Further, the inferences from Ingram's testimony indicate Appellant had no reasonable basis to believe he was in imminent danger.

Appellant was walking 10-15 feet ahead of Ingram and Tisdale. Neither Ingram nor Tisdale were armed with any kind of weapon and neither were within striking distance of Appellant. Appellant attempted to disguise himself, drew a weapon, turned around, and fired. The actions, according to the testimony presented by the State, were entirely unprovoked. Ingram never spoke to Appellant that night, was never in a fight with Appellant, and never threatened Appellant. As a result, there is evidence in the record sufficient to demonstrate Appellant was not without fault in bringing on the difficulty.

Additionally, Appellant had other means to avoid danger. Ingram and Tisdale were not armed and neither gave any indication of hostility towards Appellant. Appellant was at least 10-15 feet ahead of them and could have continued in the same direction he was headed. If Appellant had a reason to be fearful, he could have retreated to the Super Chic and been in a public place in which he could seek refuge and assistance. Instead, he covered

his face and began firing at an unarmed Ingram and Tisdale. As a result, there is evidence in the record sufficient to demonstrate Appellant had other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

The testimony by Ingram and the officers created a jury question regarding whether Appellant was at fault in bringing on the difficulty and had the ability to retreat to avoid any perceived danger. The State provided evidence sufficient to negate Appellant's claim of self-defense, and, as a result, the trial court properly denied the motion for directed verdict.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 12, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
Hon. Benjamin H. Culbertson, Circuit Court Judge

The State,

Respondent,

v.

Dominic Leggette,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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August 12, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Georgetown County
Hon. Benjamin H. Culbertson, Circuit Court Judge

The State,

Respondent,

v.

Dominic Leggette,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 12th day of August, 2011.



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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.

Dominic Alexander Leggette,

Appellant.

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2012-UP-203
Submitted March 1, 2012 – Filed March 28, 2012

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
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Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William M. Blich, Jr., all

of Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Dominic Alexander Leggette appeals his convictions of voluntary manslaughter and assault and battery of a high and aggravated nature, arguing the trial court erred in denying his motion for a directed verdict because the State did not disprove self-defense. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) (stating an appellate court views the evidence and all reasonable inferences in the light most favorable to the State on review of a denial of a directed verdict); id. ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) ("[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt."); id. ("A person is justified in using deadly force in self-defense when: (1) The defendant was without fault in bringing on the difficulty; (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonabl[y] prudent man of ordinary firmness and courage would have entertained the same belief . . . ; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance."); State v. Wiggins, 330 S.C. 538, 546, 500 S.E.2d 489, 493 (1998) (finding, after viewing the evidence in the light most favorable to the State, that the State presented sufficient evidence to create a jury issue regarding self-defense); State v. Long, 325 S.C. 59, 63, 480 S.E.2d 62, 63-64 (1997) (holding a trial court properly refused to direct a verdict in defendant's favor based on self-defense when the evidence of self-defense was not conclusive but raised questions for the jury); State v. Strickland, 389 S.C. 210, 214, 697 S.E.2d 681, 683 (Ct. App. 2010) ("[U]nless it can be said as a matter of law that self-defense was established, it [is] not error for the trial court to submit the case to the jury.").

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

EXHIBIT COPY

THE STATE,

RESPONDENT,

V.

DOMINIC LEGGETTE,

APPELLANT

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

APR 12 2012

SC OFFICE OF
APPELLATE DEFENSE

Opinion No. 2012-UP-203

PETITION FOR REHEARING

RECEIVED

APR 12 2012

SC Court of Appeals

The Court of Appeals affirmed the above named appellant's conviction and sentence on March 28, 2012. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Leggette argued on appeal that the trial court erred in denying his directed verdict motion because the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998).

The Court of Appeals affirmed the trial court by holding that the appellate court views the evidence in the light most favorable to the state when reviewing a directed verdict motion. The

Court also held that a trial court properly refused to direct a verdict in defendant's favor based on self-defense when the evidence of self-defense was not conclusive but raised questions for the jury; and unless it can be said as a matter of law that self-defense was established, it is not error for the trial court to submit the case to the jury.

It is respectfully submitted that the Court of Appeals misapprehended the issues.

ISSUE: Dominic Leggette lived in the Uptown section of Andrews, South Carolina. Al Ingram and Antonio Tisdale were from the Jones section of Andrews. The two groups did not get along according to Al Ingram, one of the victims who was shot in the foot. R. 19, ll. 1 – 25; R. 70, ll. 1 – 25; R. 71, ll. 1 – 3. On August 13, 2008, Al Ingram and Antonio Tisdale went to hang out with their friends at the regular places including the Super Chic, a club called Blue's, and the club Carnell's which were all in close proximity of each other. R. 66, ll. 1 – 25; R. 67, ll. 1 – 25; R. 68, ll. 1 – 25; R. 69, ll. 1 – 25.

When Ingram arrived, he saw "words being exchanged between people from his side of town" and Dominic Leggette. People in Ingram's group told him Dominic Leggette was right there. When Leggette saw Ingram, Leggette started walking away towards the Super Chic according to Ingram's testimony. R. 71, ll. 1 – 25. At that point, Ingram's story was that he and Tisdale started walking towards the Super Chic to buy cigarettes. R. 72 – R. 201.

Ingram's story was that Leggette was walking in front of them. Suddenly, Leggette turned and started shooting towards Ingram and Tisdale; Ingram said Leggette fired three or four times. Ingram was hit in the foot by a bullet that ricocheted off of the ground. Ingram and Tisdale started running towards their car. R. 76 -- R. 79. Tisdale collapsed in front of Blue's and Carnell's; he was shot in the chest. R. 173, ll. 1 – 25. Ingram went back and realized Tisdale was fighting for his life. R. 82 – R. 84.

Dr. Cynthia Anna Shandl, the forensic pathologist, completed the autopsy on the body of Antonio Tisdale. R. 50, ll. 1 – 25; R. 53, ll. 1 – 4. She testified that he died from a gunshot wound to the left chest. He also had a blood alcohol of 0.106, and had marijuana and nicotine in his system. R. 63, ll. 1 – 25.

Dominic Leggette testified that he and Ingram had fought in the past about a year before at the Take a Break Club concerning Ingram's treatment of Leggette's then girlfriend. A bigger fight ensued between Ingram's people and Leggette's people. The "confrontations, jumpings, and lynchings" went on throughout the neighborhood from then until the incident in August 13, 2008. Leggette's group was usually outnumbered, but they "licked their wounds and went on about their business." R. 185 – R. 190.

Leggette said that there were two altercations in the few days before the shooting incident. On Saturday, August 9, 2008, Leggette and his people were at Take a Break. Leggette and Ingram got into a physical altercation again concerning a girl. R. 191 – R. 331. Then again, on Monday, August 11, 2008, another incident occurred where Ingram said some things to Leggette that caused Leggette to be fearful of Ingram. Leggette was aware that Ingram had weapons charge when he was only thirteen as this was common knowledge in the community. R. 195, - R. 195.

Ingram admitted on the witness stand that he served time in DJJ when he was thirteen for possession of a .22 caliber handgun. He was sixteen at the time of this incident on August 13, 2008. R. 91, ll. 1 – 23; R. 92, ll. 1 – 7.

Leggette testified that on August 13, 2008, his then girlfriend, Rhonda Brown, called him to bring her his phone charger as she needed to use it. She was at the club, Carnell's. His friend, Ron Gardner who was visiting from out of town, went with him. Leggette had obtained a gun for

protection, and he showed Gardner the gun on the way. R. 195, ll. 19 – 25; R. 196, ll. 1 – 25; R. 197 – R. 199.

When they got to Carnell's, he saw people from Jones Avenue there so Leggette moved away. He did not want a confrontation. R. 199, ll. 15 – 25. However, two people from the Jones group confronted him, and soon several of the group were around him in a semi-circle. He knew he was going to be jumped. He called his cousin, Eric Collins, to come get him. He saw Ingram and Tisdale arrive in their car, so he started walking towards the Super Chic. He heard footsteps running behind him, and heard some one say: "What's up now?" When Leggette turned, he saw Ingram's hand reaching for something in his waist. Leggette was scared from all that had happened so he thought Ingram was reaching for a gun. Leggette then pulled out his gun and started shooting. He shot two or three times. R. 200, ll. 1 – 25; R. 201, ll. 1 – 25; R. 202, ll. 1 – 21.

Leggette took off running, and left Andrews. He did not know Tisdale died until he was arrested. R. 202, ll. 22 – 25; R. 203, ll. 1 – 16. Leggette heard that the U.S. Marshal was looking for him so he called the marshal and turned himself in. R. 203, ll. 17 – 25; R. 204, ll. 1 – 21.

Ron Gardner, who testified for the state, said he moved away from Andrews, and returned to visit on August 13, 2008. He went to visit Leggette. R. 137, ll. 10 – 25; R. 138, ll. 1 – 25; R. 139, ll. 1 – 25. He went with Leggette to take the phone charger to the girlfriend. Leggette showed him the gun he had on the way. R. 140, ll. 1 – 25.

When they reached Carnell's, a "bunch of people just rushed up on us out of nowhere out of the blue." Gardner said he was scared. Leggette started running; Tisdale and Ingram started running after Leggette, and then Gardner heard gunshots. R. 141, ll. 1 – 25; R. 142, ll. 1 – 25; R. 143, ll. 1 – 25.

Gardner saw Tisdale and Ingram run back, and Tisdale collapsed in Gardner's arms. R. 144, ll. 1 – 25; R. 145, ll. 1 – 25.

Craig Jackson also testified for the state. He was at Carnell's having some drinks on August 13, 2008. He stepped outside and saw a group of about ten guys all wearing white T-shirts. He heard one of them say: "That's Dominic right there!" Ingram and Tisdale took off walking with Dominic in front of them. Jackson thought there was going to be a fight. R. 160, ll. 9 – 25; R. 161, ll. 1 – 25; R. 162, ll. 1 – 25; R. 178, ll. 1 – 25.

Jamar Mitchum, brother of Antonio Tisdale, testified for the state that he was at Blue's and Carnell's when Antonio was shot. His testimony was that he saw Dominic Leggett walk by Blue's, where Mitchum was, on his way to meet a girl. Ingram and Tisdale decided at that time to walk to Super Chic to buy cigarettes. Ingram and Tisdale were walking behind Leggett. R. 150, ll. 1 – 25; R. 151, ll. 1 – 25. Mitchum heard shots fired. Then Tisdale came running back down the street, and told Mitchum that Dominic shot him. R. 152, ll. 1 – 7.

Steven Brown, investigator with the Fifteenth Solicitor's Office, testified that Leggett did not have a concealed weapons permit. R. 159, ll. 11 – 25; Supp. R. 1, ll. 1 – 19.

At the close of the state's case and again at the close of the defense case, defense counsel made two motions for a directed verdict. The first motion was based on the insufficiency of the evidence to prove the charge of murder against Leggett as no evidence of malice aforethought was admitted. The second motion for a directed verdict was based on the fact that the state did not disprove self-defense as was required pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). R. 183, ll. 1 – 25; R. 184, ll. 1 – 24; R. 205, ll. 23 – 25; R. 206, ll. 1 – 4.

The judge denied both motions both times. R. 184, ll. 16 – 22; R. 206, ll. 1 – 4.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006).

When this Court reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the non-moving party. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). When ruling on a motion for directed verdict, the trial judge is concerned with the existence of evidence, not its weight. Id. If there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, it is the trial court's duty to submit the case to the jury. Id. In a self defense case, a directed verdict should be granted if the State fails to provide sufficient evidence to negate the self-defense claim.

The basic definition of when a person is justified in using deadly force in self-defense is comprised of four elements: (1) That he was without fault in bringing on the difficulty; (2) That he actually believed he was in imminent danger of losing his life or of sustaining serious bodily injury, or he actually was in imminent danger of losing his life or of sustaining serious bodily injury; (3) If his defense is based on his actual belief of imminent danger, that a reasonable prudent man of ordinary firmness and courage would have entertained the same belief, or if his defense is based on his being in actual and imminent danger, that the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm, or losing his own life; and (4) That he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-58, 244 S.E.2d 503, 505-06 (1978).

The State is required to disprove self-defense beyond a reasonable doubt when the issue is raised by the defendant. State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010); State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998).

Murder is statutorily defined as the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. Section 16-3-10 (2003); In the Interest of Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. Id.

No evidence was presented that Leggette went to the club intended on harming anyone. The state's witness, Gardner, testified that Leggette received the call from his girlfriend to bring her the charger. R. 140, ll. 1 – 12. When Leggette arrived at the club, he tried to leave as soon as he saw the group of people from Jones town. Leggette and Gardner testified that they were scared. Leggette was walking away and then running when Ingram and Tisdale started to pursue him. There was evidence of prior and recent physical altercations between Ingram and Leggette. Leggette knew Ingram had possessed a gun in the past. Leggette bought his own gun for protection. Leggette believed Ingram was about to pull a gun from his waistband when Leggette fired. Leggette believed his life was in danger. He testified that he knew he was about to be attacked that night at the club, and that was why he tried to leave.

Leggette addressed the court at sentencing, and said that he was sorry for what had happened but he was "scared to the point that he had to defend himself." He said it was at the point where he thought his family would have been burying him. R. 266, ll. 12 – 25; R. 267, ll. 1 – 25; R. 268, ll. 1 – 25; R. 269, ll. 1 – 13.

The jury believed that Leggette was upset as they found him guilty of voluntary manslaughter and not murder. R. 263. Voluntary manslaughter is the unlawful killing of a

human being in the sudden heat of passion resulting from sufficient legal provocation. Id.; State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).

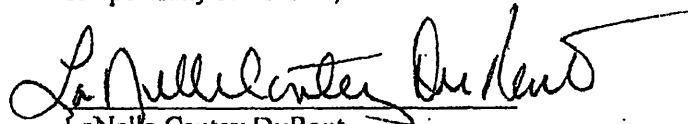
The Court of Appeals misapprehended the issue. There was evidence of recent physical altercations between Leggette and Ingram. There was testimony that Leggette was scared and was trying to avoid the altercation. He was walking away and was being followed by Ingram and Tisdale. The fact he had a gun indicated his fear as he knew that Ingram was known to carry a gun. Leggette believed his life was in danger. The state did not disprove these factors.

The evidence presented at trial was that Leggette fired his gun in self-defense. The state did not disprove self-defense. The directed verdict should have been granted.

In State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), the Supreme Court reversed Dickey's conviction for voluntary manslaughter by finding that the defendant shot the victim in self-defense, and the state failed to disprove the elements of self-defense beyond a reasonable doubt. The Court found that for the purposes of determining whether the defendant acted in self-defense, the defendant has the right to act on appearances, even if his belief is ultimately mistaken.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its rulings.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

This 12th day of April, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

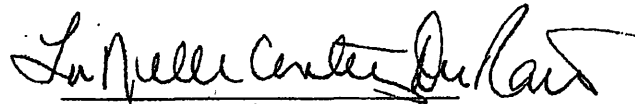
V.

DOMINIC LEGGETTE,

APPELLANT

CERTIFICATE OF SERVICE

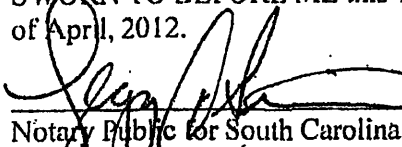
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of April, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of April, 2012.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The South Carolina Court of Appeals

The State, Respondent

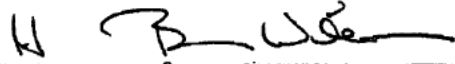
v.


Dominic Leggette, Appellant.

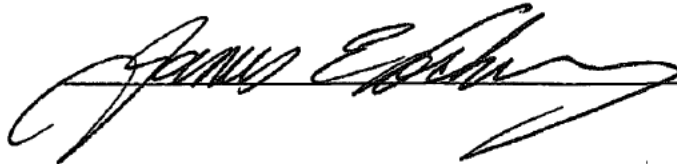
Appellate Case No. 2010-157506

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2012-UP-203 (S.C. Ct. App. filed 3/28/2012)

08-GS-22-00944, 00945

THE STATE,

RESPONDENT,

V.

DOMINIC LEGGETTE,

APPELLANT

APPELLATE CASE NO. 2012-212381

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on May 29, 2012.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the trial court in denying Leggette's directed verdict motion when the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)?

STATEMENT OF THE CASE

On November 12, 2008, the Georgetown County Grand Jury indicted Dominic Alexander Leggette on the charges of murder and assault and battery with intent to kill (ABWIK). On March 29 – April 1, 2010, Leggette proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. He was represented by Scott Hixson, and the state was represented by Ronald Hazzard. The jury found Leggette guilty of the lesser charge of voluntary manslaughter and assault and battery of a high and aggravated nature (ABHAN). Judge Culbertson sentenced Leggette to thirty years on the voluntary manslaughter and ten years on the ABHAN. R. 274, ll. 15 – 25; R. 275, ll. 1 – 12. Leggette's attorney filed a notice of appeal. The Court of Appeals affirmed the conviction and sentence on March 28, 2012. State v. Leggette, Op. No. 2012-UP-203 (CT. App. filed March 28, 2012. Leggette's appellate counsel filed a petition for rehearing which was denied on May 29, 2012. This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court in denying Leggette's directed verdict motion when the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998).

Dominic Leggette lived in the Uptown section of Andrews, South Carolina. Al Ingram and Antonio Tisdale were from the Jones section of Andrews. The two groups did not get along according to Al Ingram, one of the victims who was shot in the foot during the incident. R. 19, ll. 1 – 25; R. 70, ll. 1 – 25; R. 71, ll. 1 – 3. On August 13, 2008, Al Ingram and Antonio Tisdale went to hang out with their friends at the regular places including the Super Chic, a club called Blue's, and the club Carnell's which were all in close proximity of each other. R. 66, ll. 1 – 25; R. 67, ll. 1 – 25; R. 68, ll. 1 – 25; R. 69, ll. 1 – 25.

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Ingram's story was that Leggette was walking in front of them. Suddenly, Leggette turned and started shooting towards Ingram and Tisdale; Ingram said Leggette fired three or four times. Ingram was hit in the foot by a bullet that ricocheted off of the ground. Ingram and Tisdale started running towards their car. R. 76 – R. 79. Tisdale collapsed in front of Blue's and Carnell's; he was shot in the chest. R. 173, ll. 1 – 25. Ingram went back and realized Tisdale was fighting for his life. R. 82 – R. 84.

Dr. Cynthia Anna Shandl, the forensic pathologist, completed the autopsy on the body of Antonio Tisdale. R. 50, ll. 1 – 25; R. 53, ll. 1 – 4. She testified that he died from a gunshot wound to the left chest. He also had a blood alcohol of 0.106, and had marijuana and nicotine in his system. R. 63, ll. 1 – 25.

Dominic Leggette testified that he and Ingram had fought in the past about a year before at the Take a Break Club concerning Ingram's treatment of Leggette's then girlfriend. A bigger fight ensued between Ingram's people and Leggette's people. The "confrontations, jumpings, and lynchings" went on throughout the neighborhood from then until the incident in August 13, 2008. Leggette's group was usually outnumbered, but they "licked their wounds and went on about their business." R. 185 – R. 190.

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Ingram admitted on the witness stand that he served time in DJJ when he was thirteen for possession of a .22 caliber handgun. He was sixteen at the time of this incident on August 13, 2008. R. 91, ll. 1 – 23; R. 92, ll. 1 – 7.

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At the close of the state's case and again at the close of the defense case, defense counsel made two motions for a directed verdict. The first motion was based on the insufficiency of the evidence to prove the charge of murder against Leggett as no evidence of malice aforethought was admitted. The second motion for a directed verdict was based on the fact that the state did not disprove self-defense as was required pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). R. 183, ll. 1 – 25; R. 184, ll. 1 – 24; R. 205, ll. 23 – 25; R. 206, ll. 1 – 4.

The judge denied both motions both times. R. 184, ll. 16 – 22; R. 206, ll. 1 – 4.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006).

When this Court reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the non-moving party. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). When ruling on a motion for directed verdict, the trial judge is concerned with the existence of evidence, not its weight. Id. If there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, it is the trial court's duty to submit the case to the jury. Id. In a self defense case, a directed verdict should be granted if the State fails to provide sufficient evidence to negate the self-defense claim.

The basic definition of when a person is justified in using deadly force in self-defense is comprised of four elements: (1) That he was without fault in bringing on the difficulty; (2) That he actually believed he was in imminent danger of losing his life or of sustaining serious bodily injury, or he actually was in imminent danger of losing his life or of sustaining serious bodily injury; (3) If his defense is based on his actual belief of imminent danger, that a reasonable prudent man of ordinary firmness and courage would have entertained the same belief , or if his defense is based on his being in actual and imminent danger, that the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm, or losing his own life; and (4) That he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-58, 244 S.E.2d 503, 505-06 (1978).

The State is required to disprove self-defense beyond a reasonable doubt when the issue is raised by the defendant. State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998).

Murder is statutorily defined as the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. Section 16-3-10 (2003); In the Interest of Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong. Id.

No evidence was presented that Leggette went to the club intended on harming anyone. The state's witness, Gardner, testified that Leggette received the call from his girlfriend to bring her the charger. R. 140, ll. 1 – 12. When Leggette arrived at the club, he tried to leave as soon as he saw the group of people from Jones town. Leggette and Gardner testified that they were scared. Leggette was walking away and then running when Ingram and Tisdale started to pursue him. There was evidence of prior and recent physical altercations between Ingram and Leggette. Leggette knew Ingram had possessed a gun in the past. Leggette bought his own gun for protection. Leggette believed Ingram was about to pull a gun from his waistband when Leggette fired. Leggette believed his life was in danger. He testified that he knew he was about to be attacked that night at the club, and that was why he tried to leave.

Leggette addressed the court at sentencing, and said that he was sorry for what had happened but he was "scared to the point that he had to defend himself." He said it was at the point where he thought his family would have been burying him. R. 266, ll. 12 – 25; R. 267, ll. 1 – 25; R. 268, ll. 1 – 25; R. 269, ll. 1 – 13.

The jury believed that Leggette acted without malice as they found him guilty of voluntary manslaughter and not murder. R. 263. Voluntary manslaughter is the unlawful killing

of a human being in the sudden heat of passion resulting from sufficient legal provocation. Id.; State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).

The jury struggled with the issue of guilt as seen from the numerous questions they asked, and the testimony they asked to hear again. They asked for the charges on voluntary manslaughter and self-defense again. At one point, the jury said they were at an impasse. The judge gave then an *Allen* charge and sent them back to deliberate more. Supp. R. 42, ll. 1 – 25; R. 261 – R. 262.

The Court of Appeals affirmed the trial court by holding that the appellate court views the evidence in the light most favorable to the state when reviewing a directed verdict motion. The Court also held that a trial court properly refused to direct a verdict in defendant's favor based on self-defense when the evidence of self-defense was not conclusive but raised questions for the jury; and unless it can be said as a matter of law that self-defense was established, it is not error for the trial court to submit the case to the jury.

It is respectfully submitted that the Court of Appeals misapprehended the issue. There was evidence of recent physical altercations between Leggette and Ingram. There was testimony that Leggette was scared and was trying to avoid the altercation. He was walking away and was being followed by Ingram and Tisdale. The fact he had a gun indicated his fear as he knew that Ingram was known to carry a gun. Leggette believed his life was in danger.

The evidence presented at trial was that Leggette fired his gun in self-defense. The state did not disprove self-defense. The directed verdict should have been granted.

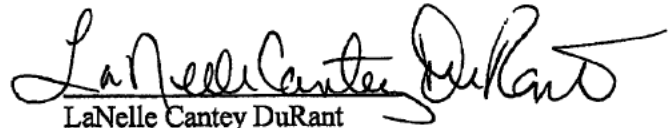
In State v. Dickey , 394 S.C. 491, 716 S.E.2d 97 (2011), the Supreme Court reversed Dickey's conviction for voluntary manslaughter by finding that the defendant shot the victim in self-defense, and the state failed to disprove the elements of self-defense beyond a reasonable

doubt. The Court found that for the purposes of determining whether the defendant acted in self-defense, the defendant has the right to act on appearances, even if his belief is ultimately mistaken.

CONCLUSION

Based on the above, certiorari should be granted, and the case remanded for a directed verdict, and the convictions and sentences should be reversed.

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive style with a large, sweeping flourish at the end.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of August, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2012-UP-203 (S.C. Ct. App. filed 3/28/2012)
08-GS-22-00944, 00945

THE STATE,

RESPONDENT,

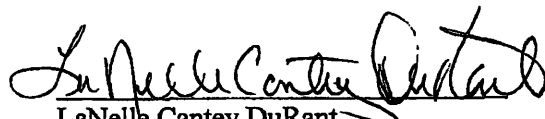
V.

DOMINIC LEGGETTE,

APPELLANT

CERTIFICATE OF SERVICE

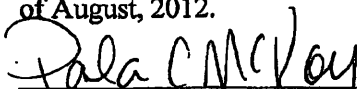
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on William M. Blicht, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and the S.C. Court of Appeals this 29th day of August, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of August, 2012.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Georgetown County
Hon. Benjamin H. Culbertson, Circuit Court Judge
Appellate Case Tracking No. 2012-212381

The State,

Respondent,

v.

Dominic Leggette,

Petitioner.

Opinion No. 2012-UP-203 (S.C. Ct. App. filed March 28, 2012)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTIONS PRESENTED

- I. The trial court properly denied Petitioner's motion for a directed verdict because the State presented ample evidence the shooting was not in self-defense.

STATEMENT OF THE CASE

The State agrees with Petitioner's procedural Statement of the Case.

ARGUMENT

I. The trial court properly denied Petitioner's motion for a directed verdict because the State presented ample evidence the shooting was not in self-defense.

The Court of Appeals correctly found the trial court did not err in denying Petitioner's motion for a directed verdict on the issue of self-defense. Petitioner contends the State failed to present any evidence to disprove the shooting was in self-defense. The testimony of the State's witnesses, when taken in the light most favorable to the State, provided ample evidence to disprove self-defense. Because it cannot be said as a matter of law that self-defense was established, it was not error for the trial court to submit the case to the jury.

Petitioner maintains under State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998) he was entitled to a directed verdict of acquittal based on his acting in self-defense. The State is required to disprove self-defense, once raised by the defendant, beyond a reasonable doubt. Id. When ruling on a motion for a directed verdict, the trial judge is concerned with the existence, and not the weight, of the evidence. See State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). When the appellate court reviews the denial of a motion for a directed verdict, it views the evidence in the light most favorable to the State, and if there is any direct or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, refusal by the trial judge to direct a verdict is not error. See Id.

Additionally, unless it can be said as a matter of law that self-defense was established, it was not error for the trial court to submit the case to the jury. State v. Strickland, 389 S.C. 210, 214, 697 S.E.2d 681, 683 (Ct. App. 2010), *cert. denied* (Apr. 7,

2011); see also, State v. Hendrix, 270 S.C. 653, 657, 244 S.E.2d 503, 505 (1978) (“[U]nless it can be said as a matter of law that self-defense was established, it was not error to submit the case to the jury.”). If the State provides evidence sufficient to negate a defendant’s claim of self-defense, a motion for directed verdict should be denied. Strickland, 389 S.C. at 214, 697 S.E.2d at 683.

To establish self-defense, four elements must be present:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

Id. at 214-15, 697 S.E.2d at 683-84 (citing Hendrix, 270 S.C. at 657-58, 244 S.E.2d at 505-06).

Al Ingram, one of the victims in this case, testified he was at a nightclub with Antonio Tisdale, the deceased victim. (T.196-197; R. 70-71). The two left the nightclub, but returned a short time later. When they returned several people were exchanging words with Petitioner. (T.197-198; R. 71-72). Ingram explained Petitioner was from a different part of town and people from Ingram’s neighborhood typically do not get along with people from Petitioner’s neighborhood. (T.197-198; R.71-72).

Ingram testified he did not speak to Petitioner during the exchange or as Petitioner left. He also stated about a year prior to this incident he was involved in a fight with Petitioner but only because Petitioner was helping others that Ingram had a dispute with at the time. (T.198; 200; R. 72-74). He stated no weapons were involved in the prior dispute and everyone went home when it was over. (T.199; R. 73). Ingram testified he and Petitioner had no fights, and they did not exchange threats prior to the incident in which Petitioner shot Ingram. (T.199; R. 73).

Petitioner walked away from the group and headed towards the Super Chic convenience store. Ingram and Tisdale headed in the same direction a couple minutes later to purchase cigarettes. (T.200-201; 222; R. 74-75; 96). Ingram testified at the time of the incident, Petitioner was walking 10 to 15 feet in front of them. (T.206; R. 80). According to Ingram, Petitioner tied something over his face like he was trying to hide his face, then reached in his waistband and pulled out a gun. Ingram testified Petitioner turned around and "just started firing the gun maybe three to four times." (T.203-204; R. 77-78). Ingram testified neither he nor Tisdale had any kind of weapon. He also testified they were not within striking or punching distance of Petitioner. (T.206; R. 80). Craig Jackson, an observer, also testified neither Ingram nor Tisdale had any kind of weapon or did anything to provoke the shooting by Petitioner. (T.298-304; R. 166-172). Investigator Thacker, who helped process the crime scene, indicated the evidence could be consistent with an ambush style killing. (T.173; R. 47).

Ingram was shot in the ankle and Tisdale was shot in the chest. Tisdale died as a result of the gunshot to his chest. When Officer Cumbee arrived on scene, numerous witnesses told him Petitioner shot Tisdale. (T.140; R. 14). Later Ingram identified

Petitioner in a photo-lineup as the person who shot him and Tisdale. (T.214-215; R. 88-89). Finally, Petitioner fled the area and was not taken into custody until nearly a month after the shooting when he was found near the North Carolina line by U.S. Marshals. (T.249-250; R. 123-124).

The evidence presented through the testimony of Ingram, indicates Petitioner was not entitled to a directed verdict as to self-defense because the State produced evidence to show Petitioner was at fault in bringing on the difficulty and had other means of avoiding any possible danger. Further, the inferences from Ingram's testimony indicate Petitioner had no reasonable basis to believe he was in imminent danger.

Petitioner was walking 10-15 feet ahead of Ingram and Tisdale. Neither Ingram nor Tisdale were armed with any kind of weapon, and neither was within striking distance of Petitioner. Petitioner attempted to disguise himself, drew a weapon, turned around, and fired. The actions, according to the testimony presented by the State, were entirely unprovoked. Ingram never spoke to Petitioner that night, was not involved in a fight with Petitioner the night of the shooting, and never threatened Petitioner prior to the shooting. As a result, there is evidence in the record sufficient to demonstrate Petitioner was not without fault in bringing on the difficulty.

Additionally, Petitioner had other means to avoid danger. Ingram and Tisdale were not armed and neither gave any indication of hostility towards Petitioner. Petitioner was at least 10-15 feet ahead of them and could have continued in the same direction he was headed. If Petitioner had a reason to be fearful, he could have retreated to the Super Chic and been in a public place in which he could seek refuge and assistance. Instead, he covered his face and began firing at an unarmed Ingram and Tisdale. As a result, there is

evidence in the record sufficient to demonstrate Petitioner had other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance.

The testimony by Ingram and the officers created a jury question regarding whether Petitioner was at fault in bringing on the difficulty and had the ability to retreat to avoid any perceived danger. The State provided evidence sufficient to negate Petitioner's claim of self-defense, and, as a result, the trial court properly denied the motion for directed verdict. The Court of Appeals, therefore, properly affirmed the decision of the trial court and this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 29, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
 Appeal From Georgetown County
 Hon. Benjamin H. Culbertson, Circuit Court Judge
 Appellate Case Tracking No. 2012-212381

The State,

Respondent,

v.

Dominic Leggette,

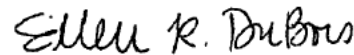
Petitioner.

PROOF OF SERVICE

I, ELLEN R. DuBOIS, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
 South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 Post Office Box 11589
 Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
 This 29th day of October, 2012.



ELLEN R. DuBOIS
 Legal Assistant
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3727

The Supreme Court of South Carolina

The State, Respondent,

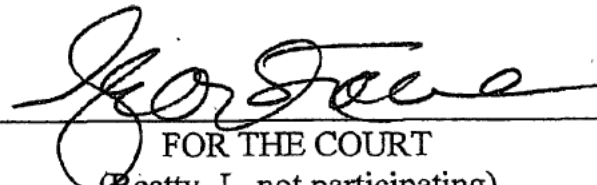
v.

Alexander Dominic Leggette, Petitioner.

Appellate Case No. 2012-212381
 Lower Court Case Nos. 2008GS2200945;
 2008GS2200944

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *State v. Leggette*, Op. No. 2012-UP-203 (S.C. Ct. App. filed Mar. 28, 2012). The petition is denied.


 _____ C.J.
 FOR THE COURT
 (Beatty, J., not participating)

Columbia, South Carolina

May 7, 2014

cc:

The Honorable Jenny Abbott Kitchings
 The Honorable Alma Y. White
 LaNelle Cantey DuRant
 William M. Blich, Jr.

RECEIVED

MAY 7 2014

SC. Ct. OF
 APPELLATE DIVISION

FORM 5

STATE OF SOUTH CAROLINA)
County of Georgetown)

IN THE COURT OF COMMON PLEAS

2015-CP-22-00521

Dominic Leggett A 340047)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION REVIEW

FILED
GEORGETOWN COUNTY, S.C.
2015 MAY 21 AM 8:57
ALMA Y. WHITE
CLERK OF COURT

INSTRUCTIONS B 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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Georgetown General Session Court
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) 1008-GS-22-944

- (b) 2008-G-S-22-945
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 4, 2010
- (b) 30 days current with 10
- (c) _____
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 Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct appeal in the Court of appeal
- ii. petition for rehearing in the Court of appeal
- iii. petition for writ certiorari, in the Court of appeal
- (b) the result in each such Court to which you appealed:
- i. Direct appeal affirmed pursuant to SCACR, Rule 215
- ii. petition for rehearing affirmed
- iii. petition for writ certiorari affirmed
- (c) the date of each such result:
- i. Direct appeal affirmed March 28, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) NA

(b) NA

(c) NA

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial Counsel

(b) Constitutional and Statutory Violation

(c) _____

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

(a) I will amend to the issues raise in question 10

(b) in support of question 11, after the Court

(c) appoint Counsel

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NA

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. NA

ii. NA

iii. NA

iv. NA

(b) the name and location of the Court in which each was filed:

i. NA

ii. NA

iii. NA

- iv. NA
- (c) the disposition thereof:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (d) the date of each such disposition:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. NA
 - ii. NA
 - iii. NA
 - iv. NA

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?

NA
NA

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

- (a) which grounds have been presented:
 - i. NA
 - ii. NA
 - iii. NA
- (b) the proceedings in which each ground was raised:
 - i. NA
 - ii. NA
 - iii. NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) this is my first step of collateral attacking my
- (b) conviction; that is the raise for such grounds
- (c) are now being raise

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ✓

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Ronald Hazzard, Georgetown public Defender
office, 203 Laurel Street, Conway, S.C. 29156
 - ii. LaNelle Cantey DuRant, Appellate Defender; South Carolina
Commission on Indigent Defense; Division of Appellate Defense
 - iii. P.O. Box 11589 Columbia, S.C. 29211-1589

(b) the proceedings at which each such attorney represented you:

- i. at trial Ronald Hazzard
Appellate courts LaNelle Cantey DuRant
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:
New trial, or vacate of convictions and sentence

20. Are you now under sentence from any other court that you have not challenged?
NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Georgetown)

VERIFICATION

I, Dominic A. Leggett, 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.

Dominic Leggett

SWORN to and subscribed before me this 15th
day of May, 2015.
Susan H. Dyer (L.S.)
Notary Public

My Commission Expires: _____ My Commission Expires
March 5, 2018

FILED
GEORGETOWN COUNTY, S.C.
2015 MAY 21 AM 8:57
ALMA Y. WHITE
CLERK OF COURT

2015-CP-22-00521

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

I, Dominica Leggett, 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:

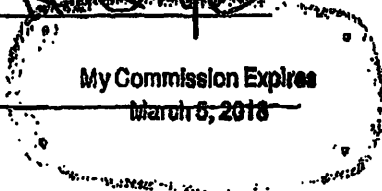
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dominica Leggett
Applicant

SWORN or affirmed to and subscribed before me this
15th day of May, 2015.

Susan H. Frye
Notary Public

My Commission Expires: March 8, 2018



FILED
GEORGETOWN COUNTY, S.C.
2015 MAY 21 AM 8:57
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)
)
)
 Dominic A. Leggette,)
 S.C.D.C. No. 340047,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-22-00521

RETURN

In response to the post-conviction relief application filed May 21, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Georgetown County Clerk of Court's orders of commitment. The Georgetown County Grand Jury indicted the Applicant at the November 2008 term of General Sessions for assault and battery with the intent to kill (2008-GS-22-00945) and murder (2008-GS-22-00944). Ronald Hazzard, Esquire represented the Applicant.

Applicant proceeded to a jury trial on March 29, 2010 and was found guilty. On April 1, 2010, the Honorable Benjamin H. Culbertson sentenced the Applicant to ten (10) years' imprisonment for a lesser included offense of assault and battery of high and aggravated nature (ABHAN) and thirty (30) years' imprisonment for a lesser included offense of voluntary manslaughter, to be served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals on April 12, 2010 by Ronald Hazzard, Esquire. A notice of appeal was also filed by fifteenth circuit solicitor on April

12, 2010. On March 28, 2012, the Court of Appeals affirmed the conviction. State v. Alexander Dominic Leggette, Op. No. 2012-212381 (S.C. Ct. App. filed April 12, 2010). Appellate defense petitioned for rehearing on April 12, 2012, and it was denied. Applicant appealed to the Supreme Court, which declined to grant the petition for writ of certiorari on May 7, 2014. The Remittitur was sent on May 15, 2014.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. I will amend to the issues raise in question 10 in support of question 11; after the court appoint counsel.”
2. Violation of due process.
 - a. “Constitutional and statutory violation.”

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant also alleges due process violations. These allegations appear to be merely recitations of his grounds for ineffective assistance of counsel. Therefore, Respondent submits these allegations are without merit and incorporates its response in Part III, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits such claims are likewise without merit. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant's trial procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

V.

The Respondent denies each allegation not expressly admitted, qualified, or explained.

Remainder of page intentionally left blank.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA KINARD
Assistant Attorney General

By:


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Feb. 23, 2016

| I N D E X | | | | | |
|-----------|---------------------|-----|-------|-----|-----|
| | WITNESS | DIR | CROSS | RED | REC |
| 1 | | | | | |
| 2 | | | | | |
| 3 | Dominic A. Leggette | | | | |
| 4 | Mr. Fowler | 5 | -- | 45 | -- |
| 5 | Ms. Kinard | -- | 38 | -- | -- |
| 6 | Ronald W. Hazzard | | | | |
| 7 | Ms. Kinard | 49 | -- | -- | -- |
| 8 | Mr. Fowler | -- | 62 | -- | -- |

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E X H I B I T S

14

| 15 | NO. | DESCRIPTION | ID | EV |
|----|-----|------------------------|----|----|
| 16 | | No exhibits submitted. | | |

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22 Exhibits retained by Clerk of Court.

23

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25

1 (The hearing commenced at approximately
2 11:09 a.m.)

3 MS. KINARD: Leggette.

4 THE COURT: Good morning.

5 THE APPLICANT: Good morning, sir.

6 THE COURT: All right.

7 MS. KINARD: Thank you, Your Honor, may it please
8 the Court. This is the matter of Dominic A. Leggette
9 versus the State of South Carolina, Case No.
10 2015-CP-22-00521. Just to clarify, this is a
11 Georgetown County case being heard here in Conway.

12 The Applicant filed his application for
13 post-conviction relief on May 21st, 2015. He's
14 currently incarcerated by orders of the Georgetown
15 County Clerk of Court. The Georgetown County Grand
16 Jury indicted him at the November 2008 term for assault
17 and battery with intent to kill and murder. He was
18 represented by Mr. Ronald Hazzard.

19 They proceeded to a jury trial on March 29th,
20 2010. He was found guilty on April 1st, 2010. The
21 Honorable Benjamin Culbertson sentenced him to ten
22 years imprisonment for the lesser included offense of
23 assault and battery of a high and aggravated nature,
24 and 30 years for a lesser included offense of voluntary
25 manslaughter to be served concurrently.

1 Mr. Hazzard filed a notice of appeal with the
2 South Carolina Court of Appeals on April 12th, 2010. A
3 notice of appeal was also filed by the Fifteenth
4 Circuit Solicitor on April 12th, 2010. On March 28th,
5 2012 the Court of Appeals affirmed his conviction.

6 Appellate defense petitioned for rehearing on
7 April 12th, 2012, and it was denied. After he further
8 appealed to the Supreme Court which declined to grant
9 his petition for writ of certiorari on May 7th, 2014, a
10 remittitur was returned on May 15th, 2014.

11 The basic allegations are ineffective assistance
12 of counsel and constitutional statutory violations.
13 The State is present and ready to proceed, the
14 Applicant is present and represented by Steve Fowler.

15 THE COURT: Mr. Fowler?

16 MR. FOWLER: Your Honor, I've spoken with my
17 client, and he is acceptable with his Georgetown County
18 case being heard here in Conway. I've also explained
19 to him to the best of my knowledge of his rights, we've
20 explained to him the issues of this being timed served
21 or not credited as time served as we go forward today.

22 And I have spoken with him very thoroughly, I
23 think, in my opinion. I've spoken with him again this
24 morning, we've gone over our case. And I would like to
25 call him at this time as our first witness.

1 THE COURT: All right.

2 MR. FOWLER: I would like to call Mr. Dominic
3 Alexander Leggette to the stand, please.

4 THE COURT: Come around and be sworn, please.

5 DOMINIC A. LEGGETTE, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat, and state your name.

8 THE APPLICANT: Dominic Leggette.

9 DIRECT EXAMINATION

10 BY MR. FOWLER:

11 Q Please spell your name, spell your name for the
12 Court, please.

13 A D-O-M-I-N-I-C, L-E-G-G-E-T-T-E.

14 Q Mr. Leggette, you were the subject of a trial in
15 Georgetown County on March 29th through April 1st,
16 2010; is that correct?

17 A Yes.

18 Q Okay. And you and I have spoken about this PCR
19 hearing; is that correct?

20 A Yes.

21 Q Okay. Now, what is your current sentence in SCDC?

22 A 30 years ran concurrently with ten years.

23 Q Okay. And what are you -- what were you charged
24 with initially?

25 A Murder and assault and battery, attempt to kill.

1 Q What did you -- what were you found by the Court
2 to be guilty of?

3 A Voluntary manslaughter and assault and battery
4 high and aggravated nature.

5 Q And that's where the 30 years and ten concurrent
6 is coming from?

7 A Yes, sir.

8 Q Is that correct?

9 A Yes, sir.

10 Q Okay. Now, in your conversations with me you
11 stated that there were amended stipulations that did
12 not meet murder; is that correct?

13 A Yes, sir.

14 Q Okay. Can you explain that to the Court?

15 A I didn't murder -- murder and voluntary
16 manslaughter are two different -- they are two
17 different things. But they are basically like on the
18 same -- like on the same acts. Murder, when you murder
19 someone, it's like you're going with malice and you're
20 like --

21 MS. KINARD: Your Honor, I'm going to object to
22 this legal testimony by the Applicant.

23 MR. FOWLER: Your Honor, he's explaining how he
24 was described and his understanding what of he was
25 charged with and his own charges. He's explaining to

1 the Court what his understanding of what he was
2 sentenced to, Your Honor.

3 THE COURT: Well, don't -- in this proceeding you
4 don't need to explain to me what the law is. Now, if
5 you feel that there was ineffective assistance of
6 counsel because of a misunderstanding of the law or
7 whatever, then you could go into that. But you don't
8 have to -- well, counsel, I guess the best way to
9 handle it is if you will redirect the question, so
10 that's sustained.

11 MR. FOWLER: I'll rephrase it, Your Honor.

12 THE COURT: Okay.

13 Q Did your attorney go over with you what you were
14 being charged with at that trial of March through April
15 of 2010?

16 A Yes, sir.

17 Q Okay. And you felt like he explained to you what
18 you were being charged with initially; correct?

19 A Yes, sir.

20 Q But you're also saying that you felt after the
21 fact that you found out there were some stipulations
22 that were not coercive with what you were charged --
23 what you were found guilty of; correct?

24 A Yes, sir.

25 Q Okay. Now, I'm not asking you for a legal

1 definition as we discussed earlier, but what I am
2 asking you is on your subsequent research, did you find
3 out that there were some discrepancies of what you
4 attorney told you you were being charged with or what
5 you were found guilty of?

6 A Yes. I felt there -- I felt that there was some
7 discrepancies between what I was charged with initially
8 and what the jury charged me of.

9 Q Okay. So you did feel like there was a change
10 there from what you were charged with and what the jury
11 came back with?

12 A Yes, sir.

13 Q And you've stated to me, I think, that you -- that
14 the voluntary manslaughter did not warrant the number
15 of years that you got; correct?

16 A Yes, sir.

17 Q Why do you say that?

18 A Currently I'm incarcerated at SCDC. I have been
19 in SCDC about eight years now, about six years now, not
20 counting the county time. And I have been in just
21 about every level three in SCDC. And in my researching
22 cases and meeting other people through SCDC, I am the
23 only person that I have ran across that got that much
24 time.

25 And individuals, different persons have actually

1 went to trial, but none of them have exceeded or
2 reached 30 years.

3 Q So you felt like what you were convicted of does
4 not warrant the 30 years; correct?

5 A Yes, sir.

6 Q Okay, very good. Did your attorney go over that
7 with you in terms of why you received 30 years as
8 opposed to some other sentence for involuntary
9 manslaughter?

10 A No, sir.

11 Q Okay. So you basically had to do that research on
12 your own; correct?

13 A Yes, sir.

14 Q Okay. Now, when we've discussed this, we've
15 discussed it several times, you said that even after
16 the jury trial of March to April 2010, you went back
17 and you found some things out. You dug into it, I
18 think was your words, you dug into it and found some
19 additional information that you were -- have problems
20 with; correct?

21 A Yes, sir.

22 Q What are some of those issues -- and we'll go over
23 in order, I guess, of our discussion -- but what are
24 some of those issues that you feel caused an
25 ineffective assistance of counsel in this matter?

1 A Okay. I feel like counsel was ineffective, was
2 not -- by not putting a character witness on the stand.
3 Because a character witness would have told the Courts
4 and would have proved to the Courts that law
5 enforcement was creating perjury when they were on the
6 stand, because there were altercations that were going
7 on since 2006.

8 And if police are called, they have to have
9 dispatch records, which I have been trying to get, but
10 it's been hard. They have to have dispatch records
11 when the police are called. And I know that they have
12 to save these things, so I feel like that right there
13 was a ground for ineffective assistance of counsel.

14 Q So you, just to repeat, you hit it there at the
15 end, you felt that was a ground for ineffective
16 assistance of counsel?

17 A Yes, sir.

18 Q Okay.

19 A I also believe that counsel was ineffective
20 because the State made it seem like it was an ambush
21 killing. All of the witnesses, all of the State's
22 witnesses -- because I wasn't the only defense
23 witness -- all of the State's witnesses describe me as
24 leaving the scene with the two victims coming behind
25 me.

1 Now, with them, with the two victims coming behind
2 me, me leaving the scene, how could I ambush kill them?

3 Q So when you say you were leaving -- so your
4 attorney basically did not go into that in the trial,
5 or how does that relate to the ineffective assistance
6 of counsel?

7 A He went into it. But I feel like he failed to ask
8 the paleontologist like her -- her, what's the right
9 word, proximity of like where the shot took place, like
10 how close were we, how close. Because the State did
11 it, they asked somebody how close, and that's when the
12 ambush came out, they tried to make it seem like it was
13 an ambush.

14 Q So basically what I'm getting from you is you're
15 trade the State tried to portray it as an ambush
16 killing, but it was also you were running away from the
17 scene; correct?

18 A Correct.

19 Q So there was a discrepancy there; right?

20 A Yes, sir.

21 Q Did your attorney go into that discrepancy in the
22 trial or not, or how was he deficient in portraying
23 those issues? You said it was an ambush -- you were
24 being -- the State was saying you were ambush killer,
25 but then on the other hand, there's also evidence

1 potentially that you were running away from the scene.
2 So was that going into a trial, in your opinion, well
3 enough?

4 A No, it wasn't.

5 Q Why not?

6 A Because you can -- when you -- you speaking of --
7 I'm speaking of self-defense, that's what I plead, I
8 went for self-defense. For the State to arise ambush
9 killing, an ambush -- I'll credit myself, I'm not the
10 smartest man in the world, but I know that an ambush is
11 like to lie and wait for someone. And had -- none of
12 the State witnesses proved that I tried to try lie and
13 wait. All of them said that I was leaving. That's why
14 I'm like -- I was like, how can you lie and -- to lie
15 and wait, that didn't compliment what we were standing
16 on.

17 Q So you felt like there was a discrepancy in terms
18 of being portrayed as an ambush killer and perhaps
19 getting sentenced for that; whereas opposed to all the
20 State's witnesses, you said, said you were running
21 away; correct?

22 A Yes, sir.

23 Q Very good. You've mentioned a couple things in
24 this ineffective assistance of counsel. What else do
25 you have that you think is relevant here?

1 A Counsel was ineffective by not calling Sheron
2 Magee to the stand.

3 Q Okay. And let's start going into our
4 conversations and kind of going through some of this.
5 You said Sheron, who is Sheron Magee?

6 A Sheron Magee is a -- he's a member of the west
7 side, west side, Jones Avenue approximate -- he from
8 the other side of town, he from the West Andrews end of
9 town, Jones Avenue end of town.

10 Q But now, how does he relate to this case; was he a
11 State's witness, or was he a defense witness or how
12 is --

13 A He was originally a State's witness.

14 Q Okay.

15 A But his statement was so damaging that the State
16 did not use him.

17 Q Okay. Did your attorney go into that, him being a
18 State witness and then eventually not being called by
19 the State in court, or how did that go?

20 A Not that I recall.

21 Q Okay. So you're saying that Sheron Magee said
22 that -- had statements that were potentially helpful to
23 you; correct?

24 A Sheron Magee in his statement that -- in his
25 statement that the lawyer showed me, he said that he

1 knew of Al Ingram and --

2 MS. KINARD: Objection, hearsay.

3 Q Is that in the transcript?

4 A It's in the transcript -- no, it's not in the
5 transcript.

6 Q Okay.

7 MR. FOWLER: I apologize, Your Honor, I'm sorry.

8 THE COURT: All right.

9 Q But you're saying Sheron Magee was a potentially
10 helpful witness to you; correct?

11 A Yes.

12 Q Was he ever interviewed by your attorney?

13 A Not that I know.

14 Q Was there ever a statement given to you -- you
15 indicated that he was a -- he had a statement or
16 something out there. Did you ever get a copy of that
17 statement?

18 A No, sir.

19 Q Okay. But did -- based on your knowledge, he gave
20 a statement to the State; correct?

21 A Yes, sir.

22 Q So you never received a document stating what the
23 substance of his statement was; correct?

24 A Yes, sir.

25 Q You never saw that; right?

1 A Yes.

2 Q And also, he was not called at trial as a witness
3 for you by your counsel; correct?

4 A Yes, sir.

5 Q And you felt like he had a -- he could have been
6 very helpful to you in this matter?

7 A Yes, sir.

8 Q And just to clarify, once more, how -- generally
9 how do you feel like he could have been helpful to you?

10 A Okay.

11 Q He had a statement that would --

12 A He had a statement, his statement was so damaging
13 that the State didn't use him. So I automatically feel
14 as if -- if the State didn't use him and I'm on trial,
15 then that's damaging.

16 Q So you felt -- not to put -- but you felt that was
17 a card that could have been played in your favor that
18 was not played; correct?

19 A Correct. And, to be honest, I really -- excuse
20 me. I'm having a little difficulty here because --
21 excuse me, Your Honor. I'm having a little difficulty,
22 Your Honor, because as of currently I do not have my
23 entire Rule 5. I have asked for it. He has a copy of
24 it right there. And I have not had my entire Rule 5.

25 Q Well --

1 A And that right there would, if I had my entire
2 Rule 5, the statement would have been induced into
3 that.

4 MR. FOWLER: Well, let -- I know you addressed the
5 judge, but may I continue my line of questioning, Your
6 Honor?

7 THE COURT: Sure.

8 MR. FOWLER: Okay.

9 Q Let's go into that. You're basically going on
10 your own knowledge of what Sheron Magee could have
11 told; correct?

12 A Yes, sir.

13 Q All right.

14 MR. FOWLER: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes.

17 Q You provided this to me earlier; correct?

18 A Yes, sir.

19 Q Okay. What is that?

20 A This is a legal envelope from the public
21 defender's of Horry County.

22 Q Okay. And what's the date on it received?

23 A Date received, August 12th, 2014.

24 Q Okay. Now, what -- and let me show this to
25 opposing counsel. Okay. Now, you're saying this

1 document was the first time you saw your discovery?

2 A No, it wasn't the first time I saw my discovery.

3 But as of currently, I still don't have my entire Rule
4 5.

5 Q Okay. So let's get this straight and let's be
6 clear on this. Did you request from your attorney your
7 full Rule 5 by the time of the trial in March, starting
8 in March 2010?

9 A Yes, sir.

10 Q Okay. So before trial you asked for your complete
11 Rule 5 discovery; correct?

12 A Yes, sir.

13 Q Did you receive by March 29th, 2010, your complete
14 Rule 5 discovery?

15 A No, sir.

16 Q Okay. Well, why did your attorney allow you to go
17 forward with that trial or without you receiving your
18 complete discovery? Why did you go --

19 A He probably felt -- really, he probably felt
20 like -- he probably felt confident that we would win
21 because self-defense was established.

22 Q Did you ask your attorney before March of 2010 for
23 the -- I might have asked this before, and I
24 apologize -- but you asked before the trial, but you
25 did not receive it?

1 A Yes.

2 Q And you felt -- how did you feel not having your
3 discovery and yet going to trial in March of 2010 on
4 this matter, why did you do that?

5 A It was hard. It was hard. But I had done spent
6 19 months in the county. I was -- I was tired, I had
7 just had a baby, my daughter was two. And I was really
8 ready to go home.

9 Q So the discovery, you basically put your hopes in
10 your attorney saying that he knew what he was talking
11 about; correct?

12 A Yes. Yes, sir.

13 Q All right. Now, going back to this August 12th,
14 2014 addressed to you, you were still asking for your
15 discovery by August of 2014; correct?

16 A Yes, sir.

17 Q Have you to this day received your full discovery
18 packet from your attorney?

19 A No, sir.

20 Q In your own words, why have you not received your
21 own -- why have you not received that information from
22 your attorney?

23 A Currently, to be honest, I really don't know. I
24 don't want to just openly lie. I remember him telling
25 me something that he didn't have it. In that paper --

1 in the paperwork that I gave you, it's a letterhead in
2 the front of it.

3 Q All right.

4 A It's a letterhead in the front of it, and it
5 states, I don't have it, I had to get it out of
6 records, or something of that nature.

7 MR. FOWLER: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 Q Is this the document you're referring to?

11 A Yes, sir.

12 Q Okay. And what's the date of that letter?

13 A August 11, 2014.

14 Q Okay. And basically what does the letter say?

15 A It says, Dear Mr. Leggette, This office is a
16 recipient of your letter to Mr. Hazzard. Enclosed
17 please find paperwork from your case. This is not the
18 full discovery. I am waiting to be pulled from the
19 records department due to its age. Once I receive the
20 entire file, I will send you a copy of discovery in
21 full.

22 Q Okay. And who is it signed by?

23 A Joey E. Deboche.

24 Q Okay. And what's his title?

25 A Paralegal.

1 Q With the -- and this is the fifteenth?

2 A The Fifteenth Circuit Public Defender's office.

3 Q Okay. So by still in August of 2014 you were
4 asking for your full discovery file; correct?

5 A Yes, sir.

6 Q And you were still being told in August of 2014
7 that you did not get your full discovery file; right?

8 A Yes, sir.

9 Q Well, now it's May 2016. Has the public
10 defender's office of Horry County and the Fifteenth
11 Circuit provided you your full discovery?

12 A No, sir.

13 Q Okay. So you still don't know what's in that full
14 packet of discovery; is that correct?

15 A Yes, sir.

16 Q Okay. Do you think it's important to have your
17 discovery before you go to trial or before you go to
18 any of these matters?

19 A Yes, sir. It's entirely important.

20 Q And you have still continued your best efforts to
21 try to get that discovery; correct?

22 A Yes, sir.

23 Q Okay. Do you feel like that was a deficiency of
24 your attorney not having the full discovery before the
25 March 2010 trial?

1 A Yes, sir.

2 Q Okay. And do you still feel like it's a
3 deficiency that as of May 2016, according to you, you
4 don't have the full file?

5 A Most definitely, sir.

6 Q Okay. Let's talk a little bit about the trial
7 starting in March of 2010. You indicated to me that
8 there was a -- well, you stated to me there was a
9 discrepancy in the jury, correct, in terms that the
10 jury, there was somebody on the jury that knew somebody
11 in the audience; is that correct?

12 A Yes, sir.

13 Q Okay. Tell me a little bit about that situation.

14 A I think the jury was starting to deliberate. And
15 they came off of break, and one of the jurors so
16 happened to look behind the prosecution table. And all
17 of a sudden today, out of all the days that we have
18 been in trial, he spotted the victim -- the deceased
19 victim's father, which he been there from the
20 beginning.

21 He said the deceased victim's father is a coworker
22 of his and that he would like to be excused from the
23 trial. And I was -- I was saying -- I was saying at
24 that time and I say at this time, I feel that that
25 wasn't right. They moved to seat the alternate, but it

1 wasn't right because the jury was already pushing their
2 views off on other jury members. And I don't have the
3 ability to understand or know what they was talking
4 about in the deliberating room.

5 MR. FOWLER: Okay. May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, sir.

8 Q Okay. What I'm going to show you is pages 426 --
9 well, you can tell me, but basically it's from the
10 transcript of record from March 2010. Can you read
11 starting at line 15 on page 426, can you read that.
12 From where it says, the Court.

13 A Start with line 15?

14 Q Yes, sir.

15 A The Court: All right, this is from juror 111.
16 Francis W. Robert said, after lunch we came in, I seen
17 the Court in the courtroom. His last name is Mitchum.
18 And one of the witness' last name is Mitchum. I do not
19 know if they are related, I just want the Court to be
20 aware.

21 So eventually when he came back after lunch, he
22 saw a coworker that he may know, now I have the
23 impression, that was related to one of the witnesses.
24 Do we need any questioning, or are you all satisfied
25 that he is not going to be influenced by that?

1 Q Okay. So was this kind of shocking to you that
2 there was a jury member who knew somebody who was in
3 the audience of the courtroom?

4 A Yes, sir.

5 Q Okay. And this is on page 426, so it's fairly
6 deep in the trial; correct?

7 A (Nodding.)

8 Q Do you feel like this Francis Roberts -- excuse
9 me. Do you feel like this juror who saw a coworker's
10 family member or the connection, do you feel like that
11 could be problematic?

12 A Yes, sir. Because the coworker that he's speaking
13 on, he's speaking on the deceased victim's father. He
14 was sitting behind the prosecutor's desk from the
15 beginning of the trial. The man, he was there like
16 every day of trial as well as my father was there every
17 day of trial.

18 Q Okay. Now, it was -- the juror was eventually
19 replaced with an alternate; correct?

20 A Yes, sir.

21 Q But you do feel like by that time of the trial
22 that it was spoiled -- well, you tell me, do you feel
23 like it was a spoiled jury by that time because of that
24 influence?

25 A Yes, sir.

1 Q Okay. And just to reiterate, why do you feel like
2 at that point of trial that you should have had a -- at
3 that point of the trial, what were the damages that a
4 juror like that who knew -- who had a relationship
5 apparently could have done to your case; could it have
6 hurt your case?

7 A Yes, sir.

8 Q Do you feel like your attorney adequately
9 addressed the issue or not, or do you feel like -- you
10 say he should have done something else?

11 A I feel like he should have moved to have the jury
12 dismissed.

13 Q Did he do that?

14 A No. He moved to sub the alternate.

15 Q Did you have any discussions with him about --

16 A I said that I felt like that it should be a new
17 jury. But we didn't, we went ahead.

18 Q Okay. But you indicated that to your attorney;
19 correct?

20 A Yes, sir.

21 Q Okay. While we're on that -- well, let's talk
22 about the trial itself. You stated that there were
23 several meetings in chambers that you were not aware of
24 or you didn't know the subject matter of. Tell me a
25 little bit about that.

1 A That's it. We was in court, and I think that it's
2 exhibit -- they say that they entered into as Court's
3 Exhibit 9. They -- my first time of finding out about
4 this was when they came in, it was like and then the
5 prosecutor said something, and he was like, hold on, I
6 want to know if that's -- what we previously talked
7 about in chambers. I was never aware that they had a
8 meeting in the chambers about this particular exhibit
9 or anything at all.

10 Q So are you saying that your defense counsel never
11 indicated -- never notified you of any issues from
12 these meetings in chambers?

13 A No, sir.

14 Q Okay. Do you feel like having that knowledge
15 would have helped you in your case?

16 A Yes, sir.

17 Q Okay. Why do you feel that way?

18 A If -- not knowing something is just as bad -- is a
19 very bad thing especially when you got your -- when you
20 in trial, you like you want -- this is like this is the
21 rest of your life. And during that time I was on trial
22 for murder. They didn't even amend the charges yet, so
23 I was on trial for murder. They had already said they
24 putting death penalty, life imprisonment 30 years.
25 This is very detrimental to my health.

1 MR. FOWLER: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir.

4 Q Okay. What I'm going to show you now is this is
5 from the transcript of the March 2010 hearing. Can you
6 read that page number.

7 A 466.

8 Q Okay. And can you read starting on line 19.

9 A All right, ladies and gentlemen, welcome back. I
10 have received the note from the jury that says that you
11 feel that you are impassive and that you're hung, but
12 that you want to know if there was any recourse or if I
13 had any suggestions that will assist you in this
14 matter.

15 Q Okay. Continue reading for a little bit, if you
16 don't mind.

17 A What the law states and what the law requires is
18 that we do have additional charge that we can give to
19 you which basically says that you state -- says that
20 you stated that you're unable to agree on a verdict in
21 this case. And as I instructed you earlier, your
22 verdict must be a unanimous verdict.

23 Now, when a matter is in dispute, it isn't always
24 easy for things -- excuse me.

25 Q Just do the best you can.

1 A Now, when a matter is in dispute, it isn't always
2 easy for even two people to agree, much less 12 people
3 to agree on one thing. 12 people make it a lot more
4 difficult. In most cases absolutely certainty cannot
5 be reached or expected. However, you have a duty to
6 make these reasonable -- to make every reasonable
7 effort to reach a unanimous verdict.

8 In doing this, you should consult with one
9 another, express your own views and listen to the
10 opinions of your fellow jurors. Tell each how -- other
11 how you feel and why you feel that way, express your
12 differences with open mind.

13 Q Okay. So --

14 MR. FOWLER: And if I may approach one more time,
15 Your Honor.

16 Q On page -- can you read what page that is of the
17 transcript.

18 A 465.

19 Q And what does it say in parenthesis on line 21, 22
20 and 23?

21 A On the record, note from the jury at 4:25,
22 whereupon the following takes place outside the
23 presence of the jury.

24 Q Okay. And then it goes into the discussion of the
25 impasse; correct?

1 A Okay.

2 Q Well, is that correct?

3 A Yes, sir.

4 Q Okay. So at 4:25 the Court receives a note that
5 there was an impasse of the jury?

6 A Yes.

7 Q Correct? And it also says that they wanted
8 further instruction; correct?

9 A Yes.

10 Q Did your attorney go into the issue of the impasse
11 with you at that time?

12 A No, sir.

13 Q Did your attorney go over the issue of the impasse
14 only with the Court at that time?

15 A Yes, sir.

16 Q But no, did -- what did he -- after the Court read
17 that, did your attorney go into the possibility of it
18 being a hung jury with you or an impasse with you at
19 that time?

20 A Possibility of there being a hung jury?

21 Q Yes.

22 A Yes.

23 Q Okay. What did he say to you at that time?

24 A I actually cannot actually recall his actual
25 words. But I remember me telling him -- I remember me

1 telling him that I would really like try to push for a
2 hung jury right now. Because they already said they
3 are impassive, and to send them back would be pushing
4 views, each other views off on each other.

5 Q So do you feel like your attorney should have
6 pushed harder for a ruling of a hung jury at that time
7 with the Court?

8 A Yes, sir. Because it's like this, if you -- if
9 you put 12 people together, 12 people from 12 different
10 lives, they got different lives, and they got different
11 things going on. Some of them have newborns, some of
12 them might have more or some less. If you take 12
13 people and you put them on a jury, and they
14 deliberating for 11 hours and they going to tell you
15 they are impassive.

16 So when they go back to the room, when they go
17 back to the back room, you come in, they come in, you
18 read the Allen charge and they go back to the back
19 room, now, it's like, you know what, I just now told
20 him, I'm not agreeing with y'all, we kind of impassive.
21 So you know what, I'm ready to go home. He guilty.

22 Q Okay. So on page 465 you said that the note from
23 the jury came in at 4:25; correct?

24 A Yes, sir.

25 MR. FOWLER: And if I may approach again.

1 Q On page -- you tell me, what page is that?

2 A 469.

3 Q And then could you read lines 12 and 13 -- well,
4 yeah, 13 and 14.

5 A 13, Whereupon, the following takes place outside
6 the presence of the jury.

7 Q I apologize, I apologize. Line 12 only.

8 A On the record verdict reached at 7:07 p.m.

9 Q So you're telling me that they came back with a
10 hung jury potentially at 4:25, and then at 7:07 they
11 reached a verdict; correct?

12 A Yes, sir.

13 Q Do you think that -- you know, that's a relatively
14 short period of time, you know, from 4:25 to 7:07. Do
15 you think that because the judge sent them back in,
16 it -- they had a shorter timeframe to come up with a
17 verdict?

18 A Yes, sir. Based on when they went back in there,
19 like I was saying, it was like -- it was basically like
20 they were asking for help because they just wanted to
21 say, well, we hung, you're going to ask for help first.
22 So when you send them back in there, okay.

23 But all of this goes through one person, it goes
24 through the foreman, it goes through the foreman, the
25 foreperson. So the foreperson can just write, say, I'm

1 going to ask for help, and we're going to go in, and
2 we're going to come back. So when we come back, so
3 when they come back, it's like how -- how can we get to
4 a unanimous decision.

5 And when the jury say you're guilty, and like
6 if -- it's what, 12 jurors. If 11 say he -- if eight
7 say he guilty and four say not guilty, then eight going
8 to be on them other four that they get a unanimous
9 decision. 4:25 to 7:07, that's a lot of time, that's
10 at lot of time to be on three or four people to be
11 getting them to switch it.

12 Q So do you feel that because your attorney didn't
13 push for a hung jury, they came back with a verdict
14 faster than they probably would have?

15 A Yes, sir.

16 Q Okay. There's a couple of other issues that you
17 mentioned to me with this. You mentioned earlier that
18 self-defense was not established?

19 A Yes, sir.

20 Q Okay. Why was it not established by your
21 attorney? Or in your opinion, why was it not
22 established by your attorney?

23 A I can't actually be on -- I can't actually be the
24 record with -- I'd be lying on record. I feel like --

25 Q I'm not asking you to lie.

1 A I feel like my attorney did good in establishing
2 self-defense. The State did not disprove self-defense.

3 Q So you're saying the State did not disprove
4 self-defense?

5 A They did not disprove self-defense.

6 Q Okay. You felt like your attorney could have done
7 anything to make that better known to the jury that the
8 State did not disprove self-defense?

9 A On different aspects, yes, sir.

10 Q How so?

11 A One of them -- one of them being the witness,
12 bringing the witness in. The witness would have -- he
13 would have basically gave them a different outlook.
14 Because throughout -- I got on the stand, self-defense
15 calls for the Defendant to get on the stand.

16 And to be honest, I told a lot of stories when I
17 first got locked up. I was scared. I did a lot of
18 miscalculating, a lot of wrong things.

19 Q But you feel like you straightened that out by the
20 time of trial; correct?

21 A Yes.

22 Q And you were forthright with your attorney;
23 correct?

24 A Yes.

25 Q Okay. And you referred to a witness in your last

1 few statements -- in your last statement; are you
2 referring to Sheron Magee or --

3 A Yes, sir.

4 Q -- some other witness? Sheron Magee?

5 A Sheron Magee. And he could have brought forth the
6 character witness, Jamie White for him. Because he had
7 staples -- that right there would have shown -- he
8 would have -- Jamie White would have told -- would have
9 told the jury of the bodily influence -- the great
10 bodily harm with him having to go get staples in his
11 head, go and get 17 staples in his head. And about
12 Ingram being in the Harbor Place projects of uptown on
13 the 11th pulling a gun on me.

14 Q And that's Jamie White as well?

15 A Yes, sir.

16 Q Now, who is Jamie White?

17 A Jamie White?

18 Q Yes.

19 A Jamie White is my brother.

20 Q Okay. And was he caught -- you felt it would have
21 been beneficial to you to have him called as a witness?

22 A Yes, sir.

23 Q Was he called as a witness?

24 A No, sir.

25 Q Why was he not called as a witness?

1 A I don't even -- I don't know. I don't think they
2 could -- I don't know.

3 Q Was he a codefendant of yours in this case?

4 A I had no codefendants, sir.

5 Q Okay. So do you feel like your attorney should
6 have called Jamie White as a witness as well?

7 A Yes, sir.

8 Q Okay. As I mentioned earlier, there's a couple
9 issues additionally on this. Who is Officer Tisdale?

10 A Officer Tisdale, that's the US Marshal that I
11 turned myself in to.

12 Q Okay. Did he read you your Miranda rights?

13 A No, sir.

14 Q Okay. How do you -- was that brought up at trial
15 that your Miranda rights were not read to you?

16 A No, sir.

17 Q Okay. But you indicated that to your attorney;
18 correct?

19 A Yes, sir.

20 Q Okay. Why was that not brought up at trial that
21 your -- or before trial that your Miranda rights were
22 not read to you?

23 A Because they interviewed -- they gave me like an
24 interview. Like I think when he was talking about
25 Miranda rights, he was probably thinking about the

1 interview. He wasn't thinking about on the arrest when
2 they initially arrested me. You know, when you're
3 initially arrested, you supposed to be read your
4 Miranda rights, and once again once you're getting
5 interviewed or interrogated by the police.

6 Q So you were not read your Miranda rights when you
7 turned yourself in to Officer Tisdale; correct?

8 A Yes, sir.

9 Q Okay. Now, who is Patrick Cumby?

10 A He's a former officer of Andrews Police
11 Department.

12 Q Okay. And is he related to you?

13 A Yes, sir. He's my first cousin.

14 Q All right. What's his role in all of this, what
15 did he do?

16 A Officer Rudy Tisdale of US Marshal service turned
17 me in to Officer Patrick Cumby on 41, Highway 41,
18 sometime -- sometime on August the 13th, sometime --
19 no, sometime on like the 9th of September.

20 Q Okay.

21 A And during that time they took me to the county.
22 During that time when they taking me to the county,
23 Officer Cumby asked me, he asked me -- he asked me a
24 question. And I stated -- I stated -- I gave him my
25 answer for him. Being a family member, I wasn't really

1 looking at him as the police capacity at the time.

2 Because I wasn't really thinking like that.

3 But the statement that I gave to Officer Cumby is
4 the statement that they used, that the State used, in
5 their closing remarks in trial.

6 Q And that's reflected in the transcript, too;
7 right?

8 A Yes, sir.

9 Q Okay. So you're saying that neither Tisdale who
10 you originally turned yourself in to nor Officer
11 Patrick Cumby read you your Miranda rights; right?

12 A Yes, sir.

13 Q And you feel like those statements that you gave
14 during that time should have been thrown out; correct?

15 A Yes, sir.

16 Q Okay. On your application you stated that
17 ineffective assistance of counsel. Based on all that
18 we've talked about today, is there anything else that
19 you can relate to that has gone to the ineffective
20 assistance of counsel charge against your attorney?

21 A Counsel was ineffective by not getting his...

22 Q That we've not gone over today so far in court.

23 A I feel like he should have asked for voluntary
24 manslaughter charge. And the absence of Mr. Tisdale.
25 The Tisdale was -- the victim Tisdale, yes, he was a

1 part of -- he was a part of Jones Avenue boys, but I --
2 that night, I never even -- he was never like -- he was
3 like somewhere like coming behind Ingram. Ingram had
4 already ran past him.

5 Q So you're saying that your attorney didn't
6 properly ask for voluntary manslaughter?

7 A Yeah. He didn't -- I felt like he should have
8 motioned for involuntary manslaughter when it came to
9 Tisdale.

10 Q Did he motion for involuntary manslaughter to the
11 Court?

12 A No, sir.

13 Q Okay. Anything else under that ineffective
14 assistance of counsel that you feel is relevant that we
15 have not gone over today?

16 A No, sir.

17 Q Okay. And you also stated constitutional and
18 statutory violations, and you're discussing them -- and
19 within that based on your testimony today is about the
20 Miranda rights and some of the other things we've
21 mentioned; correct? Is that correct?

22 A Yes, sir.

23 Q Okay. How would you describe your attorney's --
24 based on the totality of the circumstances, what we've
25 gone over today before this Court, how would you

1 describe your attorney's performance to you in this
2 matter?

3 A He put -- he put an effort towards it, but he
4 didn't like put his -- I felt like he didn't put his --
5 like enough into it. Because if he have put enough
6 into it, the gaps that we are speaking on now wouldn't
7 even be here.

8 Q So do you feel that his performance was lacking?

9 A Yes, sir.

10 Q Okay. Do you feel because of that lacking
11 performance that that's the reason why you are where
12 you are at this point?

13 A Yes, sir.

14 MR. FOWLER: I have no further questions for him.

15 CROSS-EXAMINATION

16 BY MS. KINARD:

17 Q Good morning, Mr. Leggette, how are you?

18 A I'm fine. And you, ma'am?

19 Q Fine, thank you. Just a few questions for you. I
20 want to go back to your discussion of whether this was
21 an ambush shooting or not. Do you recall your attorney
22 asking the pathologist if this was an ambush shooting?

23 A Not that I recall, no, ma'am.

24 Q Okay.

25 MS. KINARD: May I approach the witness, Your

1 Honor?

2 THE COURT: Sure.

3 MS. KINARD: Thank you.

4 Q I just want to point out to you the bottom of page
5 190, line 25, he asks right here. Could you read that
6 out loud, please.

7 A Okay, so -- okay, so wasn't it any type -- like
8 any type of ambush killing or anything like that, it
9 was shot and fired from in front of the Defendant.

10 Continued to...

11 Q Keep going, what was her answer?

12 A Well, there are always many -- there are -- I
13 cannot tell you where the two individuals are spaced,
14 however the gunshot wound itself was in front of the
15 chest.

16 Q Okay, thank you. So that does speak to some of
17 your concern about whether it was an ambush or not.
18 Your attorney did try to establish that it might not
19 have been, and that just wasn't much coming from this
20 witness; is that correct?

21 A Yes, ma'am.

22 Q To your knowledge, did your attorney have all of
23 the discovery available to him?

24 A To my knowledge?

25 Q Um-hum.

1 A Yes. To my knowledge, yes, ma'am.

2 Q And did he review it with you before the trial?

3 A Did he review my -- yes, ma'am. He didn't hand it
4 to me, but he like -- that's how I knew I had a bigger
5 motion of discovery than what I had, because what he
6 had, it was like -- like a phone book. What I got is
7 like 47, 48 pages.

8 Q But he had it and he looked over it with you?

9 A He looked over it. I didn't never touch it. I
10 didn't never had it in my hand. So that doesn't
11 actually promise me with me looking over.

12 Q But you discussed it with him?

13 A Once, yes, ma'am.

14 Q Okay, thank you. Have you exhausted your appeals
15 at this time?

16 MR. FOWLER: Objection, Your Honor. Relevance. I
17 mean, what relevance does it have to his attorney's
18 performance the exhaustion of any appeals to this
19 Court, Your Honor?

20 THE COURT: Well, it can be cross over.
21 Ineffective assistance of counsel claims could in some
22 cases have been before the appellate court. Don't
23 usually happen but it does happen. So, go ahead, I'll
24 overrule it.

25 MS. KINARD: Thank you.

1 Q My actual reason asking that is I was just curious
2 why you might need your discovery motions.

3 A Why I need my motion, my Rule 5?

4 Q Um-hum.

5 A That's my right by law to have my Rule 5.

6 Q Oh, no, I agree with that. I was just curious.

7 A I mean, to have my Rule 5 -- actually, I was
8 supposed to get my whole motion that's -- when you give
9 a person a Rule 5, they supposed to get it in its
10 entirety. I haven't -- I don't even have partial of
11 it. I only have like a third.

12 Q You don't disagree that it was -- could have been
13 provided to your attorney in full?

14 A Can you restate that question.

15 Q Was your discovery provided to your attorney in
16 full, to your knowledge?

17 A Yes, ma'am.

18 Q Thank you. I'm going to go now to the issue you
19 brought up with the juror seeing someone they
20 recognized in the courtroom. If I can find that page,
21 one moment. Am I correct in stating that your
22 allegation is that the juror who recognized Mr. Mitchum
23 may have influenced other jurors because they had begun
24 deliberating?

25 A Yes, ma'am.

1 Q Okay. If I may approach again, I ask you to look
2 at these pages you reviewed with Mr. Fowler, but step
3 back just a bit earlier. You looked at page 425, I
4 believe.

5 A Yes, ma'am.

6 Q And but stepping back to 424, at the top if you
7 can read, it says, so that you can begin your
8 deliberations; is that correct?

9 A Instruction by the bailiff. The bailiff tells
10 you, you can begin your deliberations, so I am going to
11 excuse you back to the jury room now. Please do not
12 begin your deliberations at present.

13 Q So deliberations had not begun; is that correct?

14 A Yes, ma'am.

15 Q Okay. And then by the bottom of the page we're
16 talking about returning exhibits back to them, meaning
17 they didn't have anything to look at to begin
18 deliberations; is that correct?

19 A Yes, ma'am.

20 Q And then we go straight into 425, with there's a
21 question about the juror, as Mr. Fowler showed you. So
22 technically deliberations had not begun yet; is that
23 correct? Do you see how I'm reading that?

24 A No. It seems like you jumped over something.

25 Q Okay. Deliberations had not begun?

1 A Okay.

2 MR. FOWLER: Can I ask the Court what page and
3 line.

4 MS. KINARD: 424 to 426, same pages you reviewed
5 just a little earlier.

6 Q And then go straight over to line 13 where you
7 looked earlier, someone's in the audience that they're
8 asking about.

9 A So basically he just told you they done begin it.
10 If he taking the stuff back, if they're taking the
11 exhibits back, I mean, and they already starting
12 deliberations, what you're speaking about is after, it
13 comes after. It says, hereupon, take them back there.
14 Then all -- then it goes on. Then as you read later,
15 as you go further down, it says, oh, now, we got a note
16 from the jury. They already started.

17 Q We just looked at the page right there, it says,
18 now you have a note from the jury, right on this sheet
19 of paper, 425 line 23.

20 MR. FOWLER: Objection, Your Honor. He answered
21 the question.

22 MS. KINARD: Just trying to clarify his answer.
23 All right.

24 Q Your consideration of the chambers conferences,
25 are you alleging that Mr. Hazzard did not tell you what

1 happened during chambers conferences?

2 A Yes, ma'am.

3 Q Okay. Did you provide him a list of witnesses
4 that you would like him to investigate?

5 A Yes, ma'am.

6 Q Who was on that list?

7 A Sheron Magee, Jamie White, and I think there was
8 like one other person.

9 Q When did you provide him that list?

10 A When did I provide him that list? I provided him
11 that list about -- this was -- I went to court in
12 March, so I'm going to say about '07. It was like '07.

13 Q So --

14 A November, or October, November.

15 Q So well in advance of trial?

16 A Yes, sir.

17 Q Okay. Did he speak to any of those witnesses, to
18 your knowledge?

19 A He said he spoke to Sheron Magee, he -- and that's
20 the only one that I know about.

21 Q And you stated that you felt he did present the
22 defense of self-defense completely?

23 A Yes. It's missing -- it's missing a couple little
24 merits. I felt like he could have went into it a
25 little bit better, but yes, ma'am.

1 Q So you're confident in how he presented your case
2 as far as your defense goes?

3 A Huh?

4 Q Were you confident in that portion of his
5 representation of you?

6 A Was I confident at the time, yes, ma'am.

7 MS. KINARD: No further questions at this time,
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. FOWLER: Just a couple things.

11 REDIRECT EXAMINATION

12 BY MR. FOWLER:

13 Q You said that you wanted your full discovery;
14 correct?

15 A Yes.

16 Q And you stated earlier that by August of 2014, the
17 public defender's office who from this -- of Horry
18 County had not, by their own statement had not provided
19 you their full discovery; correct?

20 A Yes, sir.

21 Q So by the time of the trial in March of 2010, it
22 could have been -- your attorney -- let me rephrase the
23 question. You brought up earlier on cross-examination
24 the difference between a phone book and a few pieces of
25 paper on discovery.

1 A Yes.

2 Q Explain that to me. Are you saying that there was
3 more discovery out there that your attorney did not
4 provide you by March of 2010, or you did not -- or do
5 you not know if there was more out there?

6 A I knew that there was more out there because he --
7 he didn't come one time when he sent two, I think they
8 were probably paralegals or something to come see me.
9 And that's how I knew it was a phone book because they
10 were just looking through it. That's how I knew it
11 was -- my motion was a lot bigger than what I got.

12 Now, what I got I have with me currently in that
13 blue bag, it's like 48, probably 52 pages at the max.
14 Now, 52 pages compared to what they showed me, that is
15 nothing.

16 Q So let's go into that briefly. You're telling me
17 that paralegals, that his paralegals met with you
18 before trial; is that correct?

19 A Yes.

20 Q And you're saying that they had more -- they
21 represented to you what you thought was more discovery
22 than you received; correct?

23 A Yes.

24 Q Okay. So you don't know if it was -- well, how,
25 how do you explain the discrepancy of the public

1 defender's office in August of 2014 saying, you know,
2 there's more discovery out there, and you not getting
3 what you felt like was full discovery before trial in
4 March of 2010?

5 MS. KINARD: Objection. This calls for
6 speculation. I believe it's also been asked and
7 answered on direct.

8 MR. FOWLER: I'm just getting to why there's a
9 discrepancy in his mind of how much discovery he saw
10 before trial, Your Honor. And maybe I should have
11 phrased it like that.

12 THE COURT: Well, rephrase it.

13 Q Why is there a discrepancy in your mind of the
14 amount of discovery that you should have received
15 before March of 2010?

16 A If you were on trial and I was your lawyer, and
17 you asked me for your Rule 5, I'm required by law to
18 give you your Rule 5. Not all of -- not piece of it,
19 not half of it, but all of it in its entirety. Not
20 pages, double copied pages, like I had got when I first
21 got it.

22 And that, and that right there you got, it's like
23 double copies and triple copies of things that I
24 already had. That's not a motion of discovery. A Rule
25 5 is a Rule 5, is a piece of paper. And it got all the

1 facts that you supposed to go on trial for. I didn't
2 have all those facts.

3 Q Okay. We mentioned earlier on the record about
4 the note from the jury came in at 4:25 and the jury
5 reached a verdict at 7:07; correct?

6 A (Nodding.)

7 Q Those are times that are listed in the transcript;
8 right?

9 A Yes, sir.

10 Q But nowhere else in the --

11 MS. KINARD: Objection. This was not discussed on
12 cross.

13 THE COURT: Sustained.

14 MR. FOWLER: I'm getting to a point. I apologize,
15 Your Honor.

16 Q There is no timeline in this transcript about when
17 certain things were said; correct?

18 A Yes.

19 Q Okay. So we don't know -- so going back to her
20 question of on page 424 about deliberations, there's no
21 specific times in this transcript stating when the jury
22 went specifically into deliberations; correct?

23 A Yes, sir.

24 Q Okay. Well, there is no --

25 A There is none.

1 Q Okay. All right.

2 MR. FOWLER: No further questions, Your Honor.

3 THE COURT: Okay.

4 MS. KINARD: Nothing further. Thank you, Your
5 Honor.

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

7 (Witness excused.)

8 MR. FOWLER: No further witnesses, Your Honor.

9 MS. KINARD: The State would call Ron Hazzard.

10 THE COURT: Come around and be sworn, please.

11 RONALD W. HAZZARD, after being duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat. State your name and
14 spell it, please.

15 THE WITNESS: My name is Ronald William Hazzard,
16 last name is H-A-Z-Z-A-R-D.

17 DIRECT EXAMINATION

18 BY MS. KINARD:

19 Q Thank you, Mr. Hazzard. Appreciate you joining us
20 today. How long have you been with the public
21 defender's office?

22 A I was initially with the Horry County Public
23 Defender's office beginning in May of 1988 through
24 sometime in 1989. This period of time that encompasses
25 Mr. Leggette's case I had started with the public

1 defender's office the second time around in December of
2 2008, and I'm still employed there as of this day.

3 Q Thank you. Do you recall how these charges arose
4 and how the Applicant came to be arrested, some of the
5 background of the case?

6 A I really don't, because I didn't initially
7 represent Mr. Leggette. Mr. Leggette's offense
8 occurred, I believe, in August of 2008. I was not
9 tasked to take over his case until sometime in August
10 of 2009. I believe my predecessor in the Georgetown
11 County office, Richard Colvin, initially had
12 Mr. Leggette's case.

13 I at that time was assigned to the Horry County
14 office and specifically given Mr. Leggette's case when
15 it became evident that it was going to go to trial.

16 Q At that time did you begin meeting with
17 Mr. Leggette to discuss his charges and preparing for
18 trial?

19 A Yes, ma'am. My records reflect my first meeting
20 with Mr. Leggette was in October of 2009.

21 Q Do you recall approximately how many meetings you
22 had with him?

23 A I remember four meetings specifically, and if
24 memory serves correctly, there were also a series of
25 telephone calls. Because Mr. Leggette was allowed to

1 call the Horry County office so that we can discuss his
2 case.

3 Q During these meetings did you discuss his
4 indictments and the elements of each offense?

5 A Yes, ma'am.

6 Q Did you review the possible punishments and
7 sentences for each charge?

8 A Yes, ma'am.

9 Q As part of that, did you tell him the minimum and
10 maximum sentences he was facing?

11 A Yes, ma'am.

12 Q Did you discuss any collateral consequences?

13 A Probably not to any great extent. I really don't
14 spend a whole lot of time telling folks if they get
15 convicted that they're going to lose their right to
16 vote. I made it known and Mr. Leggette was very aware
17 that if he was convicted of murder that he would be
18 facing a sentence of no less than 30 years nor more
19 than life imprisonment and that whatever sentence he
20 received, if it were a murder conviction, would be day
21 for day. And explained to him the possible penal
22 exposure for assault and battery with intent to kill as
23 it existed at that time.

24 Q And you, of course and we're sure, discussed the
25 State's burden of proving guilt beyond a reasonable

1 doubt?

2 A Yes, ma'am.

3 Q As well as how the jury process works?

4 A Most definitely. We discussed the trial protocol
5 from beginning to end as far as -- and his
6 constitutional rights, his right to remain silent, his
7 right to testify, his right to call witnesses, confront
8 the evidence against him.

9 We discussed all of that in great detail, how many
10 people are on the jury, how the jury is selected, how
11 many strikes you have. We go through all of that, and
12 we went through all of that in advance of
13 Mr. Leggette's trial.

14 Q At any point during your conversations did you
15 feel that Mr. Leggette did not understand you or did
16 not comprehend what was happening?

17 A No, ma'am. Mr. Leggette is a very, very
18 intelligent young man.

19 Q Did you discuss -- excuse me, discuss his version
20 of the facts of the case?

21 A Yes, ma'am. We discussed it at great length.
22 That's why the self-defense defense came up. He is --
23 he was very forthright. As he testified here earlier
24 today, he initially gave conflicting and non-truthful
25 versions of events to law enforcement. But his

1 testimony at trial was very consistent with the
2 evidence of the case.

3 No question that he was leaving or trying to get
4 basically as far away from the area as humanly
5 possible, that the two victims came to the
6 establishment that he had just left, specifically asked
7 where he was going, were told that he had headed in a
8 specific direction, and they took off running behind
9 him just before the shootings occurred.

10 Q We've talked a lot about discovery, and I'd like
11 to get your version of that. Did you file a discovery
12 motion, or had that been filed prior to your taking on
13 the case?

14 A That had apparently been -- well, not apparently,
15 I'm sure that was filed long before I took over the
16 case. Our office policy has been since the beginning
17 of time with Orrie West as the circuit public defender
18 that upon a client being appointed, the first thing
19 that happens is a Rule 5 motion for discovery, and a
20 certificate of representation is filed with the Clerk
21 of Court for the specific county and served on the
22 solicitor's office so the solicitor knows who the
23 prosecutor is and knows that specifically a Rule 5
24 request for discovery is being made.

25 Q Did you believe that everything that should have

1 been there was there in the discovery packet?

2 A Yes, ma'am, to my recollection it was. And I
3 jotted down some dates, if I can refer right quick.
4 Specifically, I'm sure that everything that was
5 supposed to be there was there because on March 24th of
6 2010 I had a discovery review conference at the public
7 defender's office here in Conway with deputy solicitor
8 Scott Hixson. That was the prosecutor who prosecuted
9 the case.

10 So he and I had discussed back and forth
11 everything related to the discovery and, in fact, sat
12 down and went over everything one last time. So no, I
13 mean, there was nothing that was missing.

14 Q Did you review the discovery with the Applicant?

15 A I did indeed. Dominic indicated that he didn't
16 receive a copy of his discovery, and he probably is
17 correct on that. The reason he didn't receive a copy
18 of his discovery is because he didn't want a copy at
19 that time. The reason he didn't want a copy at that
20 time is that Dominic didn't have his glasses for most
21 of the time that he was incarcerated, and his eyesight
22 is really, really, really bad. So he couldn't read the
23 discovery. And we discussed that. And so I would sit
24 there and actually read it to him so that -- and then
25 we would discuss the things that I read to him.

1 Q Did you feel like he understood and had a grasp of
2 everything that was contained in that discovery?

3 A I do.

4 Q Did you learn of any fact witnesses or character
5 witnesses of any kind from Mr. Leggette?

6 A What I've done is I've printed out the notes from
7 my database, and it would help to refresh my
8 recollection. I have a copy for both counsel if y'all
9 wish to have a copy of these notes as well. But if the
10 Court would allow me to review them, I do know there
11 are a couple of names in here that Mr. Leggette
12 specifically mentioned to me.

13 THE COURT: That's fine. Take your time.

14 MR. FOWLER: I have no objection. Can I see it
15 first, Your Honor.

16 THE WITNESS: Yes, sir.

17 MR. FOWLER: What is this document again?

18 THE WITNESS: If I might respond, the public
19 defender's office uses a what's called defender data.
20 It's a database that allows us, among many other
21 things, to enter notes from in realtime with regard to
22 your representation or things that you do for a client
23 or with regard to a file.

24 And these are some of the notes that I entered
25 back then. I'll say some of because back in 2009,

1 early 2010, I was not as complete with the notes as I
2 am now. But those are all the notes that I entered
3 into the database during my representation of
4 Mr. Leggette.

5 MR. FOWLER: All right, I have no objection to it
6 refreshing his memory, in that limited scope.

7 THE COURT: Okay.

8 THE WITNESS: Madam Attorney General, with regard
9 to your question, in reviewing these database notes, I
10 note that back in March of 2010, I had a meeting with
11 our office investigator and subsequently sent him a
12 memo that specifically mentioned Jamie White, Rhonda
13 Brown and Craig Jackson as being the three individuals
14 that Mr. Leggette wanted us to get in contact with if
15 possible and interview.

16 Q To your knowledge was that done?

17 A To the extent that it was possible, yes, ma'am.

18 Q And you made a decision not to call these
19 individuals on Mr. Leggette's behalf?

20 A No, ma'am. That would have been Mr. Leggette's
21 decision. Because once we decided -- and obviously we
22 were always going to put up a defense, because it was
23 going to be self-defense. We were always going to put
24 up evidence, and he was always going to testify.

25 Once Mr. Leggette was going to testify, we were

1 going to lose the final close, didn't matter to me how
2 many people we put up at that point. So if anyone did
3 not testify, it's because he decided he didn't wish for
4 them to testify.

5 Q Thank you. Did you at any time develop an opinion
6 regarding the State's ability to either, A, prove the
7 case beyond a reasonable doubt, or B, disprove
8 self-defense?

9 A Well, I'm biassed on Mr. Leggette's behalf. I
10 never felt they disproved self-defense, and I never
11 felt that they truly proved any guilt of his beyond a
12 reasonable doubt. But apparently the jury returned the
13 verdict that they returned. But I think part of that
14 is also can be seen in the lesser includeds that the
15 jury came back with as what I perceived to be somewhat
16 of a compromise.

17 Q Do you believe you did everything necessary to
18 establish self-defense?

19 A I believe I did everything that I was capable of
20 doing at that time. I do -- when I look back on it
21 now, I do wonder and I do not specifically recall
22 whether I did as good a job as should have been done in
23 casting the Defense's request for jury charge,
24 specifically with regard to the Defendant's right to
25 act on appearances.

1 I don't recall whether I did as good a job as I
2 would do now, for instance, with the requested jury
3 charges. That would be the one thing that I've
4 definitely questioned, whether I did a good enough job
5 with the jury charges.

6 Q Hindsight is always 20/20. Let's speak to a
7 couple of instances that Mr. Leggette mentioned
8 specifically. First of all, being Mirandized by
9 Mr. Tisdale and/or Mr. Cumby. Do you recall any issues
10 with that or can you describe your recollection of
11 those instances?

12 A Don't have any particular recollection of it. But
13 I do know this, I do recall this, that if it were not
14 an issue, it was not an issue because either it wasn't
15 something where they asked him any questions -- because
16 especially with regard to Mr. Cumby, that was his
17 relative. If he gave a statement to Mr. Cumby, that
18 was on him. I don't believe that Mr. Cumby ever asked
19 him any specific questions, and I'm pretty sure that
20 the US Marshal didn't ask him any questions either.

21 I think Mr. Leggette now is of the impression that
22 just because he was taken into custody, they had to
23 read him his Miranda rights. But I guarantee you, I
24 explained to him back then, that unless they actively
25 engage him in questioning, his Miranda rights do not

1 have to be read to him.

2 Q And similarly, can you explain the two statements
3 he provided when he was in custody.

4 A To my recollection, as he -- I would characterize
5 him the way he characterized him, that they were far
6 less than the truth and kind of gave us an uphill
7 mountain to climb because he obviously gave some false
8 statements when initially questioned regarding the
9 incidents that occurred.

10 Q Specifically with regard to Miranda, were those
11 made after he was read his rights?

12 A Yes, ma'am.

13 Q And did he decline his right to counsel at that
14 time?

15 A Yes, ma'am.

16 Q Are --

17 A Although -- I apologize. There is one interview
18 that was about six minutes long, to my recollection.
19 It was terminated because during that interview, at the
20 six-minute mark he requested counsel, and the interview
21 was terminated at that time.

22 Q Thank you. Are chambers conferences common during
23 the course of trials?

24 A Yes, ma'am.

25 Q Did you provide Mr. Leggette with any information

1 that was relevant to the trial once you returned from
2 those conferences?

3 A Very much so. Mr. Leggette was in custody, so any
4 time there was a break in the trial he would be taken
5 to the lock up. And any time we came back from a
6 chambers conference, I immediately went into the
7 lockup, and he and I discussed what that conference had
8 been about.

9 Q Moving to the juror who recognized Mr. Mitchum,
10 pursuant to your recollection, do you believe that was
11 handled appropriately?

12 A Yes, ma'am. To my knowledge, that's the one way I
13 knew how to handle it. If there was an issue, it was
14 brought to the Court's attention, the juror was
15 relieved and an alternate was put in that juror's
16 place. There, to my recollection, was absolutely no
17 information provided to the Court that would indicate
18 that the juror who was replaced had acted
19 inappropriately during any period of deliberation.

20 Q Keeping on the deliberation path, Mr. Leggette
21 testified and Mr. Fowler discussed what we call an
22 Allen charge, which is when the jury comes back and
23 says, we are hung, we need help. Do you recall having
24 any issues with that charge as it was given to the
25 jury?

1 A I had no issues with regard to the Allen charge
2 itself, no, ma'am.

3 MS. KINARD: I would like to note for the Court
4 there were no objections from either side in the
5 transcript, that's on page 466.

6 Q When it came to sentencing, had you discussed with
7 Mr. Leggette as much as possible what his potential
8 sentences would be?

9 A Well, yes --

10 Q Let me rephrase that. Had you discussed with
11 Mr. Leggette the possibility of him being found guilty
12 of lesser included offenses?

13 A Yes, ma'am.

14 Q Had you discussed anything about those sentences,
15 those potential sentences?

16 A Yes, ma'am.

17 Q Do you recall why Mr. Leggette was sentenced the
18 way he was?

19 A That was Judge Culbertson's choice. And that is
20 something that to my personal experience continues to
21 this day. If you're convicted, he to my experience --
22 if you're convicted at trial, to my experience he
23 basically gives you every day he can.

24 Q Do you recall his saying, and this is page 488,
25 the last page of the record, that -- and 487, it may

1 have been due to the fact that Mr. Leggette was
2 carrying a firearm that he had purchased illegally?

3 A He did indicate that on the record, yes, ma'am.

4 MS. KINARD: No further questions at this time.

5 Thank you.

6 CROSS-EXAMINATION

7 BY MR. FOWLER:

8 Q You say that on March 24, 2010, you had a
9 discussion with Scott Hixson; is that correct?

10 A With Scott Hixson, we had a conference in my
11 office here in Conway, yes, sir.

12 Q Okay. How did you relay that information to your
13 client at that time on March 24th?

14 A I did not relay it to him on March 24th. By that
15 time Mr. Leggette and I had already gone over all of
16 the discovery. This conference with Mr. Hixson was
17 simply to make sure that there weren't any -- anything
18 new, anything surprising, any issues that would derail
19 the trial that was scheduled basically for the
20 following week.

21 Q Did you provide what you just said that no issues
22 or no surprises, did you convey that to your client at
23 any point?

24 THE WITNESS: Court's indulgence, Your Honor. On
25 March 20 -- I believe it was March 28th, might have

1 been actually the 27th, Mr. Leggette and I met for an
2 extended period of time and did our final trial
3 preparation conference. And any of those issues were
4 addressed with him at that time.

5 Q Did you provide -- now, we've had a conversation
6 about his full discovery. And I think you said that
7 you did not send it to him because he had eyesight
8 problems; is that correct?

9 A That -- I'm -- I didn't send it to him because
10 when I met with him, I specifically asked him, do you
11 want a copy of it, and he said, no, I can't read it.

12 Now, whether Mr. Colvin gave him anything before
13 that during the year that Mr. Colvin would have
14 represented him, I have absolutely no idea. With
15 regard to the status of the discovery in full as it
16 exists, I would love to get to the bottom of it to find
17 out what happened to it in storage. You know, I want
18 Mr. Leggette to have it if he wants it.

19 Q What do you mean, what happened to it in storage?
20 Are you saying that it has been lost or misplaced, or
21 what's the status of it at this time?

22 A I don't know. I represent...

23 Q Well --

24 A Let me -- I'm sorry, I'm going to answer your
25 question in this fashion. At the time I represented

1 Mr. Leggette, whose trial went forth in Georgetown
2 County, I was working in Horry County. And I would
3 make trips down there, see Mr. Leggette, review the
4 crime scene, do things of that nature. Tried the case,
5 for that week in Georgetown County.

6 At the conclusion of that case I came back to
7 Horry County. Now, his file either stayed in
8 Georgetown County, I'm not sure, might have brought it
9 back with me to Horry County, closed it out and turned
10 it over to the administrative person to close it out
11 and box it up.

12 I don't have a specific recollection whether it
13 initially stayed in Georgetown County or was in Horry
14 County. Regardless of where it was, eventually all
15 Georgetown County files are closed up at the end of the
16 case, and they come to Horry County and they are placed
17 in storage here in Horry County.

18 Now, once the file left my hand, I have absolutely
19 no personal knowledge of what happened to it from that
20 day. But I would love to find it for him.

21 Q So you're saying that as it stands right now,
22 you're under the impression that his complete discovery
23 is lost or misplaced; correct?

24 A I do not know. I have no personal knowledge of
25 the status of it.

1 Q So how would he go about getting his full
2 discovery even at this point? I mean, I think we've
3 shown on the record that he received a letter from your
4 office in August of 2014. Are you saying that it's
5 impossible for him to receive the full file at this
6 time?

7 A I do not know. But I will say as an officer of
8 the Court, if this Court will hold this matter open, I
9 will do every single thing in my power to become
10 involved in it and find it, find out what happened to
11 it and get it to Mr. Leggette. I was not aware
12 initially that there was an issue with what happened to
13 his discovery.

14 Q So you're saying that you would have no objections
15 to this Court holding this matter open until he
16 receives his full discovery; correct?

17 A For a reasonable period of time. I mean, but I
18 would -- I'll put it this way, as an officer of the
19 Court, I will be responsible for finding out what's
20 going on with his discovery, whether it still exists,
21 whether it's, you know, irreparably misplaced or lost.
22 Or if it does exist, making sure that counsel receives
23 it so he can get it to Mr. Leggette. And I would have
24 that done long before the August term of post
25 conviction relief court.

1 MR. FOWLER: May we approach, Your Honor.

2 (Discussion off the record.)

3 THE COURT: Yes, sir.

4 MR. FOWLER: Yes, sir, Your Honor, Mr. Hazzard
5 stated in his cross-examination that he would be
6 willing to help find the full and complete discovery of
7 my client. He also opened the door to the possibility
8 of leaving this matter open until that discovery is
9 found in its entirety.

10 I've spoken with my client, and we'd like to move
11 at this point for this matter to be held open until
12 Mr. Hazzard, as an officer of the Court, finds that
13 information and can bring it back to this Court so it
14 can be provided to my client.

15 MS. KINARD: While the State certainly does not
16 oppose the finding and providing to Mr. Leggette of his
17 discovery, we also do not see a need to hold this
18 matter open or in abeyance, as it seems to be a
19 collateral issue and not related to the majority of the
20 allegations of ineffective assistance of counsel that
21 have been presented.

22 So the State would like to proceed on the
23 substantive grounds with the additional possibility of
24 providing everything to Mr. Leggette once it's located.

25 MR. FOWLER: May I have a moment with my client,

1 Your Honor?

2 THE COURT: Yes.

3 (Discussion off the record.)

4 MR. FOWLER: Your Honor, I've spoken with my
5 client, and I wish to continue with that motion at this
6 time.

7 THE COURT: All right. With all the reporting
8 that we have to do, I certainly do not mind holding it
9 open. But it's got to be completed within 20 days.
10 And you can supplement the record with anything in
11 there that might be pertinent to the issues that we've
12 already developed here for trial. But after 20 days,
13 we got to do something because we'll be languishing on
14 this issue. I mean, he's the most important person in
15 this entire action, so we just can't let it linger.

16 It may be that they'll find that the file has been
17 misplaced. So counsel, you'll have to ride herd on
18 Mr. Hazzard and make sure you get a definite answer
19 within 20 days.

20 MR. FOWLER: So are you saying that he, that Mr.
21 Hazzard, is required to provide the information within
22 20 days and at the next term of PCR court in Horry
23 County this is to be --

24 THE COURT: No, I'm not saying that.

25 MR. FOWLER: Okay.

1 THE COURT: I'm not saying that.

2 MR. FOWLER: All right.

3 THE COURT: He's got 20 days to get it to you and
4 to the Attorney General, for y'all to supplement this
5 record by brief if you find something in there that is
6 critical to the issues that have already been raised.
7 And, yes, I want Mr. Hazzard to accomplish that with
8 all due haste since he agreed to do it.

9 THE WITNESS: Yes, sir, Your Honor.

10 MR. FOWLER: So we will continue on today with my
11 cross-examination at this time, and then Mr. Hazzard by
12 20 days --

13 THE COURT: We're not going to dump this on
14 another judge. We're going to conclude it one way or
15 the other.

16 MR. FOWLER: Yes, sir. Yes, sir. All right, if I
17 may continue my cross-examination, Your Honor?

18 THE COURT: Yes, sir.

19 Q You said earlier that you had -- one of your --
20 this is my words, not yours, but one of your largest
21 regrets in this is the casting of the Defense's request
22 for a jury charge.

23 So you did state earlier that you had some issues
24 with your own jury charge. Tell me about that, expand
25 on that if you don't mind. Explain that to me, please.

1 A I really can't, it's been so long. My vague
2 recollection, when I look at how I do things now versus
3 what I vaguely recall happening then is I do -- I can't
4 believe that the jury charges were as strong as in
5 present day I would definitely push for.

6 You know, maybe they were, but I just -- I can't
7 believe that they weren't.

8 Q So you're saying that you would have done a better
9 job of that now as opposed to then; right?

10 A Correct. And I would assume that the transcript,
11 because I haven't looked at it in some time, I'm
12 assuming that any and all jury charges made were made
13 part of the record as a Court's exhibit.

14 Q So are you saying that your -- you feel like your
15 jury charge was lacking or deficient in its
16 presentation?

17 A From my vague recollection, I would have to say I
18 would think it was, yes.

19 THE COURT: Think it was what?

20 THE WITNESS: Not as strong then as it is now.
21 Whether that is considered to be lacking or deficient
22 is not for me to say.

23 THE COURT: Okay.

24 THE WITNESS: That's my regret is that if it
25 wasn't as well done then as I like to think I do now,

1 that that's an issue for me personally.

2 THE COURT: Well, you know, let me step in here
3 now. Jury charges are strictly up to the judge.
4 Proposed charges are just suggestions to the judge.
5 So, I mean, we're barking up the wrong tree there now
6 if we think that an attorney not giving any charges to
7 a judge is somehow ineffective assistance of counsel.
8 We can stop that idea right now, okay. Attorneys do
9 not charge the jury.

10 Q On direct examination of my client, the name
11 Sheron Magee was mentioned, and yet you did not mention
12 him on a list of witnesses that you stated earlier, I
13 think Mr. White, I believe, and some others. Were you
14 familiar with Sheron Magee?

15 A At this time I do not recall that name.

16 Q So you do not recall Sheron Magee?

17 A Correct.

18 Q You don't remember if he was a State's witness or
19 anything along those lines; right?

20 A I'll go along with what Mr. Leggette testified to,
21 which was that Mr. Magee was or Sheron Magee was listed
22 as a State's witness but subsequently not called by the
23 State. If there -- and again, if there was any
24 discussion between Mr. Leggette and myself regarding
25 this individual, there can be only two reasons why that

1 person didn't testify in his defense, one that
2 Mr. Leggette chose not to have the person testify, or
3 two, that the sheriff couldn't find him.

4 Q We mentioned earlier about the Allen charge and
5 how the jury came back at an impasse, according to the
6 transcript. And I believe the jury came back at 4:25
7 and said they were hung at that point. And then at
8 7:07, I believe, they came back with a verdict.

9 At that time, did you -- you didn't go into any
10 further possibility of it being a hung jury, you let
11 the Court go ahead and do the Allen charge; correct?

12 A Yes, sir. My understanding is that I don't
13 particularly have the authority to push a judge for a
14 hung jury if the jury has not indicated that they are
15 at an impasse. For me personally -- the jury was out
16 for a long time. I want to say that we concluded
17 evidence and testimony maybe on Wednesday, and the
18 verdict came back I want to say -- or maybe we could
19 have Tuesday evening and it came back Thursday evening.
20 Because I want to say that Friday was actually Good
21 Friday.

22 And the jury was out for an inordinate length of
23 time. And I recall -- my recollection is that Judge
24 Culbertson never inquired of them as to how their
25 deliberations were going. Once they got in the room,

1 they just sat there in the room and sat and sat and
2 sat, until they sent out that note. And once they sent
3 out that note, then my understanding was it would be
4 appropriate for the Allen charge at that time.

5 Q Okay. You mentioned in terms of the
6 transportation through Officer Tisdale and/or Officer
7 Cumby, that they perhaps were not active participants
8 in questioning my client. But once a person is in
9 custody, they are supposed to get Miranda rights, it's
10 not relevant to the amount of times they opened their
11 mouth or what they say; right? I mean, once you're in
12 custody, you should have your Miranda rights read to
13 you; correct?

14 A My understanding of the Miranda rights is that
15 before any active questioning can be done of a suspect,
16 they have to be informed of their right to remain
17 silent and that anything they say can possibly be used
18 against them to their detriment in a court of law.

19 If an individual -- my understanding is if an
20 individual is arrested for an offense and in the
21 process of being transported to the jail blurts out, I
22 did it, I killed her, the gun is under the juniper
23 bush, it is not excluded because they weren't read
24 their Miranda rights at the second they were placed in
25 the patrol car.

1 My understanding is, and maybe I'm wrong, that it
2 has -- that it deals specifically with active law
3 enforcement engagement and questioning.

4 THE COURT: You are correct, the law more
5 specifically says it turns from investigatory to
6 accusatory is the critical time for Miranda warnings.

7 MR. FOWLER: May I have one more moment with my
8 client, Your Honor?

9 THE COURT: Yes, sir, take your time.

10 (Discussion off the record.)

11 MR. FOWLER: Your Honor, I've spoken with my -- if
12 I may, I've spoken with my client, and I have no
13 further questions.

14 THE COURT: Anything?

15 MS. KINARD: No redirect, Your Honor, thank you.

16 THE COURT: All right. Anything further?

17 MS. KINARD: No, Your Honor. I apologize. The
18 State's case is complete.

19 THE COURT: All right. This is not a jury trial.
20 My standing practice in post-conviction relief hearings
21 if there is any motions or anything that's outstanding,
22 I would hear from you. But closing arguments are not
23 required. Don't expect them, so anything else?

24 MS. KINARD: Sometimes I would request one, but I
25 believe we've covered it all today with this. Thank

1 you, Your Honor.

2 THE COURT: You may step down, Mr. Hazzard. Thank
3 you.

4 (Witness excused.)

5 MR. FOWLER: If I may briefly address the Court,
6 Your Honor.

7 THE COURT: Yes, sir.

8 MR. FOWLER: Your Honor, we feel like the totality
9 of the circumstances here today have shown that
10 Mr. Hazzard's performance was deficient, and that
11 because of that deficiency it meets the Strickland
12 standard, that that's the cause of my client's current
13 level of incarceration.

14 We've gone over several topics today, Your Honor,
15 but we do feel like we would like to ask the Court for
16 a ruling in our favor. And we do feel like we've met
17 all the elements of Strickland in my client's
18 application.

19 THE COURT: Okay. Since we've left that other
20 matter open about that file, plus this was a trial,
21 obviously, you developed that in the record, and the
22 file I have up here, as I normally do in this case with
23 a trial transcript, I would hold this matter under
24 advisement so I can review the transcript and also Mr.
25 Hazzard and counsel to check on that file with

1 hopefully that complete discovery in it.

2 But you need to do that in all haste and get
3 that -- share that with each other, counsel for the
4 State and counsel for the Defendant.

5 MR. HAZZARD: Yes, sir.

6 THE COURT: And by brief, serve me with anything
7 in there that may be relevant to this petition. Okay.

8 MS. KINARD: Thank you, Your Honor.

9 MR. FOWLER: Thank you, Your Honor.

10 (The hearing concluded at approximately
11 12:50 p.m.)

12 (End of Transcript of Record)

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF GEORGETOWN |) | |
| Dominic A. Leggette, |) | Case No.: 2015-CP-22-00521 |
| S.C.D.C. No. 340047, |) | |
| |) | |
| Applicant, |) | |
| |) | ORDER OF DISMISSAL |
| v. |) | |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |

FILED
 2016 SEP 24 AM 8:54
 CLERK OF COURT
 GEORGETOWN COUNTY
 SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed by Dominic A. Leggette (“Applicant”) on May 21, 2015. Respondent made its return on or about February 23, 2016. The Court convened an evidentiary hearing into the matter on Monday, May 9, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Jessica E. Kinard, Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Ronald W. Hazzard, Esq. (“Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the November 2008 term of the Georgetown County Grand Jury for murder (2008-GS-22-00944),

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assault and battery with intent to kill (2008-GS-22-00945). Ronald W. Hazzard, Esq., represented Applicant, and Scott R. Hixson, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 29, 2010, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty of the lesser-included offenses of voluntary manslaughter and assault and battery of a high and aggravated nature on April 1, 2010. Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of 30 years for manslaughter, and 10 years for ABHAN.

Applicant filed a timely notice of appeal and a direct appeal was perfected by LaNelle Cantey Durant, Esq., who raised the following issue:

Did the trial court err in denying Leggette's directed verdict motion when the state did not disprove self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)?

By unpublished opinion decided March 28, 2012, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Leggette, Op. No. 2012-UP-203 (S.C. Ct. App. filed March 28, 2012). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated May 7, 2014. The Remittitur was issued on May 15, 2014.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
 - a. "I will amend to the issues raise in question 10 in support of question 11; after the court appoint counsel"
2. "Constitutional and statutory violation"

Despite Applicant's assertion, no amendment was thereafter filed. At the evidentiary hearing, Applicant proceeded broad allegations of ineffective assistance of counsel without objection by the State. This Court is left to draw specifics from the testimony at the evidentiary hearing

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

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. Strickland at 696. 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. at 696-97.

1. Failure to Object to Conviction for Voluntary Manslaughter

Applicant alleges that he was improperly convicted for voluntary manslaughter when he was only indicted for murder. Murder is the killing of a person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10. Voluntary manslaughter is the unlawful killing of another in sudden heat and passion, under reasonable provocation, without premeditation or malice. State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (quoting State v.

Cooley, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000)); S.C. Code Ann. § 16-3-50. Voluntary manslaughter is a lesser-included offense of murder. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). “The law to be charged to the jury is determined by the evidence presented at trial.” Id., 410 S.C. at 308, 764 S.E.2d at 513 (quoting State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). “The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense.” Id. (citing State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986)). “When the record contains no evidence to support it, a voluntary manslaughter charge should not be given.” Smith, 363 S.C. at 115, 609 S.E.2d at 530 (citing Cooley, 342 S.C. at 67-68, 536 S.E.2d at 668-69).

At trial, the court instructed the jury on the lesser-included offense of voluntary manslaughter. (Tr. 414-16). Counsel did not object when prompted after the jury instructions. (Tr. 424, ll. 9-14). At the evidentiary hearing, Applicant attested that murder and voluntary manslaughter are different things, and took issue with being convicted of voluntary manslaughter when he was indicted for murder. Counsel testified he explained the indictments and the elements of each offense.

The Court finds Applicant has failed to meet his burden of showing either a deficiency on the part of counsel, or prejudice therefrom. Applicant offered no reason why voluntary manslaughter should not have been charged, and appears to not recognize it as a lesser-included offense of murder. A review of the complete trial record shows that the voluntary manslaughter instruction was appropriate and supported by facts in the record. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Seek Involuntary Manslaughter

Applicant faults Counsel for failing to seek an instruction on involuntary manslaughter for the killing of Tisdale. As with voluntary manslaughter, involuntary manslaughter is a lesser-included offense of murder. Sams, 410 S.C. at 309, 764 S.E.2d at 514. “Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others.” Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); S.C. Code Ann. § 16-3-60 (2003)). As noted above, the law to be charged is to be determined by the facts of the case.

The Court will not belabor this allegation—a thorough review of the trial record does not indicate facts to show that a charge of involuntary manslaughter would be appropriate. In particular, the Court notes the trial court’s acknowledgement that Applicant was in possession of a firearm in violation of 18 U.S.C. § 922(g), which is a federal felony punishable by up to 10 years in prison. (Tr. 286-87; Court Exhibit #9); see also 18 U.S.C. § 924(a)(2) (penalty provision). As Applicant was otherwise engaged in an unlawful act amounting to a felony, that alone would foreclose the possibility of involuntary manslaughter, let alone the remaining facts of trial. Accordingly, the Court finds Applicant could not meet his burden under either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

3. Failure to Call a Character Witness

Applicant alleges Counsel was ineffective in failing to call a character witness to contest law enforcement testimony. An applicant for post-conviction relief “*must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence*”

at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis original). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. (quoting Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)). As Applicant was non-specific in this portion of his testimony, and *no* proposed witnesses were presented at the evidentiary hearing, Applicant cannot show ineffectiveness for failing to call a character witness. Applicant has failed to meet his burden and his request for relief by way of this allegation is **DENIED**.

4. Failure to Call Witness Sheron Magee

Applicant also alleges Counsel was ineffective in failing to call Sheron Magee as a witness in his defense. The Court will not belabor this allegation, as it is resolved on the same basis and law as above—Applicant presented no such witness at the evidentiary hearing. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

5. Failure to Call Witness Jamie White

Applicant also alleges Counsel was ineffective in failing to call Jamie White as a witness in his defense. Once again, it is resolved on the same basis and law as above—Applicant presented no such witness at the evidentiary hearing. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

6. Failure to Obtain Dispatch Records

Applicant alleges Counsel was ineffective for failing to obtain records from 911 emergency dispatch regarding when law enforcement was called at or around the time of the killing. In order to prevail upon a claim that counsel did not adequately prepare or investigate a

case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here the Court faces much of the same as in Sections II.2-4, above. Applicant presented no dispatch records at the evidentiary hearing. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

7. Failure to Challenge State's Theory of "Ambush Killing"

Applicant alleges Counsel was ineffective in failing to adequately challenge the State's theory of the case describing the killing as an ambush. At trial, Counsel challenged Investigator Michael Thacker, of the Georgetown County Sheriff's Office, on cross-examination as to whether he found anything inconsistent with the defense theory of the case that the victims attacked Applicant. (Tr. 172-73). On re-direct, the State asked Thacker if the evidence he looked at was consistent with an ambush killing, to which Thacker replied "[i]t could be, yes, sir." (Tr. 173, ll. 15-18). Later, during cross-examination of forensic pathologist Cynthia Schandl, Counsel emphasized the bullet killing Tisdale entered from his front, and asked "so, wasn't like any type of ambush or anything like that?" (Tr. 190-91). Schandl was equivocal in

her answer, and admitted "I cannot tell you where the two individuals were in space." (Appx. 191, ll. 3-5). No other references to an "ambush" appear in the record.

At the evidentiary hearing, Applicant protested that all of the State's witnesses described him as leaving the scene with two victims in pursuit, and questioned how he could ambush the victims if they were in active pursuit. Applicant suggested Counsel could have asked the pathologist how close the shooter and the victim were. The State had Applicant review the above cited portion of Schandl's testimony on cross-examination. Counsel did not testify to this allegation.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court does not discern from the record that the State's theory was of an ambush killing, though the testimony does show that as the victims coincidentally followed Applicant to a store, he veiled his face, turned around, and suddenly started firing at them. (Tr. 203-04). The word appears only twice in the record, and one of those instances is where Counsel asked of the pathologist the very question demanded by Applicant. Applicant does not offer what else Counsel should have done. Accordingly, Applicant has failed to meet his burden of proof for either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

8. Failure to Provide Discovery

Applicant alleges Counsel was ineffective by failing to ever provide the entirety of his Rule 5 discovery. At the evidentiary hearing, Applicant claimed that though he requested his full discovery prior to trial, he never received it. Applicant speculated that Counsel did not bother doing so out of confidence in the self-defense strategy. Applicant testified proceeding to trial without his discovery was hard on him, and that although he persisted in efforts to obtain it after trial, he still believed he never received all of it. Applicant affirmed his belief that Counsel had

all the discovery materials available in his possession at the time of trial, but did not offer what, if anything, he expected to find.

Counsel testified that motions for discovery were filed long before he took over the case. Counsel recalled that he met with Solicitor Hixson on March 24, 2010, for a discovery review conference to confirm that he had everything, ensuring that nothing was missing. Counsel affirmed that he reviewed everything with Applicant, and confirmed that Applicant probably did not get a copy of his discovery. Counsel explained Applicant did not want a copy of his discovery at the time, largely because he did not have his glasses while incarcerated and his eyesight was sufficiently poor that he could not read the materials. Instead, Counsel read the contents of Applicant's discovery to him and then discussed it. Counsel opined that Applicant understood and had a grasp of everything in his discovery. Counsel could not speak to the status of Applicant's complete file at the time of the hearing, but offered to do all he could to recover and provide it if Applicant so desired.

This Court, upon Applicant's motion, agreed to leave the record open for 20 days for Applicant to obtain any documents not in his possession and submit them to the Court. Applicant did not submit anything to this Court.

This Court finds no deficiency on the part of Counsel, nor prejudice therefrom. The Court finds credible Counsel's testimony that Applicant affirmatively did not desire a copy of his discovery due to his inability to read it, and that Counsel undertook efforts to inform and explain to Applicant the materials in light of his disability. The Court additionally finds Applicant failed to show what, if anything, could have been done differently at trial had he been provided a copy of his complete discovery. Accordingly, Applicant has not met his burden of proof under either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

9. Failure to Communicate Meetings in Chambers

Applicant alleges Counsel was deficient in failing to communicate to him discussions which took place between Counsel, the prosecution, and the trial judge in chambers. Shortly after reconvening on March 31, 2010, the State marked as Court's Exhibit Nine certified record of conviction of Applicant for criminal domestic violence, first offense. (Tr. 286, ll. 4-17). The State indicated the subject had been discussed prior. (Tr. 286, ll. 11-12). The Court indicated its understanding the record was offered to satisfy a legislative statute "that basically says a person engaged – not engaged in any unlawful activity has no duty to retreat. That more or less does this away – does away with your getting a charge on that statute; correct?" (Tr. 287, ll. 6-11). Counsel confirmed as much and also indicated the subject had previously been brought up in chambers. (Tr. 287, ll. 12-14). Counsel reaffirmed, however, that Applicant was still entitled to consideration under common law self-defense. (Tr. 287, ll. 16-20).

At the evidentiary hearing, Applicant took exception, and argued he was never made aware of any meeting in chambers or anything pertaining to the exhibit in question. Applicant argued the confusion and surprise was stressful and bad for his health. Counsel noted conferences in chambers are common during trials, and that he immediately communicated the substance of such meetings to Applicant whenever he returned from them.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. The Court finds credible Counsel's assertion that he immediately communicated the substance of chambers conferences to his client. Additionally, the Court notes that Applicant promptly learned of the substance of the conference in question when it was memorialized on the record at the time the exhibit was introduced. Furthermore, the Court finds Applicant has not shown what, if anything, could have been done differently had he been more quickly notified of the substance of the

chambers conference, and thus fails to show how he was prejudiced. Applicant has failed to meet either prong of Strickland by way of this allegation, and his request for relief is **DENIED**.

10. Failure to Move for Mistrial – Juror

Applicant alleges Counsel should have moved for a mistrial after a juror realized late in the trial that the victim's father was a coworker of his. "The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way." State v. Bantan, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (2010) (citing State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999)). "A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial." Id. (citing State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000)). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Id. (quoting State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct.App. 1999)). "The trial court should exhaust other methods to cure possible prejudice before aborting a trial." Id., 387 S.C. at 417, 692 S.E.2d at 203-04 (citing State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999)).

At the close of jury instructions, the trial court sent the jury into the jury room and instructed them "please do not begin your deliberations at present." (Tr. 424, ll. 2-4). Confirming no objections to the jury instructions, the Court directed the bailiff to take exhibits to the jury room and to bring out the alternates. (Tr. 424, ll. 22-25). Just as the trial court was about to dismiss the alternate jurors, the bailiff informed the Court that a juror had "a question about somebody in the audience that he knows and he was asking about." (Tr. 425, ll. 1-14). After directing the question be written, the juror produced a note indicating he recognized a co-worker in the audience in the courtroom with the last name of Mitchum, but did not know if he

was related to the witness with the same last name. (Tr. 426, ll. 15-23). The State indicated its belief the juror had not misled anybody in *voir dire*, but Counsel noted that the potential connection was enough to inspire the juror to bring it to the Court's attention. (Tr. 426-27). Rather than question the juror on the matter, the parties and the Court agreed to simply seat an alternate out of an abundance of caution, and dismiss the concerned juror. (Tr. 426-31). The Court finally instructed the jury to begin its deliberations after seating the alternate. (Tr. 430, ll. 6-8).

At the evidentiary hearing, Applicant speculated the juror, permitted to deliberate, could have hurt his case. Applicant indicated he told Counsel he should get a new jury, but instead Counsel moved to seat the alternate. On cross-examination, Applicant argued deliberations began when the trial court directed bailiffs to begin taking exhibits to the jury room. Counsel testified seating the alternate was the one way he knew to handle the situation, and asserted there was no indication the juror had acted inappropriately for any deliberation.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. The record is clear that the jury was not instructed to begin deliberations until after the juror of concern was removed and replaced with an alternate. Contrary to Applicant's assertion, the logistical effort of moving exhibits to the jury room does not constitute an instruction to begin deliberations. There is no evidence to show the jury did anything contrary to the Court's instructions, and this Court presumes the jury follows all instructions provided. See State v. Young, 420 S.C. 608, 623, 803 S.E.2d 888, 896 (Ct.App. 2017); Richardson v. Marsh, 481 U.S. 200, 206 (1987) ("the almost invariable assumption of the law [is] that jurors follow their instructions"). Counsel properly exercised his judgment in seeking to have the juror replaced with an alternate. It is evident the jury was conscientious and thoroughly reviewed the evidence

before them in light of their numerous questions, difficulty in reaching a verdict, and ultimate verdicts returned for lesser-included offenses. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

11. Failure to Move for Mistrial – Hung Jury

Applicant alleges Counsel was ineffective for failing to object to the Allen¹ charge given to the jury during deliberations. “The trial judge has the duty to urge, but not coerce, a jury to reach a verdict.” Dawson v. State, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002) (citing Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002)). “An Allen charge cannot be directed to the minority voters on the jury panel, but must instead be even-handed, directing both the majority and the minority to consider the other’s views.” Id. “Whether an Allen charge is unconstitutionally coercive must be judged ‘in its context and under all the circumstances.’” Id. (quoting Tucker v. Catoe, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001)).

After considerable deliberations and numerous notes from the jury, the jury informed the Court that it was at an impasse, and asked: “Do we have any other recourse? Do you have any suggestions to help us get through this?” (Tr. 465-66). The Court indicated to the parties its intention to give an Allen charge, but warned if they came back a second time he would declare a mistrial. (Tr. 466, ll. 6-11). The Court gave an Allen charge and the jury returned to deliberations. (Tr. 466-68). The jury returned a verdict a few hours later. (Tr. 469, l. 12).

Applicant posed Counsel should have pushed harder for a ruling that the jury was hung when instead it was given an Allen charge. Applicant speculatively argued that the charge encouraged holdout juror(s) to just find him guilty. Counsel found no issues with the charge.

¹ Allen v. U.S., 164 U.S. 492 (1896).

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Applicant does not take issue with any substance within the Allen charge, but the giving of any charge at all. Applicant's position is without foundation—the Court was obliged to give the charge in the circumstances and Counsel had no basis to seek a mistrial at that time. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

12. Failure to Suppress Pre-Miranda Statement

Applicant alleges Counsel was ineffective for failing to challenge and suppress statements he made without being notified of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Under Miranda, a suspect in custody must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct.App. 2012) (quoting Miranda at 479). If an individual indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. Id. (quoting Miranda at 473-74).

Two statements were raised to the trial court in Jackson v. Denno² hearings prior to trial, both of which were found by the trial court to have been given freely and voluntarily in satisfaction of Denno. (Tr. 27-63). The State exhaustively used Applicant's statements against him during closing arguments.

At the evidentiary hearing, Applicant explained he was not read his Miranda rights when he turned himself in to the U.S. Marshalls, but only before his interview. Applicant noted the Marshalls turned him over to Patrick Cumby, of the Andrews Police Department, who was

² 378 U.S. 368 (1964).

related to Applicant and transported him back to the county. Applicant reported that during transport, Cumby asked Applicant a question and he answered. Applicant argued the statement was a pre-Miranda questioning that should have been excluded.

Counsel stated he did not believe Cumby ever asked Applicant any specific questions, and that Applicant's two damaging statements were made after he was Mirandized. Counsel noted Applicant was read Miranda before each statement; in one statement, spoke with law enforcement for about six minutes, then requested counsel and the interview was terminated.

The Court finds Applicant has failed to meet his burden of showing deficiency on the part of Counsel, or any prejudice therefrom. The Court cannot discern from the record any statements that were given prior to Miranda warnings as claimed by Applicant. Applicant was not specific as to which of many statements were supposedly provided to Cumbee. Rather, the record only indicates the exhaustive consideration of two recorded statements provided to law enforcement, and Counsel expressed his belief that there was no statements to Cumbee. There is no indication of Cumbee ever being referenced at trial. In the absence of evidence to the contrary, the Court finds Counsel's recollection credible and accurate. Accordingly, Applicant has failed to meet his burden of proving either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

B. Direct Appeal Issues – State Failed to Disprove Self-Defense; Unduly Harsh Sentence

Aside from his many allegations of ineffective assistance of counsel, Applicant raised allegations that the State failed to disprove his assertion of self-defense, and that the punishment was unduly harsh for voluntary manslaughter. These claims constitute allegations of trial court error not cognizable in a post-conviction relief action. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at

applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Because these allegations could have been (or were) raised on appeal, Applicant's allegations that the State failed to disprove self-defense and that the sentence was unduly harsh are **DENIED** as not cognizable under the Uniform Post-Conviction Procedure Act.

[Conclusion and signature on following page]

III. CONCLUSION

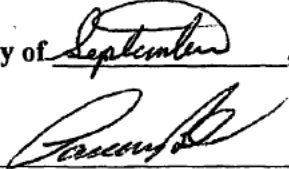
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th day of September, 2018.



 PAUL M. BURCH
 Presiding Judge
 Fifteenth Judicial Circuit

_____, South Carolina

WITNESSES
 Andrews Police Department

BEST WARRANT NUMBER
 J505880
 CDR: 0116 §16-03-0010, 0020
 DOI: August 13, 2008

ACTION OF GRAND JURY

TRUE BILL

William Kennedy
 Foreperson of Grand Jury
 Date: 12 Nov. 2008

VERDICT,

Foreperson of Petit Jury
 Date:

DOCKET NO. 2008-GS22-00944 ✓

The State of South Carolina
County of Georgetown

Robert Bryan 08G00692

COURT OF GENERAL SESSIONS
NOVEMBER, 2008 TERM

THE STATE

vs.

DOMINIC ALEXANDER LEGGETTE



SSN:
 B/ M

ATTORNEY: Goude, C. Reuben

Indictment for

MURDER

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 12, 2008, the Grand Jurors of Georgetown County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Dominic Alexander Leggette did in Georgetown County, on or about August 13, 2008, willfully, feloniously, and intentionally kill the victim, Antonio Tisdale, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about August 13, 2008 in Georgetown County, in violation of Section 16-03-0010, S. C. 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.



J. GREGORY MEMEREB
 FIFTEENTH CIRCUIT SOLICITOR

RBB

SCANNED

WITNESSES

Andrews Police Department

DOCKET NO. 2008-GS22-00945 ²✓

The State of South Carolina

County of Georgetown

Robert Bryan

08G00692

**COURT OF GENERAL SESSIONS
NOVEMBER, 2008 TERM**

REST WARRANT NUMBER

J505881

CDR: 0014 §16-03-0620

DOI: August 13, 2008

THE STATE

vs.

DOMINIC ALEXANDER LEGGETTE



ACTION OF GRAND JURY

TRUE BILL

William Kennedy
Foreperson of Grand Jury

Date: *12 Nov. 2008*

ATTORNEY: Goude, C. Reuben

Indictment for

VERDICT

**ASSAULT AND BATTERY WITH
THE INTENT TO KILL**

Foreperson of Petit Jury

Date:

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT


At a Court of General Sessions, convened on November 12, 2008, the Grand Jurors of Georgetown County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

CDR: 0014 16-03-0620

That Dominic Alexander Leggette did in Georgetown County on or about August 13, 2008, commit an unlawful act of violent injury to the victim, Al Ingram, with malice, thus committing the crime of Assault and Battery with Intent to Kill, to wit: the defendant, while armed with a handgun, did shoot the victim, Al Ingram, in violation of Section 16-03-0620, S. C. 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.



J. GREGORY WIERREE
 FIFTEENTH CIRCUIT SOLICITOR

RBB

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.

Dominio Alexander Leggette

AKA:

Race: B Sex: M Age: 20

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS22-00944

A/W#: J505880

Date of Offense: 8/13/2008

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

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

VOLUNTARY MANSLAUGHTER 2-70-795

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Robert B Bryan

Bryan, Robert B

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 X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X 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: 4/1/2010
 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.

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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90

§ 90.11 TP (SCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

Robert A. Moore
Clerk of Court/ Deputy Clerk

Court Reporter: *Constance Hurley*

_____ 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 \$ 20.00 beginning we after 1/1/10

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE *M. J. ...*

Judge Code: 2111418

Sentence Date: April 1, 2010

SCANNED
SEC 217 (07/2008)

STATE OF SOUTH CAROLINA
 COUNTY OF Georgetown
 STATE VS.
Dominic Alexander Leggette
 AKA: _____
 Race: B Sex: M Age: 20
 DOB: _____
 Address: _____
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS22-00945
 A/W#: J505881
 Date of Offense: 8/13/2008
 S.C. Code § : 16-03-0620
 CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS ADMIAN 0-10-115
Voluntary MANSLAUGHTER
 in violation of § CL 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 009
 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 initial)
 The plea is Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTORNEY: _____

Scott Hixson Defendant Scott Hixson 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: 4/1/2010
 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
 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 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.90
 § 90.11 TP (SCCA Surcharge) \$5 \$ 5.00
 TOTAL \$ 133.90

Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/B beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning Mon. after release
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Scott Hixson
 Clerk of Court/ Deputy Clerk
 Court Reporter: Corrae Huxley

PRESIDING JUDGE Marjannet Hultson
 Judge Code: 21 1 4 18
 Sentence Date: April 1, 2010
 SCCA/217 (07/2008)