

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2018A1910100216

The State of South Carolina,)

vs.)

MOTION FOR ~~NEW TRIAL~~ RECEIVED

Barry Jones,)
Defendant.)

JAN 11 2022

CO Court of Appeals

Barry Wayne Jones was found guilty at trial on the charge of murder and not guilty on the charge of attempted murder on December 13th, 2021. He was sentenced to thirty-five years that same day. At this time, the defense renews all previous motions and objections and respectfully requests that a new trial be granted in this case. The denial of the following motions prevented Mr. Jones from receiving a fair trial:

(1) The Defense Motion for Immunity on the murder charge should have been granted pursuant to the Protections of Persons and Property Act

A hearing was held September 7th-8th, 2021 to determine whether Mr. Jones was immune from prosecution, and the Court held an evidentiary hearing and later denied immunity by written order on October 1st, 2021 and also by amended order dated October 15th, 2021. Defense counsel filed a written objection to the Court's orders denying immunity and believes that the Court misapprehended the facts and the law in this case, and believes immunity should have been granted as to the charge of murder.

(2) The Defense Motion to Sever should have been granted

During the hearings held September 7th-8th, 2021 the defense also argued and filed a written motion seeking severance on the murder charge from the attempted murder case. The Court denied the motion for severance by original written order dated October 1st, 2021 and then

by later amended order dated October 15th, 2021. It was clear from the trial that the murder and attempted murder charges did not (1) arise out of a single chain of circumstances [or single course of conduct], (2) were not proved by the same evidence, (3) were not of the same general nature, and (4) a real right of the defendant has been prejudiced.” *State v. Beekman*, 415 S.C. 632,636, 785 S.E.2d 202, 204 (2016) (citing *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996)). It was clear during deliberations that the jury was split, and they indicated via a note that they were deadlocked. After being Allen charged the jury came back within thirty minutes with the guilty verdict on murder but not guilty on attempted murder. It appears clear that the jury was overwhelmed and confused by the task of considering both cases, and the prejudice of hearing the attempted murder allegation against a police officer left them unable to properly consider the facts and evidence of the murder allegation.

(3) The Court should have granted the defense motion to exclude evidence of attempted suicide pursuant to Cartwright.

The South Carolina Supreme Court considered suicide-attempt evidence for the first time in *State v. Cartwright* implementing a rigorous framework by which suicide-attempt evidence could properly be admitted after finding that “suicide-attempt evidence is fraught with the potential for extreme prejudice” and that “[e]vidence of attempted suicide is not easily analogized to evidence of guilt.”¹ *State v. Cartwright*, 425, S.C. 81, 91 (S.C. 2018). The *Cartwright* Court instructs that the trial court must conduct a hearing outside of the jury’s presence to determine whether the State has proven by clear and convincing evidence that:

(1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an *unmistakable* nexus exists by clear and convincing evidence

¹ Contradicting the Court of Appeals in *State v. Orozco* where the Court reasoned that “[a suicide attempt] is easily analogized to other types of circumstantial evidence guilt based on the accused’s behavior after the crime.” *State v. Orozco*, 392 S.C. 212, 218, 708 S.E.2d 227 (Ct. App. 2011).

linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial. If the trial court concludes that the three factors have been established, the evidence is relevant and may be admitted, subject to a Rule 403, SCRE analysis. The suicide-attempt evidence may be admitted only when all three factors have been met, and the evidence survives a Rule 403 analysis. We recognize that in view of our rigorous framework, *suicide-attempt evidence will rarely be admitted.*

A pretrial hearing was conducted concerning the attempted suicide evidence, and the Court abused its discretion by ruling this evidence could be considered by the jury, as there was not an unmistakable nexus by clear and convincing evidence of Mr. Jones' attempt at suicide being due to his guilt from the underlying crimes. Law enforcement witnesses proposed no belief as to why he attempted to take his own life, and at trial, Mr. Jones testified that it was not due to any guilty over the crimes he was on trial for, but rather due to the fact that excessive force was being used against him by Officer Florida, and he felt he would rather take his own life than being hunted down like an animal by this officer. Allowing this evidence to be considered by the jury was highly prejudicial, should have been precluded under SCRCP 403, and prevented Mr. Jones from receiving a fair trial in this case.

(4) The Court refused to ask any voir dire questions concerning police officer credibility and insufficient questions regarding attempted suicide

The defense moved for supplemental attorney conducted voir dire due to the aggravated nature of this case, and that request was denied by the Court. In the alternative the defense sought for specific questions to be asked of the jury concerning their beliefs regarding whether a police officer was more credible or more reliable than a regular witness or even the Defendant. The Court refused to ask any version of this question, in a case where the state theory was that Mr. Jones shot at two police officers in the line of duty, and this prevented the defense from ascertaining the true beliefs of the jurors on a critical issue in the case. Additionally, the Court

refused to ask defense proposed voir dire regarding whether a juror might consider evidence of attempted suicide as evidence of guilty by a Defendant. The Court only asked a generic and insufficient question regarding juror ability to be fair and impartial if suicide came up in the case, which is not adequate under the facts of this case and how the State sought to use this evidence to show Defendant's "guilty conscious."

(5) The Court should have granted the Defense motion pursuant to Batson v. Kentucky

During jury selection the state struck two young African American males, both with dreadlock style hair, without insufficient race neutral reasons for their excusal. Solicitor Hubbard, in striking juror Brannon even called him "the Defendant." Defense counsel made a motion objecting to the jury pursuant to Batson and that motion was denied by the Court. This was a structural error by the Court.

(6) The Court refused to allow the Defense to present a complete and full defense by disallowing any mention of the fact that the State was not going forward on Officer Kathmann's Attempted Murder case.

Shortly before trial began the State informed the Court and defense counsel that it would not be going forward on the attempted murder allegation concerning Officer Kathmann. During the prior motion to sever, held months prior, the State relied heavily on the fact that this charge, plus the attempted murder allegation against Officer Florida, was integral to their case and had to be joined with the murder case. Even in the light most favorable to the State, the only evidence in the record that the Defendant shot at Officer Florida came from Officer Florida, who the state contends was lying to cover his own actions of excessive force in shooting first at the Defendant. When Officer Kathmann took the stand as a witness the defense sought to question him regarding his attempted murder charge not being tried and the State's objection was sustained.

This line of questioning was proffered, where the State inappropriately objected but was sustained, regarding if Officer Kathmann was ever advised why his case was not being pursued. To not be allowed to explore why Kathmann's charge was not being brought, particularly when the only evidence of attempted murder on Kathmann came from Officer Florida, directly impugned the defense's right to present a complete and full defense as well as challenge the version of events set forth by Officer Florida. This was an abuse of discretion by the Court, violating the fundamental tenants of Due Process and the right to present a complete and full defense of the 6th Amendment. See Kyles v. Whitley, 514 U.S. 419 (1995).

(7) Admission of all of Defendant's guns into evidence was error under SCRE403, 404(B)

At the time the Defendant was taken into custody he testified he had just moved out of his girlfriend's house where he had hurriedly put his clothes, toiletries and valuables in his car, including all of his guns. The State's own witness, Crime Scene Investigator Tankersley, confirmed that only two of Defendant's guns were used that day. His rifle was used to return fire at Officer Florida and his Taurus .38 special revolver was used to shoot Milledge Hall at the Pool Room and later in an attempt to take his own life after the shootout with Officer Florida. The State sought and was successful, over defense counsel's objection, in admitting numerous other guns and knives into evidence that were found in his car. None of these other weapons were used or alleged to have been used by the Defendant, and many of them were inaccessible to him during the incident and completely irrelevant to this case. It was error to allow them into evidence and violates SCRE 403 and 404(B).

(8) The Court abused its discretion in allowing the improper victim impact testimony of the decedent's wife, Brenda Hall.

Over defense counsel's objection, the Court allowed improper victim impact testimony

into evidence that would normally only be allowed during the penalty phase of death penalty cases. The State claimed that it needed to offer Ms. Hall's testimony to establish the time of death, as she was there with her husband when he died; however, the State had already had the pathologist testify and could have easily gotten this information through that witness. The State sought this information so that it could get extremely sympathetic testimony before the jury, from the wife of the decedent, in order to make an emotional impact. She testified that she was there with him at the end as chest compressions were being performed in an attempt to save his life. This violates 16-3-1550, as described in State v. Hill, 331 SC 94 (1998) and Payne v. Tennessee, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991).

9. The Court abused its discretion in limiting the testimony of defense witness Tim Cornwell.

Throughout its case in chief the State elicited from almost every lay witness that the alleged murder victim, Milledge Hall, was a peaceful man who never carried guns. Whether Mr. Hall had a gun or not was a central issue to the murder case. Through his wife, Brenda Hall, they even asked her "he wasn't the type of guy to carry guns?" The state put the alleged victim's character for peace into evidence repeatedly throughout their case under SCRE 404(a)(2). With defense witness Tim Cornwell the defense was able to elicit evidence of the alleged victim's reputation within the community for violence; however, the Court would not allow the defense to elicit testimony of a specific instance of violent conduct as the Court ruled it was too remote in time. It was proffered that Tim Cornwell observed the alleged victim attempt to start a violent confrontation approximately fifteen years ago at a turkey shoot, where he threatened two other men with physical violence regarding a construction dispute. This evidence should have been allowed to be heard by the jury under SCRE 405(b), as the alleged victim's trait for violence was an essential element of the defense, and it was already put into evidence by the prosecution to

attempt to show he was peaceful. This was error.

(9) The Court should have given a curative instruction, or in the alternative granted a mistrial after claims by the State that attacked Mr. Jones' right to counsel.

During cross examination by the State of Mr. Jones the State questioned Mr. Jones about South Carolina's laws on trespass, to which Mr. Jones replied he did not know the law. The State then responded that he seems to know all of the laws concerning self-defense but just not regarding trespass, thereby attacking his right to counsel and insinuated that he was coached in the law that was important to his case. Defense counsel asked that the jury be excused and then argued that a curative instruction should be given and in the alternative a mistrial should be granted. The Court refused to provide a curative instruction and denied defense counsel's motion for a mistrial. This was error.

(10) The Court should not have precluded defense evidence of a shooting reconstruction sought to be admitted through their crime scene expert.

The defense offered and had admitted witness Christopher Robinson as an expert in crime scene investigation, reconstruction, and firearms. He was allowed to testify regarding the bullet trajectory analysis he performed, as well as his identification of which gun was being shot first as captured on Officer Kathmann's dash camera. Of critical importance to this case was whether Mr. Jones shot first at Officer Florida with his AR-15 styled rifle or whether Officer Florida shot first with his Glock 22 .40 pistol. During a hearing out of the jury's presence, Mr. Robinson testified about a shooting recreation that was performed to show the different sounds of an AR-15 rifle versus a .40 caliber pistol as recorded by a dash cam similar to Officer Katmann's. Mr. Robinson performed this reconstruction experiment to aid the jurors in identifying the sounds coming from the individual guns, as well as to show that the .40 pistol could be shot from within a moving vehicle without the barrel of the gun being seen out the

driver's side window and without leaving shell casings on the ground. The fact that no gun was visible from Officer Florida's window and no shell casings were found on the ground in the area of where he would have first shot was repeatedly asserted in the State's case as evidence that he did not fire first. The state asserted that this reconstruction video evidence should be precluded, namely because the conditions used in the reconstruction were not exactly identical to the shooting conditions the day of the incident, and they cited SCRE 403 as the evidence being "prejudicial." The Court agreed with the State; however, the Court seems to misunderstand the rule in that relevant evidence may be excluded if the probative value is substantially outweighed by the danger of unfair prejudice. The Court conducted no balancing test, and just simply ruled with the state. This evidence was critical in aiding the jurors in determining who shot first based on a recreation that would aid them in hearing the distinctive nature of the different firearms being shot in a controlled setting.

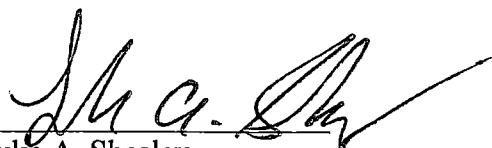
(11) The Court erred in denying defense jury charges.

There was evidence in the record, through Mr. Jones' testimony, that Mr. Hall while engaged in a lengthy and escalating confrontation at Mr. Jones' car window, attempted to open his car as part of his effort to get Mr. Jones out to fight. My Jones testified, and was corroborated by Laynce Hatcher, that he only rolled his driver's door window down approximately six inches for fear of what Mr. Hall might do as he engaged him at this door for approximately ten minutes. Mr. Jones stated his door was locked, which prevented Mr. Hall from getting him out of his vehicle, and he later testified that as Mr. Hall was brandishing his gun he was told by Hall that "he could make him get out" of his vehicle. Given this evidence in the record defense counsel sought specifically through their proposed charge number 15, a charge encompassing a citizen's right to defend his occupied vehicle. This law is contained under 16-11-440 (a) of the Protections

of Persons and Property Act and provides that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury if someone attempts to remove them from their occupied vehicle. The Protections of Persons and Property Act has codified defense of habitation law and also extended it to a person's occupied vehicle. The Court misapprehended the law in South Carolina and therefore did not feel it should be charged even though there is evidence in the record. This is reversible error. The Court committed additional error concerning jury charges in not charging all of defense counsel's charges on self-defense, and it omitted from its charges the critical language contained in defendant's proposed charge number 6, "he doesn't have to wait until his assailant gets the drop on him. He has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, one who acts in self-defense must take steps first to prevent such assailant from getting the drop on him." See State v. Rash, 182 S.C. 42, 50 (1936), State v. Starnes, 340 S.C. 312, 322 (2000). Additionally, the Court refused to charge defense counsel's proposed charges numbers 17 and 18, regarding trespass and the right to expel a trespasser, as this was a right the State repeatedly asserted the victim had to tell Mr. Jones to leave the Pool Hall. They argued strenuously that this precluded Mr. Jones from claiming self-defense, and accordingly the jury should have been charged on these areas of law. These errors in jury charges are an abuse of discretion.

For all of the aforementioned reasons a new trial should be granted in this case.

This 20th Day of December
Columbia, SC



Luke A. Shealey
Attorney for the Defendant
The Shealey Law Firm
1507 Richland Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
The State of South Carolina,)
vs.)
Barry Jones,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
Warrant Nos.: 2018A1910100216,
2018A1910100226-30

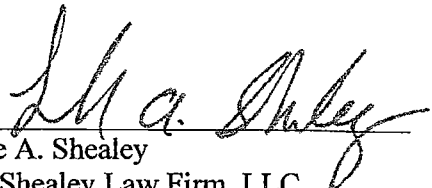
2021 MAY 10 AM 10:38
EDGEFIELD COUNTY
CLERK OF COURT
CIVIL DIVISION

**NOTICE OF MOTION TO COMPEL
DISCOVERY AND DISCLOSURE OF
EVIDENCE**


TO: ASSISTANT SOLICITOR ROBERT MCNAIR:

YOU ARE HEREBY NOTIFIED that the above-captioned Defendant, through his attorneys, will move before the Court as soon thereafter as he may be heard for an Order Compelling Discovery and Disclosure of Evidence in this case, and for such other relief as is requested in the attached Motion.

RECEIVED
JAN 11 2022
SC Court of Appeals



Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008



Brian R. Shealey
The Shealey Law Firm, LLC
1507 Richland St
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Columbia, South Carolina
May 20, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
Warrant Nos.: 2018A1910100216,
2018A1910100226-30

The State of South Carolina,)

vs.)

Barry Jones,)
Defendant.)

MOTION TO COMPEL
DISCOVERY AND DISCLOSURE OF
EVIDENCE

2021 MAY 10 AM 10:38
EDGEFIELD COUNTY
CLERK OF COURT
MAY 10 2021

The above-captioned Defendant, through his attorneys, Luke and Brian Shealey, hereby moves that the Court enter an Order directing that the State of South Carolina comply with a previously filed Motion for Discovery and Disclosure of Evidence in the above-captioned matter. In support of this Motion, Defendant would show that:

1. He was arrested in Edgefield County on or about August 20, 2018, and charged with murder, two (2) counts of attempted murder, two (2) counts of possession of a weapon during a violent crime and discharging a firearm into a vehicle.

2. On January 29, 2019, Defendant served and filed a Motion for Discovery and Disclosure of Evidence in the above-captioned case.

3. On March 10th, 2020 Defendant emailed a comprehensive list of missing discovery items to the Solicitor's Office. On March 25th, 2021 defense counsel met with Solicitor Rick Hubbard and Assistant Solicitor Robert McNair, to discuss missing discovery items and scheduling. On April 7th, 2021 defense counsel sent an additional follow-up email requesting particular items of still missing discovery (emails and discovery list attached).

4. As of the date of this Motion, the State of South Carolina has not complied with the above-referenced Motion for Discovery and Disclosure of Evidence in the following respects:

- a. On April 7, 2021, Counsel for Defendant emailed Assistant Solicitor Robert McNair regarding the following missing discovery:
- i. Investigator Smith's full and complete supplemental report;
 - ii. Any and all bodycam and dashcam footage of all Edgefield County Sheriff's Office personnel on the scene at the Johnson Pool Hall;
 - iii. Crime scene log from the Johnson Pool Hall;
 - iv. Any and all CSI reports and/or diagrams showing locations or evidence collected from the Johnson Pool Hall investigation;
 - v. Any and all pictures of the crime scene at the Johnson Pool Hall taken by Edgefield County Sheriff's Office or any other law enforcement agency that investigated that location;
 - vi. Any forensic evidence collected and reports generated from the Johnson Pool Hall incident, to include, but not limited to, gun shot residue, ballistic testing and comparison on any shell casings or projectiles recovered, DNA evidence collected and compared, and fingerprint analysis;
 - vii. Any and all dashcam and bodycam footage from officers that arrived at the Johnson Pool Hall, including but not limited to Corporal James Morgan, Officer James Densmore, and Investigator James Smith;
 - viii. Any and all dashcam and bodycam footage from officers responding to the shooting incident at Log Creek Road, including but not limited to Sergeant James Densmore, Corporal Robbie Harter, Officer

Dexter Bowman, Corporal James Morgan, and Officer Samuel Sherrill;

- ix. Any and all maintenance records or repair requests submitted for Sergeant James Florida's in-car camera in 2018 that is listed as not "fully operational" during the incident;
- x. Any and all video footage, or audio recordings, made from Sergeant James Florida's video or audio recording equipment, even if only partially operational, from the day of the Incident;
- xi. Any and all records or logs kept evidence that Sergeant James Florida turned in his body-worn camera at the end of his shift on May 7, 2018;
- xii. The results of Sergeant James Florida's drug test which was obtained post-Incident per his statement;
- xiii. The results of PFC Keith Kathmann's drug test which was obtained post-Incident per his statement;
- xiv. Handwritten notes for Investigator Smith or any other Edgefield County Sheriff's officer or Edgefield County Police Department officer involved in this case;
- xv. The complete disciplinary and internal affair files for Sergeant James Florida and Officer Keith Kathmann.

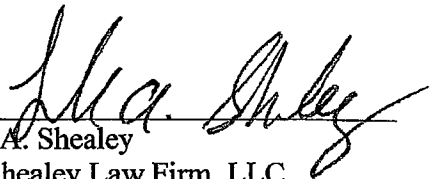
5. Rule 5(a)(3), SCRCrimP., directs that the State comply with discovery requests within thirty (30) days.

6. More than thirty (30) days have passed since the filing of the Motion for Discovery

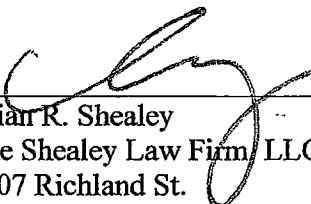
and Disclosure of Evidence in this case.

7. Rule 5(d)(2), SCRCrimP., provides that this Court may fashion a number of remedies to correct any failure to comply with the provisions of the Rules of Criminal Procedure relating to discovery.

NOW THEREFORE, Counsel for Defendant moves that this Court conduct a hearing regarding the status of discovery in this case and enter such Order regulating discovery as it deems appropriate under the facts of this case.



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Columbia, South Carolina
May 30, 2021

Luke Shealey

From: Luke Shealey
Sent: Wednesday, April 7, 2021 3:57 PM
To: McNair, Robert
Cc: 'Hubbard, Rick'; Brian Shealey
Subject: Barry Jones -discovery and scheduling
Attachments: Revised letter re missing discovery 4.7.21.pdf

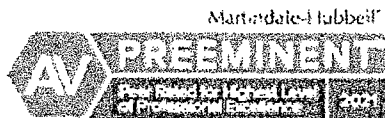
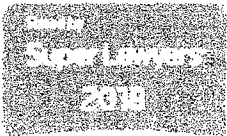
EDGETT COUNTY
CLERK OF COURT
OFFICE OF CLERK
2021 MAY 10 AM 10:58

Good Afternoon,

After our last meeting we agreed to comb through the more recent discovery productions, compared with our prior 3/10/20 email with the listed missing discovery, and see if we could winnow it down. I've attached a revised missing discovery document that is a result of that effort. I've highlighted items that are still missing from our original request and included a little italicized note under each item to try to provide a little more clarity. Items that are not highlighted we feel have been complied with. What I'd ask that you do at this point is to look at each highlighted item and provide a response regarding the status. For example, you could indicate it's an item you're still working on, an item that you've looked for but doesn't exist, or an item that you don't feel we're entitled to under some relevance or privilege objection. For example, Officer Florida and Kathmann's disciplinary records y'all advised you would not seek out, so that is something we can table for now and take up once we get to the end of discovery. Additionally, please produce any interview reports that were created as part of your office's in house interview of any witnesses, specifically the pool hall witnesses that were referenced by Solicitor Hubbard during our meeting.

As for the proposed trial date for the week of 6/28 that does not work with our witnesses' schedule; however, I think we can still use that week to handle most if not all of what will probably be lengthy pre-trial. I've compared our witnesses' schedules with the published terms of court out in Edgefield and what does seem to work is the week of 9/6. Please let us know if that works for y'all and the additional discovery. Thanks.

Luke A. Shealey
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Tel: 803-929-0008
Fax: 888-745-1381



Confidentiality Note: This e-mail, including any attachments, contains privileged, confidential, non-public information intended only for the use of the individual or entity named above. If the reader of this e-mail is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, or reproduction of this e-mail, including attachments, is strictly prohibited. If you have received this e-mail in error, please notify us immediately at 803-929-0008 and return the original e-mail, including attachments, to sender or to The Shealey Law Firm, LLC, via the US Postal Service. Thank you.

MISSING DISCOVERY ITEMS

EDGEWATER COMMUNITY
CLERK OF COURT
CHRISTOPHER PEEL

2021 MAY 10 AM 10:38

1. Inv. Smith Supp report has incomplete paragraph (bates page 8, top paragraph)
-The bottom of the first paragraph is illegible. Please provide a legible copy.
2. Inv. Smith Supp with incomplete sentence (bates 13)
-Last sentence of paragraph is illegible. Please provide a legible copy.
3. Any and all body cam and dash cam footage of all ECSO personnel on scene at the Johnson Pool Hall.
-to this date the only dash cam we have received is from Officer Kathman. We've received no body cams.
4. Crime Scene Log from Johnson Pool Hall.
-Have not received. Only have received the Log Creek crime scene log.
5. Any and all CSI reports and/or diagrams showing locations or evidence collected from the Johnson Pool Hall investigation.
-Have not received any CSI reports or diagrams re: the Johnson pool hall shooting. Have only received several photos presumably where Mr. Hall was shot with what looks like a shirt on the ground and a small amount of blood.
6. Any pictures of the crime scene at the Johnson Pool Hall by ECSO or any other law enforcement agency that investigated that location.
Have received the few exterior photos mentioned above. Please confirm if those are the only photos taken of the Johnson pool hall as part of this investigation.
7. Any forensic evidence collected and reports generated from the Johnson Pool Hall incident, to include, but not limited to, gun shot residue, ballistic testing and comparison on any shell casings or projectiles recovered, DNA evidence collected and compared, fingerprint analysis.
-Have not received anything responsive.
8. Any and all dash cam and body cam footage from officers that arrived at the Johnson Pool Hall, including but not limited to Corporal James Morgan, Officer James Densmore, and Inv. James Smith.
-Have not received anything responsive.
9. Any and all dash cam and body cam footage from officers responding to the shooting incident on Log Creek Rd, including but not limited to Sergeant James Densmore, Corporal Robbie Harter, Officer Dexter Bowman, Corporal James Morgan and Officer Samuel Sherrill.
-Have not received anything responsive.
10. Bates 237-238 appears to be a SLED evidence submission from wrong case, victim Tevin Culbreath
11. Any and all results of the SLED cell phone dump obtained from Barry Jone's phone as evidenced by the request from Bates 244-245.
12. PFC Kathmann's audio and video recorded SLED interview referenced in S/A Turner's report (bates 284).

13. Any and all maintenance records or repair requests submitted for Sgt. James Florida's in car camera in 2018 that is listed as not "fully operational" during the incident.
-have not received anything responsive.
14. Any and all video footage, or audio recordings, made from Sergeant James Florida's video or audio recording equipment, even if only partially operational.
-Have not received anything responsive. Florida claims his camera was not "fully operational," which seems to indicate it had some functionality around the time of the incident. Looking to obtain any audio/video data from his dash cam that is recoverable from around the time of the incident.
15. Any and all records or logs kept evidencing that Sgt. James Florida turned in his body worn camera at the end of his shift on 5/7/2018.
-Have not received anything responsive.
16. The CSI processing results and photos of Sergeant Florida's Explorer by S/A Tankersley, which is listed as going to be done per page 22 of her CSI Notes (Bates 343).
17. The results of Sergeant Florida's drug test which was obtained post incident per his statement (Bates 353)
-Have not received test results
18. The results of PFC Kathmann's drug test which was obtained post incident per his statement (Bates 373).
Have not received test results
19. Goldenrod notes and handwritten notes for any SLED special agent working this case
20. Handwritten notes for Investigator Smith or any other ECSO or ECPD Officer involved in this case
-Have not received anything responsive.
21. The complete disciplinary and internal affair files for Sergeant Florida and Officer Kathmann.
-Understanding from Solicitor Hubbard is that he will not seek out this information.

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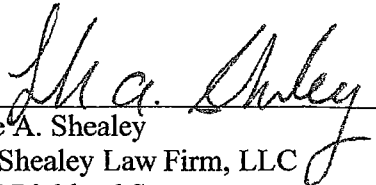
Barry Jones,
Defendant.

CERTIFICATE OF SERVICE

2021 MAY 10 AM 10:38

EDGEFIELD COUNTY
CLERK OF COURT
CIVIL DIVISION

I certify that on this date I served the Notion of Motion and Motion to Compel Discovery and Disclosure of Evidence in the above-captioned case on the State of South Carolina by delivering copies of these documents to the Solicitor of Record to his office located at 205 East Main Street, Suite 309, Lexington, South Carolina 29072 and leaving them with his clerk or other person of authority at said office.



Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina
May 3rd, 2021

RECEIVED
JAN 11 2022
SC Court of Appeals

SHEALEY | LAW
ATTORNEYS AT LAW FIRM

1507 Richland Street
Columbia, SC 29201

RECEIVED

JAN 11 2007

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA)
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2018A1910100228; 2018A1910100229;
2018A1910100230

MOTION FOR DISCOVERY
AND DISCLOSURE OF EVIDENCE

JAN 11 2022

SC Court of Appeals

2019 FEB -

PM 2:10

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

TO: ASSISTANT SOLICITOR ROBERT MCNAIR

The above-named Defendant would, through his counsel, respectfully request the following information:

- 1) Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent;
- 2) A copy of Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
- 3) Any books, papers documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

4) Any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at trial;

5) Any relevant written or recorded statements made by any witnesses, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statements made by any witnesses;

6) The names and addresses of any witnesses who have given written or oral statements of information concerning the incident(s) in question;

7) A copy of the original incident report and any supplemental reports produced by the arresting or investigation agency;

8) Any other information or evidence within the knowledge or possession of the State that tends to indicate the innocence of the Defendant, or that tends to mitigate any punishment should he be found guilty;

9) Demand is made that any chemist, analyst, and all persons within the chain of custody appear in Court for the purpose of personally testifying. Attorney for the Defense thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, SCRCrimP.

10) The defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to *McNeil v. Wisconsin*, 111 S.Ct. 220 (1991), and *Edwards v. Arizona*, 451 U.S. 477 (1981), the United States Constitution, Amendments

Five and Fourteen, and the South Carolina Constitution, Art. I § 12.

This information is requested pursuant to Rules 5 and 6, SCRCrimP.

This information is further requested pursuant to *Brady v. Maryland*, 373 U.S. 83, 10 L.E.2d 215 83 S.Ct. 1194 (1963), along with the following cases: *Crane v. Kentucky*, 476 U.S. 683 (1986), *U.S. v. Bagley*, 473 U.S. 667 (1986), *U.S. v. Agurs*, 427 U.S. 97, 49 L.E.2d 342, 96 S.Ct. 2392 (1976), *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1972), *Napue v. Illinois*, 360 U.S. 264 (1958), *Goodwin v. Metts*, 885 F.2d 157 (4th Cir. 1989), *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988), *Chavis v. N.C.*, 637 F.2d 213 (4th Cir. 1980), *Norris v. Slayton*, 540 F.2d 1241 (4th Cir. 1976), *State v. Jackson*, 396 S.E.2d 101 (S.C. 1989), *State v. Osborne*, 361 S.E.2d 256 (S.C. Ct. App. 1986), *State v. Mixon* 274 S.E.2d 406 (S.C. 1981).

Furthermore, this information is requested on the grounds that it is essential to insure the Defendant's right to a fair trial, right to confrontation of witnesses, the right to effective Counsel and due process of law and fundamental fairness guaranteed by the South Carolina Constitution Art. I §§ 3 and 14, and Amendments Six and Fourteen to the United States Constitution.

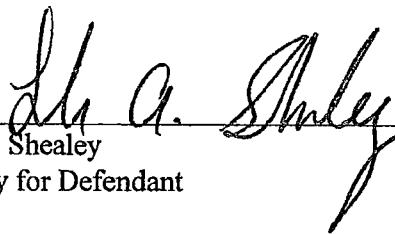
WHEREFORE, Defendant prays:

(a) That the Solicitor be Ordered to produce all information described herein and allow the Defendant the right to examine, inspect, copy and photograph, such materials and information at a specific time and place to be fixed by the Court.

(b) That the information be provided no later than 30 days from the date of this request, as reflected by the Clerk of Court's time-stamp appearing on the face of this document.

(c) That the Court enter an Order requiring the Solicitor's Office to make continuing disclosure of all matters requested herein up to and during the Trial of the charges against the

Defendant.



Luke A. Shealey
Attorney for Defendant

The Shealey Law Firm, LLC
2008 Lincoln Street
Columbia, South Carolina 29201
(803) 929-0008

Columbia, South Carolina

This 29th day of January, 2019

SHEALEY | LAW FIRM

1507 Richland Street
Columbia, SC 29201

RECEIVED

JAN 11 2007

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

EDGEFIELD COUNTY
CLERK OF COURT
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
The State of South Carolina,)
)
)
 vs.)
)
 Barry Jones,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2018A1910100216;
2018A1910100226-30

NOTICE OF MOTION FOR HEARING
PURSUANT TO S.C. CODE § 16-11-440

TO: SOLICITOR RICK HUBBARD

YOU ARE HEREBY NOTIFIED that the above-captioned defendant, through his attorneys will move before the Court the week of September 6th, 2021 for a hearing pursuant to S.C. Code § 16-11-440, and for such other relief as requested in the attached motion.

RECEIVED
JAN 11 2022
SC Court of Appeals

Luke A. Shealey

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina

This 1st day of September, 2021

EDGEFIELD COUNTY
CLERK OF COURT
OFFICE

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2018A1910100216;
2018A1910100226-30

The State of South Carolina,)

vs.)

MOTION FOR HEARING
PURSUANT TO S.C. CODE § 16-11-440

Barry Jones,)
Defendant.)

The above-captioned defendant, through his attorneys, Luke and Brian Shealey, hereby moves that an evidentiary hearing be held pursuant to S.C. Code § 16-11-440.

1. Defendant was arrested in Edgefield County on or about August 20th, 2018 and charged with Murder, two (2) counts of Attempted Murder, two (2) counts of Possession of a Weapon During a Violent Crime and Discharging a Firearm into a Vehicle. Defendant retained Brian and Luke Shealey of the private bar to represent him.

2. The Defendant, through his counsel, requests a hearing pursuant to S.C. Code § 16-11-440, as he is immune from prosecution under this provision.

NOW THEREFORE attorney for Defendant moves that this Court conduct an evidentiary hearing regarding Defendant's immunity from prosecution under S.C. Code § 16-11-440 and enter such Order deeming Defendant immune from prosecution.

(Signature page to follow)

Luke A. Shealey

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
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803-929-0008

Columbia, South Carolina

This 1st day of September, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2018A1910100216;
2018A1910100226-30

2021 SEP 2 2 AM 11: 59

The State of South Carolina,)

vs.)

Barry Jones,)
Defendant.)

CERTIFICATE OF SERVICE

I certify that on this date I served the Notice of Motion and Motion for Hearing Pursuant to S.C. Code § 16-11-440 in the above-captioned case on The State of South Carolina by delivering copies of these documents to the State's attorney of record, Solicitor Rick Hubbard, by delivering said copies to his office located at the Solicitor's Office, 205 East Main Street, Suite 309, Lexington, SC 29072, and leaving them with his clerk or other person of authority at said office.

Luke A. Shealey

Luke A. Shealey
Attorney for Defendant

Columbia, South Carolina

This 1st day of September, 2021

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JAN 11 2022

SC Court of Appeals

SHEALEY | LAW FIRM

1587 Richland Street
Columbia, SC 29201

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SC Court of Appeals

Jenny Abbott Kitchings
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the conversation, even as Hall's visible aggression and agitation escalates. At approximately 6:16pm, Hall begins to walk back towards the front entrance of the Pool Room as he continued to yell at Jones as he did so. However, instead of walking inside, Hall spins around, and begins to approach Jones' vehicle at a rapid pace while continuing to confront Jones again. Jones can be seen on video exiting his car, standing behind his open car door, and shooting Hall two times using a handgun. Jones leaves the scene as Pool Room patrons call 911.

By approximately 7:50pm, Officers had identified Jones as a suspect and encountered his vehicle parked in a clearing off of Log Creek Road, Edgefield, South Carolina. As Officer Florida of the Edgefield County Sheriff's Department drove past the clearing, he alleges that Jones began firing at his vehicle. Officer Kathmann, with the Edgefield Police Department, followed closely to support Officer Florida. Both Officers fired at Jones. Neither Officer was injured during the gunfire exchange; however, Jones had to be transported to August University Medical Center for treatment from gunshot wounds.

STANDARD

The decision to join or sever charges is within the sound discretion of the trial court. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996); *McCrary v. State*, 249 S.C. 14, 152 S.E.2d 235 (1967); *State v. Carter*, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); *State v. Anderson*, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995).

RULE

"Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances [or single course of conduct], (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced." *State v. Beekman*, 415 S.C. 632,636, 785 S.E.2d 202, 204 (2016) (citing *State v.*

Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996)). All four elements must be met. *State v. Beekman*, 415 S.C. 632,636, 785 S.E.2d 202, 204 (2016) (dissent); *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996).

ARGUMENT

I. Offenses are not of the Same General Nature and Do not Arise out of a Single Chain of Circumstances:

If the offenses are interconnected by connected transactions closely related in kind, place, and character, they can be considered to be of the same general nature. *State v. Simmons*, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002); *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005). Where an offense is not of the same kind, place, and character, it cannot clearly fit within a common scheme or plan and motive; therefore, cannot be tried jointly. *See Id.* Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together. *Id.*

In *State v. Cutro*, 365 S.C. 366, 375, 618 S.E.2d 890, 895 (2005), the Court held that two counts of homicide by child abuse and one count of assault and battery demonstrated a common scheme or plan, and thus properly tried all three offenses jointly, because each death involved Shaken Baby Syndrome inflicted by the Cutro's while an infant was in their care. The Cutro's operated a home daycare in Irmo, South Carolina and between January and September of 1993, two infants died at the Cutros' home. *Id.* at 365 S.C. at 369, 618 S.E.2d at 891. A third infant became ill while at their home and was subsequently diagnosed with serious brain damage. The State produced evidence that all three infants were victims of Shaken Baby Syndrome ("SBS"). *Id.* 366 S.C. at 370, 618 S.E.2d at 891-2. Although the incidents with the three babies occurred at

different times, each baby exhibited similar injuries. *Id.* 366 S.C. at 370-373, 618 S.E.2d at 891-893. Ms. Cutro kept the obituaries, photos, clothing, and other items of all the babies, frequently visited their graves, and fabricated a story about losing a child of her own. *Id.* at 366 S.C. at 373, 618 S.E.2d at 893. Medical experts concluded that Cutro's behavior was consistent with Munchausen Syndrome by Proxy ("MSBP"). *Id.* Only because all three of the SBS incidents were the result of Ms. Cutro's MSBP and they presented a common scheme did the Court conclude that the incidents were to be tried jointly. *Id.* 366 S.C. at 375, 618 S.E.2d at 895.

In *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986), the Court held that consolidation of charges of murder of one victim on June 9th, murder of a second victim in a similar manner on June 10th, and an attempted robbery on June 11th was improper because the crimes did not arise out of a single chain of circumstances. *Id.* More specifically, Middleton escaped from a prison work detail near Goose Creek on June 8, 1984. *Id.* at 288 S.C. at 23, 339 S.E.2d at 693. According to the charges, he raped and murdered a victim on June 9th, and another victim on June 10th. *Id.* The victims were asphyxiated, and their bodies were mutilated. *Id.* The body of the second victim was burned. It was further alleged that Middleton attempted to rob a grocery store, assaulting two employees, on June 11th. *Id.* The S.C. Supreme Court reversed the trial court's finding that joinder was justified because the existence of a crime spree, close proximity of crimes, and same weapons used fail to meet the requirements for consolidation. *Id.* The Court determined that insufficient evidence existed to support that the crimes arose out of a single chain of events. *Id.*

The offenses in the current case are not of the same general nature because of the differing circumstances surrounding the respective shooting allegations. At the Pool Room, Jones can be seen on video firing his weapon in the face of an attack by an agitated and

aggressive Hall. By all accounts these men knew each other, and this conflict was colored by past experiences with each other. In contrast, while on Log Creek Road, Jones is alleged to have shot his gun for no particular reason while Officers Florida and Kathmann sought to apprehend him due to the prior shooting incident. In the second scenario, Jones and the Officers have no prior dealings or conflicts. These facts differ from *Cutro* because *Cutro*'s behavior during and after the infant's deaths and injuries were consistent in all three incidents. Meanwhile, Jones responses and motivations are distinctly different for each incident. Although the defense of self-defense is objectively plausible during the Pool Room shooting, the state claims during the second attempted murder incident that Jones shoots for no good reason against police officers acting under color of law. Because *Cutro* had a common scheme present, only one analysis and trial were necessary to properly evaluate the three incidents. Here, to ensure the integrity of the self-defense claim at the Pool Hall, it is imperative that the charges are tried separately to avoid confusion and protect due process before a jury.

Even if the Court finds these offenses to be of the same nature, the offenses still must arise out of a single chain of circumstances. In the present case, there are no facts that support that the crimes were a single chain of events. Evidence present in the Pool Room homicide and Log Creek Road attempted murders are independent of one another, beyond the mere fact that they occurred on the same day. These crimes occurred at two separate locations, over one and a half (1.5) hours apart, had different victims, weapons, and motivations amongst Jones and the alleged victims. Like *Middleton*, Jones' alleged crimes occurred relatively close in time and location; however, pursuant to *Middleton*, cannot support a finding of a single chain of events. Accordingly, because the only thing linking these alleged crimes together is the general

proximity in time, the requirements for consolidation are not met and it would be prejudicial to Jones and violate his due process rights to allow these allegations to be tried jointly.

II. Substantive Right of Defendant's Has Been Prejudiced:

A criminal defendant has the substantial right to a fair trial. A criminal defendant is entitled to a trial that is free from confusion. *Hughes v. State*, S.C. 554, 562, 552 S.E.2d 315, 319 (2001) (dissenting opinion). The analysis for whether a substantial right is being prejudiced and whether prior bad acts evidence is inadmissible is separate. *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005). However, a Defendant may be prejudiced by the admission of prior bad act evidence that would have otherwise been inadmissible. *State v. Beekman*, 405 S.C. 225, 230, 746 S.E.2d 483, 486 (Ct. App. 2013); *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005). Rule 404(b) of the South Carolina Rules of Evidence ("SCRE") states,

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

In analyzing SCRE 404(b), the South Carolina Supreme Court determined proof that a defendant has been guilty of another crime prompts the jury to believe the prosecution's theory that he is guilty; therefore, resulting in a presumption of guilt in the minds of jurors. *See State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Additionally, the Supreme Court concluded that, "such evidence strongly tends to induce the jury to believe that, merely because the defendant was guilty of the former crimes, he was also guilty of the latter... Thus, evidence of a defendant's other crimes serves the prohibited purpose of showing he has a propensity to engage in criminal behavior."

See id. at 125 S.C. at 420, 118 S.E. at 808. Finally, in determining whether a trial court should sever charges, it should ask if the evidence serves some legitimate purpose that has a logical connection beyond propensity and is not prohibited and by SCRE Rule 404(b). *State v. Perry*, 430 S.C. 24, 31, 842 S.E.2d 654, 657.

In *State v. Tate*, the South Carolina Court of Appeals held that the prejudice of trying the two forgery charges that did not arise out of the same chain of circumstances would be substantial because the jury would be more likely to find that the defendant was guilty of both forgeries based off evidence of only one of the forgeries. 286 S.C. 462 (Ct. App. 1985). First, Tate was charged for forging a government check and issuing it to a liquor store. *Id.* at 189, 464. Second, Tate repeated the same, identical act at a different liquor store. *Id.* Although the charges and behavior were identical, they were deemed unrelated. *Id.* at 290, 464.

In *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654, the South Carolina Supreme Court held that evidence of Perry's abuse of his stepdaughter more than 20 years earlier was not substantially similar to the assault of his biological children, nor were the assaults of his children substantially similar to each other. *See id.* The stepdaughter's testimony did not serve a legitimate purpose beyond propensity and lacked a logical connect with the other crimes such that it tended to prove a material fact. *See id.* Therefore, the testimony was inadmissible evidence under SCRE 404(b). *Id.* at 430 S.C. at 44, 842 S.E.2d at 665. The alleged assaults occurred when daughter two was between five and seven and stopped when daughter two was sixteen; when daughter three was between ten and eleven and stopped before daughter three was twelve; and when stepdaughter was between the ages of nine and thirteen. *See* 430 S.C. 24, 842 S.E.2d 654. The method of abuse was similar except for the fact that physical force was used against daughter two and not daughter three, and during the nighttime rather than in the early morning.

See id. The court found that the assaults were not substantially similar to each other because the assaults began at different ages, the frequency of assaults varied, and the method of assaults varied. *See id.*

Similar to the forgery charges in *Tate*, the joinder of the alleged offenses would prejudice Jones' substantive rights, as a jury could find malice where it otherwise might not, simply by the overwhelming cumulative effect of both allegations being forced to be considered at once. Both Murder and Attempted Murder require a showing of 'malice aforethought.' "Murder" is defined in S.C. Code Ann. § 16-3-10 as "the killing of any person with malice aforethought, either express or implied." Further, "Attempted Murder" occurs when "a person who, with the intent to kill, attempts to kill another person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-29. Similar to the breaks in time present in *Tate*, with the Pool Room and Log Creek Road incidents being independent of one another – despite the allegations being similar in type – it would not be appropriate to allow the malice aforethought analysis in one of the incidents to potentially be confused or supplied for the other. In a scenario where the charges were presented together in a single trial, a jury could likely confuse the presence of malice aforethought in one crime to mean that it is present for both the murder and attempted murder charges. Because there is a threat of undue confusion present, it would be inappropriate to find that these charges should be tried jointly. Particularly due to the objectively obvious self-defense implications present from the Pool Hall video, Jones will be unduly prejudiced by the confusion created with the malice considerations forced upon a jury if made to consider both allegations during the same trial.

Additionally, Jones's substantive right to a fair trial will be prejudiced if the charges are jointly tried because it will result in the admission of prior bad acts evidence that would have

otherwise been inadmissible. The facts and evidence from either the Pool Room or Log Creek Road charges do not serve a legitimate purpose beyond propensity and lack a logical connect with the other crimes such that it tended to prove a material fact. Therefore, the testimony is inadmissible evidence under SCRE 404(b). This case is similar to *Perry* because these allegations are not substantially similar to one another as a result of them beginning at different locations and times, and occurring under vastly different circumstances. Like the gaps in time and age in *Perry*, these incidents occurred at a different time and place making them independent of one another. Because these incidents were independent of one another, logically, no fact from either would prove any motive, scheme or plan (identity is not at issue in this case.) Therefore, pursuant to SCRE 404(b) – and to avoid creating a presumption of guilt in the minds of the jurors – these charges must be tried separately because they are independent events that lack a logical connect to prove material facts. Accordingly, SCRE 404(b) prohibits evidence from one shooting allegation to prove the elements of the other. The method of these shooting allegations varies because of the different weapons used. While at the Pool Room, Jones is alleged to have used a handgun while Hall confronted him at his driver’s door. In contrast, while on Log Creek Road, Jones is alleged to have used an AR-15 against the Officers for no legitimate reason. In *Perry*, sexual abuse was present with all of the children, but not physical abuse, which led the court to conclude that there was a variance in the modes of alleged abuse. Jones’ case is similar to *Perry* because although a firearm was present at both scenes, they were different firearms that were allegedly used under different contexts. One very personal and against being confronted aggressively by an acquaintance (Hall), and the later incident is alleged to be for no good reason and against law enforcement. The mere existence of a firearms shall not lead the Court to conclude that there is an underlying motive, scheme, or plan. Therefore, SCRE 404(b) prohibits

evidence from separate allegations, with varying methods and motivations, to be used at the different scenes to prove the other. Accordingly, because of the clear independence in locations, times, purposes, and methods that demonstrate no motive, scheme or plan, Jones' substantive right to a fair trial will be prejudiced if the charges are jointly tried because it will result in the admission of prior bad acts evidence that would have otherwise been inadmissible pursuant to SCRE 404(b).

III. Offenses Cannot be Proved by the Same Evidence:

One of the elements necessary to join charges in the same indictment is that the charges must be provable by the same evidence. In *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996), the court held that consolidation requirements were met because the same evidence of subsequent break-ins would have been admissible to prove the other crimes as evidence of flight and identity. Tucker arrived at the home of the victim, pulled out a gun, and forced her into her bedroom. *Id.* at 324 S.C. 160, 478 S.E.2d 263. Two men rang the doorbell to the home looking for the victim's husband, which prompted Tucker to go into the driveway with the victim. *Id.* at 324 S.C. 161, 478 S.E.2d 263. The victim pled that the men not leave her with Tucker for he was going to kill her; however, Tucker still managed to drag the victim back into the home. *Id.* Tucker stole money out of the victim's purse and shot her twice in the head. *Id.* While on the run for the following four days, Tucker hitched rides, broke into a church and a mobile home, and killed another person while attempting to break into a car. *Id.* Following the jury's recommendation, Tucker was sentenced to death. *Id.*

In this case, neither the evidence from the Pool Room nor Log Creek Road incidents are of use in proving guilt of the other, which should lead the Court to conclude that these cases must be tried separately. This case differs from *Tucker* because identity is not at issue, as

numerous witnesses to the Pool Hall shooting identify Jones by name and sight. Additionally, these cases are proven by different witnesses. At the Pool Hall, the case will attempt to be proven by the state through the use of numerous lay witnesses to the incident that are not part of the Log Creek Road case. Additionally, this case is investigated exclusively by the Edgefield County Sheriff's Office. The Log Creek Road incident is investigated exclusively by the South Carolina Law Enforcement Division, with the alleged victims being law enforcement officers that never were apart of the Pool Hall incident. These cases are proven almost entirely by different witnesses. Because the two incidents are independent of one another, no evidence from one is necessary to support the other, and the evidence from one incident does not support a finding of guilty knowledge, intent, or avoidance of apprehension, these cases should be severed and tried separately.

CONCLUSION

For the foregoing reasons, this Court should issue an Order for the severance of Indictments to be tried separately and independent from each other.

(Signature page to follow)

Luke A. Shealey

Luke A. Shealey
The Shealey Law Firm, LLC
Attorney for the Defendant

Brian R. Shealey, Jr.

Brian R. Shealey
The Shealey Law Firm, LLC
Attorney for the Defendant

This 18th day of August, 2021
Columbia, SC

SHEALEY | LAW FIRM

1507 Richland Street
Columbia, SC 29201

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much local media attention¹ and is widely known in the small town of Johnson, SC, which is located in rural Edgefield, SC. Additional factual intertangles, which support the need for enhanced voir dire, are the fact that the Defendant's girlfriend at the time, Angie Smith², is the cousin of alleged victim Millage Hall, and also the ex wife of who ultimately would be the Defendant's lead investigator for the murder allegation – James Smith with the Edgefield County Sheriff's Department. During pretrial hearings conducted September 7th -8th, 2021 the Defendant sought immunity for the murder allegation pursuant to the Protections of Persons and Property Act, Sec. 16-11-450 as well as a motion to sever the murder allegation from the police shootout allegation. Both of these allegations were denied by later court orders³; however, given the highly aggravated and prejudicial nature of trying both of these allegations together, it is necessary that more than standard Court conducted voir dire be conducted to ensure the Defendant has a fair trial free from hidden bias that may not be revealed through standard Court conducted voir dire. Defense counsel has additional training and experience in attorney conducted voir dire, and this would allow necessary voir dire to occur in this case quickly and without delay.

REQUEST FOR SUPPLEMENTAL VOIR DIRE

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants a fair trial by a panel of impartial jurors who were selected using a fundamentally fair procedure. See *Estelle v. Williams*, 425 U.S. 501 (1976); *Irvin v. Dowd*,

¹ Several news articles were published in the "Edgefield Advertiser" in print and online regarding the murder and police shootout allegation.

² At a September 7th-8th, 2021 pretrial hearing asserting immunity, Defendant testified that the reason he returned to the Pool Room was to break up with Ms. Smith rather than to initiate any conflict with Millage Hall.

³ Initial orders denying immunity and severance were October 1st, 2021 and an amended order was filed October 15th, 2021.

366 U.S. 717 (1961). “[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.” *State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)).

The purpose of supplemental attorney conducted *voir dire* is to expose any known or *unknown* bias or prejudice of the prospective jurors against the Defendant and/or the nature of the criminal charge alleged by the State. See *Mu’Min v. Virginia*, 500 U.S. 415 (1991) (“*Voir dire* examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”); cf. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) (holding a juror’s failure to disclose certain information does not warrant a new trial where the juror was not specifically asked to disclose the information during *voir dire* examination).

According to a joint survey by the National Center for State Courts and the State Justice Institute, less than ten (10) state courts rely on judge only conducted *voir dire*. See Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D.; *The State-of-the-states Survey of Jury Improvement Efforts: a Compendium Report*, National Center for State Courts and State Justice Institute, April 2007. This study explained that “[e]mpirical research supports the contention that juror responses to attorney questions are generally more candid because jurors are less intimidated and less likely to respond to *voir dire* questions with socially desirable answers. Moreover, attorneys are generally more knowledgeable about the nuances of their cases and thus are better suited to formulate questions on those issues than judges.” *Id.*, page 28 (internal footnote citation omitted). Notably, this study found that “*South Carolina*

consistently reported the shortest average voir dire time (30 minutes) in both felony and civil trials, with Delaware and Virginia closely following (1 hour or less)." *Id.*, p. 29 (emphasis added).

I. Supplemental Voir Dire is Necessary in the Interest of Justice to Obtain an Impartial Jury through the Intelligent Exercise of Peremptory Challenges by Counsel and Informed Consideration by the Court of any Challenges for Cause.

Adequate *voir dire* is critical in protecting a defendant's constitutional right to an impartial jury. See *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981) (noting "[w]ithout an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled."); see also *Connors v. United States*, 158 U.S. 408, 413 (1895) (finding "Voir Dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate Voir Dire the trial judge's responsibility to remove prospective jurors who will not be able to impartially follow the court's instructions and evaluate the evidence cannot be fulfilled.").

The Supreme Court of the United States has explained the importance of *voir dire* examination and its role in the process of impaneling an impartial jury:

Voir Dire examination serves to protect that right by exposing possible biases, ***both known and unknown***, on the part of potential jurors. Demonstrated bias in the responses to questions on Voir Dire may result in a juror being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious.

McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 554 (1984) (emphasis added).

In cases of extensive publicity, ***defense counsel should be accorded more latitude in personally asking or tendering searching questions that might root out indications of bias, both to facilitate intelligent exercise of preemptory challenges and to help uncover factors that would dictate disqualification for cause.*** Indeed, it may sometimes be necessary to question on voir dire prospective jurors individually or in small groups, both to maximize the likelihood that members of the venire will respond honestly to questions concerning bias, and to avoid contaminating unbiased members of the venire when other members disclose prior knowledge of prejudicial information.

Nebraska Press Assn. v. Stuart, 427 U.S. 539, 602 (1976) (emphasis added).

If the Court has concerns regarding the scope and time needed to conduct supplemental attorney conducted *voir dire*, the Court has the discretion to limit the scope by restricting the number of questions allowed and the amount of time given to question the prospective jurors. Notably, the Defendant agrees to avoid any unnecessary delay by limiting the scope of the examination to **fifteen (15) questions** not addressed by the Court and by limiting the time of examination to **one hour** each for the prosecution and defense.

II. Supplemental *Voir Dire* will Aid the Parties in Complying with the Requirements of *Batson v. Kentucky* and its Progeny.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court of the United States held that the Equal Protection Clause prohibits challenging potential jurors “solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State’s case against a black defendant.” *Id.*, 476 U.S. at 79. Thus, peremptory challenges must be made in a non-rationally discriminatory manner in order to be constitutional. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (holding that the discriminatory exercise of peremptory challenges on the basis of gender

is unconstitutional).

The Court ultimately created a procedure for a party to establish a prima facie case of discriminatory use of peremptory challenges. See *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) (adopting the *Batson* procedure set forth in *Purkett v. Elem*, 513 U.S.765, 1 (1995)). The opponent of the strike must show that the race-or-gender neutral explanation provided is mere pretext. *Id.* Notably, the burden of persuading the trial court that a *Batson* violation occurred remains on the opponent of the strike. *Id.*

“If conducted properly, *voir dire* can inform litigants about potential jurors, making reliance upon stereotypical and pejorative notions about a particular gender or race both unnecessary and unwise. *Voir dire* provides a means of discovering actual or implied bias and a firmer basis upon which the parties may exercise their peremptory challenges intelligently. See *Stuart*, 427 U.S. at 602 (Brennan, J., concurring in judgment) (*voir dire* “facilitate[s] intelligent exercise of peremptory challenges and [helps] uncover factors that would dictate disqualification for cause”).

Adequate *voir dire* is a basic premise of the rationale in *Batson* and its progeny for two reasons. First, adequate *voir dire* eliminates any need to improperly rely on generalizations and stereotypes about prospective jurors. See *J.E.B.*, 511 U.S. 127. Second, the Court has noted, “[n]o doubt the *voir dire* process aids litigants in their ability to articulate race-neutral explanations for their peremptory challenges.” *Id.* at 144 n. 17. Therefore, the burden set by the Court requires counsel to have sufficient information to adequately argue a *Batson* challenge and supplemental *voir dire* will aid the parties in complying the requirements of *Batson* and its progeny.

III. COVID-19 Enhances the Necessity to Allow Attorney-Conducted *Voir Dire*.

Attorney conducted *voir dire* is also necessary in this trial because of the COVID-19 Pandemic. The public has wide-ranging opinions regarding the seriousness of COVID-19, the appropriate preventative measure that need to be taken and individual concerns related to their own personal health. Furthermore, the inability of counsel to physically observe jurors who are wearing masks means that additional questioning is necessary to gain a true understanding of jurors' biases and opinions.

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PROPOSED ATTORNEY CONDUCTED *VOIR DIRE* QUESTIONS

- (1) The only law that applies to you at this stage of the proceedings is to answer all questions entirely truthfully. There are no right or wrong answers. We want to know your true feelings. Do not concern yourself with what you may think we want to hear. There is nothing we want to hear other than the absolute truth.
- (2) Do you believe that a person who shoots and kills another person and is charged with murder is therefore guilty?
- (3) Do you believe that a person who shoots and kills another person and is charged with murder could potentially be not guilty based on self defense?
- (4) Do you believe that a person is guilty of attempted murder of law enforcement officers if that person fires a weapon at law enforcement officers who are acting in the line of duty?
- (5) Would you give more credibility to a law enforcement witness in this trial than you would give to a witness who is not law enforcement?
- (6) Do you feel that a police officer's version of events are more trustworthy and reliable than an average citizen?
- (7) If a law enforcement officer's testimony contradicted the testimony of the defendant on trial, would you be inclined to believe the law enforcement officer's testimony over the defendant's testimony?
- (8) Do you believe police officers can make mistakes based on fear and stress just like average citizens?
- (9) In order for a person to be guilty of murder or attempted murder, the State has to prove the person acted with "malice." Malice is a legal term which means the person acted with "evil" or "hatred" in their mind. If the person on trial is shown to have acted out of reasonable fear for their own safety, then malice does not exist. If the person on trial is shown to have acted because they were provoked, then malice does not exist. If malice does not exist, a person cannot be guilty of murder or attempted murder. Do you have any questions regarding the legal concept of malice?
- (10) Do you understand that a person who kills another in self defense has not committed a crime and must be found not guilty?
- (11) Do you understand that a person who shoots at another in self defense has not

committed a crime and must be found not guilty?

- (12) What are your feelings about prosecution lawyers?
- (13) What are your feelings about defense lawyers?
- (14) Do you feel that a witness testifying for the Prosecutor is more reliable than a witness testifying for the Defense? If yes, why?
- (15) Do you believe that a person who attempts suicide after shooting and killing another person is probably acting from a feeling of guilt for what they have done?

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PROPOSED SUPPLEMENTAL JUDGE CONDUCTED VOIR DIRE QUESTIONS

PERSONAL EXPERIENCE AND OPINION: COVID-19, SOCIAL DISTANCING, MASKS

- (1) Have you been vaccinated for COVID-19?
- (2) Have you tested positive for COVID-19 within the last two weeks?
- (3) Have you been exposed to someone who tested positive for COVID-19 within the last two weeks?
- (4) Do you live with someone who has been forced to quarantine within the last two weeks due to their exposure to COVID-19?
- (5) Are you feeling ill, or have been sick within the last two weeks?
- (6) Have you traveled out-of-state within the last two weeks?
- (7) Does the sound of someone in the room coughing or sneezing trigger concerns that you might contract COVID-19 from them?
- (8) Do you have any medical diagnoses that put you in a high-risk category of contracting or experiencing death from COVID-19?
- (9) Do you live with anyone that is in a high-risk category of contracting or experiencing death from COVID-19?
- (10) On a scale of 1-10 (1 being no fear and 10 being extreme fear) what level of fear do you currently have regarding the global COVID-19 pandemic?
- (11) Do you believe that you would be more likely to contract COVID-19 by appearing at court?
- (12) If you were compelled to come into the courthouse or sit on the jury, how afraid would you be on a scale of 1-10 (1 being no fear and 10 being extreme fear) that you would expose other people in your household to COVID-19?
- (13) Do you believe it is safe to hold jury trials during a Pandemic?
- (14) Would you blame the defendant for having to attend a public hearing during the COVID-19 pandemic?
- (15) Do you believe the recommendations and guidelines from the Centers for Disease Control and Prevention (CDC) regarding COVID-19 are reliable?

- (16) Do you believe that COVID-19 is real?
- (17) Do you believe that COVID-19 is dangerous?
- (18) Do you take public transportation?
- (19) Are you willing to abide by any rules the Court instructs you to regarding social distancing during trial if you are selected as a juror?
- (20) Do you have any opposition to wearing a face mask during trial that would cover your mouth and nose?
- (21) If you see a person wearing a mask in a public place, such as the grocery store, what thoughts do you have about that person?
- (22) What thoughts do you have if they are not wearing a mask?
- (23) Should wearing a mask in public be a personal choice?
- (24) Would you feel comfortable communicating with other jurors for an extended period in an enclosed room?
- (25) Would you feel pressure to reach a verdict quickly to avoid exposure to COVID-19?
- (26) Would you change your verdict to agree with others, or compromise with other jurors, to end the trial or deliberations faster so you could leave the courthouse sooner?
- (27) How distracted would you be on a scale of 1-10 (1 being not distracted and 10 being extremely distracted) with concerns related to COVID-19 while attempting to consider the evidence in this case?
- (28) Would you tell the Judge if you begin experiencing symptoms during the trial?
- (29) Have you protested any "stay-at-home" orders issued in your community or the United States?
- (30) Would you be uncomfortable riding in an elevator with another person if you did not know if that person has COVID-19?
- (31) Have you attended any mass gatherings in the last three months including but not

limited to protests, church, funerals, and parties?

- (32) Do you feel that social distancing help prevent the spread of COVID-19?
- (33) Do you feel that masks help prevent the spread of COVID-19?
- (34) Do you feel that having jury trials puts the safety of all involved at risk if social distancing and masks are not enforced?
- (35) Do you feel that your health is at risk if social distancing and masks are not mandated?
- (36) Have you ever commented on a news article on social media (such as Facebook or Twitter) that is related to COVID-19?

PERSONAL EXPERIENCE AND OPINIONS: VIOLENT CRIME

- (37) Have you, a family member, or close friend ever been a victim of a violent crime?
- (38) Have you, a family member, or close friend ever been a witness to a violent crime?
- (39) Are you so morally or religiously opposed to violent crime that you could not render a fair and impartial decision in a case?
- (40) Would you hesitate to vote "not guilty" simply because a case involves the allegation of murder and attempted murder?
- (41) Have you ever commented on a news article on social media (such as Facebook or Twitter) that is related to a violent crime?

PERSONAL EXPERIENCE: LAW ENFORCEMENT

- (42) Have you, a family member, or a close friend ever had a discussion regarding criminal activity with anyone from the FBI, SLED, County Sheriff's Departments, Drug Enforcement Administration, SC Attorney General's Office, or County Solicitor's Office?
- (43) Who has never spoken to or had contact with a police officer about a crime?

PERSONAL OPINIONS REGARDING CRIMES, ARRESTS, AND POLICE

- (44) Do you believe someone is probably guilty simply because they were arrested by the police?

- (45) Do you believe that our criminal laws are too lenient and that there should be stricter punishment?
- (46) Would you believe a police officer's testimony over another witness simply because the person is a police officer?
- (47) Do you believe that someone is probably guilty if that person does not testify?
- (48) Have you ever commented on a news article on social media (such as Facebook or Twitter) that is related to an arrest or criminal trial?
- (49) Have you "Liked", "Followed", or commented on a law enforcement agency's social media page? For example, a Lexington Sheriff's Department's Facebook page?
- (50) Have you "Liked", "Followed", or commented on a prosecutor's social media page? For example, a Solicitor's Office Facebook page?

PERSONAL OPINIONS ON THE INTERNET & SOCIAL MEDIA

- (51) Have you ever commented on a news article on the internet or social media site (such as Facebook or Twitter) that related to a person's arrest, crime, or criminal trial?
- (52) Have you ever commented on, "liked", or "Follow" a law enforcement agency's social media site? For example, a Sheriff's Department's Facebook page and/or Twitter account?
- (53) Have you ever commented on, "liked", "Followed" a prosecution agency's social media site? For example, a Solicitor's Office Facebook page and/or Twitter account?

RELATIONSHIPS AND ASSOCIATIONS: Police, Prosecutors, and Organizations

- (54) Have you, a family member, or a close friend ever been an employee of a federal, state, county, or municipal law enforcement agency or police department? For example, South Carolina Law Enforcement Division (SLED), South Carolina Highway Patrol (State Trooper's), County Sheriff's Department (YCSD), Drug Enforcement Administration, FBI, U.S. Marshall's Office, DSS?

- (55) Have you, a family member, or close friend ever been an employee of a prosecutor's office. For example, the U.S. Attorney's Office, South Carolina Attorney General's Office, Solicitor's office a/k/a District Attorney's office, or City Attorney's office?
- (56) Have you, any family member or close friend ever applied for a job in law enforcement, county jail, prison, courthouse, or Solicitor's Office?
- (57) Have you, any family member or close friend ever volunteered your services to any law enforcement agency, prosecutor's office, victim advocacy group such as Sister Care?
- (58) Have you ever been a member or supporter of a law enforcement booster organization, such as South Carolina Troopers Association, DARE, CAVE, MADD?
- (59) Have you ever been a member of any organization, religious or non-secular, that opposes the consumption of alcohol or illegal drugs?
- (60) Have you, a family member, or a close friend ever been a member of or supporter of any organization, religious or non-secular, that opposes gun ownership or anti-gun movements, including but not limited to Mothers Against Guns, Mothers Demand Action Now?
- (61) Have you ever had a ribbon or bumper sticker on your vehicle to show a position against a specific crime or any other crimes? For example, MADD.
- (62) Have you ever been a member or supporter of any group whose primary purpose is the promotion of victim's rights?

PRIOR COURT AND LEGAL EXPERIENCE

- (63) Have you, a family member, or close friend ever served on a jury panel in a criminal case?
- (64) Have you, a family member, or close friend ever appeared as a witness in a criminal trial?
- (65) Have you, a family member, or close friend ever had a bad experience with a criminal defense attorney?

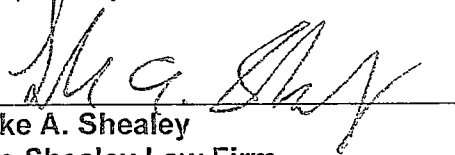
(66) Have you, a family member, or close friend ever filed a grievance against a lawyer?

CONCLUSION

Voir dire examination is a mutual search between the court and the lawyers involved to determine whether a prospective juror can be fair and impartial. Supplemental *voir dire* examination will help achieve this goal and ensure the integrity of the procedure and the impaneled jury. Defense Counsel respectfully requests that the Court allow supplemental attorney conducted *voir dire* examination and that the Court ask the *venire* the preceding questions to expose any potential juror bias and/or prejudice. Therefore, supplemental *voir dire* and the proposed *voir dire* will ensure that the Defendant receives an impartial jury and a fair trial, as required by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution. See *Estelle v. Williams*, 425 U.S. 501 (1976); see also *Cage v. Louisiana*, 498 U.S. 39 (1990).

IT IS SO MOVED.

Respectfully Submitted,



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ATTORNEY FOR THE DEFENDANT

November 30, 2021
Columbia, SC

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RECEIVED

JAN 11 2022

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

STATE OF SOUTH CAROLINA)

v.)

BARRY JONES,
DEFENDANT.

IN GENERAL SESSIONS COURT
Warrant Nos: 2018A1910100216,
2018A1910100226-30

MOTION IN LIMINE TO EXCLUDE
SUICIDE-ATTEMPT EVIDENCE

RECEIVED

JAN 11 2022

SC Court of Appeals

The Defendant, Barry Jones, by and through his undersigned Counsel, respectfully moves this Court for a hearing pursuant to *State v. Cartwright* and, subsequently, an Order excluding the introduction of any evidence of Defendant's alleged suicide attempt at trial, on the grounds that the State failed to prove by clear and convincing evidence that a reasonable jury could find that a suicide attempt occurred or that there exists an unmistakable nexus linking Defendant's alleged suicide attempt to a guilty conscience derivative of the offense for which Defendant is on trial.

The Defendant, by and through his Counsel would apprise this Court of the following facts and legal principles supporting the motion:

STATEMENT OF FACTS

This Honorable Court held an immunity hearing on September 7th, 2021 and 8th, 2021 at which Jones testified extensively to his justified shooting of Millege Hall ("Hall") in self-defense. On October 14, 2021 and October 15, 2021 the Honorable Judge McLeod denied immunity in his Order Denying Immunity and Amended Order Denying Immunity, respectively.

The Defense filed an objection to the Order and Amended Order Denying Immunity on November 22, 2021.

The shooting incidents for which Jones is on trial occurred May 7, 2018. On that date Jones was at the Johnson Pool Room ("Pool Room"), located at 158 Lee Street, Johnston, South Carolina. After leaving the Pool Room, Jones returned to the parking lot at approximately 6:07pm. While sitting in his 2007 silver Mercedes ("Vehicle") at the Pool Room, Hall came outside and approached the Vehicle. Per surveillance video, Hall approaches the driver's door of Jones' vehicle and takes an aggressive and confrontational posture towards Jones. Several times throughout the conversation, Hall is seen throwing his hands in the air, pacing, and leaving and returning to the vehicle. Jones remained in his Vehicle throughout the conversation, even as Hall's visible aggression and agitation escalates, ultimately brandishing what Jones asserts is a gun. At approximately 6:16pm, Hall begins to walk back towards the front entrance of the Pool Room as he continuing to yell at Jones. However, instead of walking inside, Hall spins around, and begins to approach Jones' vehicle at a rapid pace while continuing to confront Jones again. Jones can be seen on video exiting his car, standing behind his open car door, and shooting Hall two times using a handgun. Jones leaves the scene as Pool Room patrons call 911.

By approximately 7:50pm, Officers had identified Jones as a suspect and encountered his vehicle parked in a clearing off of Log Creek Road, Edgefield, South Carolina. As Officer Florida of the Edgefield County Sheriff's Department drove past the clearing, he alleges that Jones began firing at his vehicle. Officer Kathmann, with the Edgefield Police Department, followed closely to support Officer Florida. Both Officers fired at Jones. During the exchange of gunfire, Jones suffered gunshot wounds to the abdomen and the neck.

STANDARD

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 429-30, 632 S.E.2d at 848.

RULE

Generally, “[a]ll relevant evidence is admissible...” Rule 402, SCRE. “[E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Although generally admissible, “relevant[] evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE. “The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.” *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Additionally, relevant “[e]vidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion...” Rule 404(a), SCRE. Furthermore,

[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be

admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Rule 404(b), SCRE.

The South Carolina Supreme Court considered suicide-attempt evidence for the first time in *State v. Cartwright* implementing a rigorous framework by which suicide-attempt evidence could properly be admitted after finding that “suicide-attempt evidence is fraught with the potential for extreme prejudice” and that “[e]vidence of attempted suicide is not easily analogized to evidence of guilt.”¹ *State v. Cartwright*, 425, S.C. 81, 91 (S.C. 2018). The *Cartwright* Court instructs that the trial court must conduct a hearing outside of the jury’s presence to determine whether the State has proven by clear and convincing evidence that:

(1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an ***unmistakable*** nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial. If the trial court concludes that the three factors have been established, the evidence is relevant and may be admitted, subject to a Rule 403, SCRE analysis. The suicide-attempt evidence may be admitted only when all three factors have been met, and the evidence survives a Rule 403 analysis. We recognize that in view of our rigorous framework, ***suicide-attempt evidence will rarely be admitted.***

State v. Cartwright, 425, S.C. 81, 93 (S.C. 2018) (emphasis added). “Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.” *In re Dickey*, 395 S.C. 336, 354 (S.C. 2011) (citation omitted).

¹ Contradicting the Court of Appeals in *State v. Orozco* where the Court reasoned that “[a suicide attempt] is easily analogized to other types of circumstantial evidence guilt based on the accused’s behavior after the crime.” *State v. Orozco*, 392 S.C. 212, 218, 708 S.E.2d 227 (Ct. App. 2011).

ARGUMENT

I. *Cartwright* Framework

As a preliminary matter, the State, not the Defense, holds the burden of proving by clear and convincing evidence the three factors in the *Cartwright* framework. *State v. Cartwright*, 425, S.C. 81, 93 (S.C. 2018).

- a. The only evidence that a suicide occurred are based on statements allegedly made by Jones according to two different law enforcement officers on scene after the shooting incident. Neither alleged statement ascribes any guilt by Jones regarding the shooting events, and Jones' purported suicide attempt cannot be proven forensically or ballistically by projectile comparison.

The State cannot prove by clear and convincing evidence that Jones attempted to commit suicide, as Jones was shot multiple times by law enforcement with at least two different weapons. Jones disputes the existence of an unmistakable nexus between the attempted suicide allegation and the charges for which Jones is on trial.

Consequently, the trial court has no need to further analyze the following second and third factor because all three factors must be established for suicide-attempt evidence to be admitted, however, the Defense further considers the second and third factors in the following sections.

- b. At the time of the alleged suicide attempt, Jones was aware that he had shot Hall in self-defense.

The second factor is whether the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt. At the time of the alleged suicide attempt, Jones was

unaware that Hall had passed away from gunshot wounds but was aware of the fact that he had shot Hall, albeit in self-defense² and therefore, not considered a criminal act.

- c. An unmistakable nexus does not exist by clear and convincing evidence linking the alleged suicide attempt to a guilty conscience derivative of the offense for which Jones is on trial.

The third factor is whether an unmistakable nexus exists linking the alleged suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial. In *Cartwright*, the S.C. Supreme Court did find an unmistakable nexus between Cartwright's attempted suicide and a guilty conscience derivative of Cartwright's charge for criminal sexual conduct where Cartwright admitted that he attempted suicide after he became aware of the new charges and Cartwright had threatened to commit suicide if the victims told anyone about the sexual abuse. The Court held that, "[t]he fact that Cartwright acted on his threat and attempted suicide enhance[d] the probative value of the evidence." *Cartwright*, 425 S.C. at 93.

In this case, Jones will face a trial for offenses stemming from two separate incidents. Each incident should be considered separately when determining whether an unmistakable nexus exists. Further, Jones' attempted suicide allegation is unlike that of Cartwright's where Jones did not threaten to commit suicide or commit suicide upon learning of the charges currently being levied against him. Instead, even under the light most favorable to the State, Jones allegedly chose to commit suicide after being shot at and shot by Law Enforcement, indicating that Law Enforcement did not see the shooting of Hall as Jones saw it which was one out of necessity for self-defense and further indicating that Jones faced imminent incarceration at best and death by Law Enforcement at worst. "Accusation and threat of prosecution and punishment may impel a

² The Defense respectfully refers this Honorable Court to Defense's filed Objection to the Honorable Judge McLeod's Order Denying Immunity.

defendant to attempt suicide...Instead of seeking to avoid punishment, a defendant who attempts suicide may, for reasons unrelated to the crime charged, choose to inflict upon himself or herself a punishment more severe than that following a conviction of the charge.” *State v. Mann*, 132 N.J. 410, 422, 625 A.2d 1102, 1108 (N.J. 1993)³.

Furthermore, Jones’ alleged attempted suicide is not evidence of a guilty conscience from having to defend himself against Hall. First, Jones’ encounter with Law Enforcement serves as a break in the causal chain between Jones shooting Hall in self-defense and then attempting to commit suicide where almost an hour passed between the encounter and the attempt during which Jones did not attempt or contemplate suicide. Second, Jones testifying in his own defense at the immunity hearing held before the Honorable Judge McLeod on September 7th, 2021 and September 8th, 2021 is incongruous with a guilty conscience. At the immunity hearing, Jones testified in depth about his shooting of Hall, specifically, how his actions were out of necessity and not malice or an intention to shoot Hall without sufficient provocation. Jones’ ability to speak about his shooting of Hall and his justification behind shooting Hall is contradictory to a guilty mind. Not only does Jones’ justification of his shooting of Hall prevent a showing of an *unmistakable*⁴ nexus by clear and convincing evidence, but it prevents a showing of a nexus at all where the State cannot establish a guilty conscience.

The State will not be able to show by clear and convincing evidence that an unmistakable nexus exists linking the alleged suicide attempt to a guilty conscience derivative of the offenses for which Jones is on trial where Jones freely testified regarding his justified shooting of Hall in

³ Since the S.C. Supreme Court’s decision in *Cartwright*, no S.C. court has had an occasion to apply the *Cartwright* framework; however, in deciding *Cartwright*, the Court found *State v. Mann*, 132 N.J. 410, 625 A.2d 1102, 1107 (N.J. 1993), to be “instructive insofar as the admissibility of such evidence is concerned.” *Cartwright*, 425 S.C. at 91.

⁴ “[N]ot capable of being mistaken or misunderstood.” Merriam-Webster’s New World Dictionary (11th Ed. 2003).

self-defense and where Jones was being shot at by Law Enforcement and was shot by Law Enforcement immediately preceding his alleged suicide attempt. As such, the State, who carries the burden, fail to meet the *Cartwright* framework and Jones' alleged suicide attempt is not admissible to show a guilty conscience.

II. Rule 403, SCRE, Analysis

Even if the Honorable Court finds the suicide-attempt allegation admissible under the *Cartwright* Framework, the evidence should properly be excluded under Rule 403, SCRE because its probative value is substantially outweighed by its unduly prejudicial effect and its tendency to confuse the jury and invite a verdict on an improper basis.

First, the Defense finds no probative value in the suicide-attempt evidence as proven by the Defenses application of the *Cartwright* framework. The only permissible use of suicide-attempt evidence, per *Cartwright*, is where there exists an unmistakable nexus between the attempted suicide and the offenses for which the Defendant is on trial to prove a guilty conscience. However, the *Cartwright* Court did not draft an easily met framework and instead drafted one which would rarely admit suicide-attempt evidence recognizing the low probative value of such evidence in the majority of cases such as this one. The suicide-attempt evidence has no probative value in this case because it does not make it more or less true that Jones shot Hall with malice aforethought where Jones testified under oath that he shot Hall out of self-defense or that Jones shot at Law Enforcement with malice aforethought where Jones is alleged to have attempted suicide after being shot at and potentially shot by Law Enforcement.

Second, evidence of Jones' attempted suicide is, as the *Cartwright* Court aptly described, "fraught with the potential for extreme prejudice." *State v. Cartwright*, 425, S.C. 81, 91 (S.C.

2018). Specifically, Jones would be prejudiced by jury animus because of moral or religious beliefs towards the act of suicide. Suicide is considered morally reprehensible in many different religions and thus, evidence of an attempted suicide may sway a juror who religiously objects to the practice to decide the case based on emotion rather than evidence. Furthermore, suicide has been mistakenly associated with cowardice. See *Wash. v. Glucksberg*, 521 U.S. 702, 712 (1997) (quoting Blackstone's Commentaries as referring to suicide as "the pretend heroism, but real cowardice, of the Stoic philosophers, who destroyed themselves to avoid those ills which they had not the fortitude to endure"). For similar reasons, other individuals could have moral objections or believe false connotations causing the juror to decide the case on an improper basis.

Third, evidence of attempted suicide is "highly equivocal and circumstantial" such that its admissibility "may introduce remote, secondary concerns that might confuse the jury." *State v. Onorato*, 171 Vt. 577, 762 A.2d 858 (2000). The State's use of suicide-attempt evidence is a crude tool of persuasion that attempts to create a deceptive and dangerous parallel to flight evidence where the S.C. Supreme Court has already held that "[e]vidence of attempted suicide is not easily analogized to evidence of guilt." *State v. Cartwright*, 425, S.C. 81, 91 (S.C. 2018). Unfortunately, suicide is a leading cause of death in America⁵ and therefore, not so easily summarized into one motive or reasoning. Attempting to do so will just needlessly confuse the jury by introducing remote, secondary concerns which the Defense will be forced to combat further distracting the jury from the central issues at trial.

⁵ *Suicide*, NAT'L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/suicide>.

Evidence of Jones' alleged attempted suicide serves no probative value and is fraught with the potential for prejudicial effect as well as the tendency to confuse the jury about the central issues of the case and thus, should be excluded under Rule 403, SCRE.

III. Rule 404, SCRE, Analysis

Evidence of Jones' alleged attempted suicide is inadmissible as impermissible character evidence and, more specifically, as evidence of a crime, wrong, or act used to prove the character of Jones in order to show that he acted in conformity therewith. Suicide was a felony at common law and was sometimes considered "self-murder." See *Wash. v. Glucksberg*, 521 U.S. 702, 710-17, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997) (summarizing the Anglo-American common law tradition of criminal suicide). Furthermore, in *State v. Levelle* a S.C. Judge opined that "[i]n the eye of the law, self-destruction—suicide—is an offence; it is an unlawful act, and if a man with a deadly weapon undertakes to take his own life, he is doing an unlawful act...[,]” and the S.C. Supreme Court affirmed holding that “in this State...suicide...retain(s) its common law character as a felony.” *State v. Levelle*, 34 S.C. 120, 130-131, 13 S.E. 319, 321 (SC 1891), *overruling on other grounds by State v. Torrence*, 305 S.C. 45, 69 fn 5 (S.C. 1991); see also, *State v. Jones*, 86 S.C. 17, 47 (S.C. 1910); see also, *Davis v. Collins*, 69 S.C. 460, 465 (S.C. 1904). Subsequently, evidence of Jones' attempted suicide is inadmissible because it constitutes a crime, wrong or bad act which the State is offering to prove that since Jones alleged attempted to take his own life, he acted similarly in unlawfully taking the life of Hall and attempting to take the life of Law Enforcement.

CONCLUSION

For the foregoing reasons, this Court should issue an Order to exclude the admission of any suicide-attempt evidence at trial.

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This 30th day of November, 2021
Columbia, SC

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RECEIVED

JAN 11 2009

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
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STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
Warrant Nos: 2018A1910100216,
2018A1910100226-30

STATE OF SOUTH CAROLINA)

MOTION IN LIMINE TO LIMIT
INTRODUCTION AND USE OF DASH
AND BODY WORN CAMERA FOOTAGE

V.)

JAN 11 2022

BARRY JONES,)
DEFENDANT.)

SC Court of Appeals

Defendant Barry Jones (“Jones”), by and through his undersigned counsel, respectfully moves this Court for an Order limiting any cumulative introduction of body worn and/or dash camera footage depicting the shoot-out at issue in this case into evidence. Pursuant to Rule 403 of the South Carolina Rules of Evidence, Defendant requests that the Court:

- (1) prohibit the aforementioned evidence from being utilized by the State in an unnecessarily cumulative manner;
- (2) preclude any and all use of evidence that is deemed more prejudicial than probative; and
- (3) limit introduction of the body and dash camera footage on the grounds that statements within the footage are inadmissible hearsay and would further constitute impermissible bolstering.

In support of his motion, Defendant would apprise this Court of the following facts and legal principles:

STATEMENT OF FACTS

On May 7th, 2018, following a shooting at the Johnson Pool Room (“Pool Room”), located at 158 Lee Street, Johnston, South Carolina, officers identified Jones as a suspect and encountered his vehicle parked in a clearing off of Log Creek Road, Edgefield, South Carolina.

Officer James Florida (“Florida) of the Edgefield County Sheriff’s Department alleges that as he was driving past the clearing, Jones began firing at his vehicle.

Also present was Officer Keith Kathmann (“Kathmann”) of the Edgefield Police Department, following Florida closely behind. Kathmann’s patrol vehicle was equipped with a dash camera. Both Kathmann and Florida began firing at Jones, yet neither officer was injured during the gunfire exchange. Jones, by contrast, had to be transported to August University Medical Center for treatment from gunshot wounds to the torso and neck. Additional officers subsequently arrived at the clearing, including Officer Densmore of the Edgefield County Sheriff’s Department, who was equipped with a body camera.

STANDARD

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* at 429-30, 632 S.E.2d at 848. The improper introduction of bolstering evidence is not harmless error due to its cumulative nature because “it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.” *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994).

RULE

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...or needless presentation of cumulative evidence.” Rule 403, SCRE. “The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.” *State v. Gillian*,

373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

“[W]hen a witness has not been impeached, evidence of prior consistent statements is inadmissible” as improper bolstering. *State v. Barrett*, 299 S.C. 485, 486-87, 386 S.E.2d 242, 243 (1989). Improper bolstering is the introduction of evidence used to corroborate and bolster an alleged victim’s story and to evoke an emotional response from the jury. *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994).

Where a witness has been impeached, “[p]rior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited...The rule speaks of a party rebutting an alleged motive, not bolstering the veracity of the story told.” *Tome v. United States*, 513 U.S. 150, 157, 130 L.Ed. 2d 574, 115 S. Ct. 696 (1995); *State v. Phillip*, 623 A.2d 1265, 1268 (Me. 1993) (“As the party offering the prior consistent statements, it is the State’s burden to establish that the statements were made before the motive arose.”); *State v. Carlson*, 392 N.W.2d 89, 91 (S.D. 1986) (“Before a prior consistent statement will qualify as nonhearsay under [801(d)(1)(B)], the proponent must demonstrate...the prior consistent statement was made prior to the time the proposed motive to falsify arose.”) (emphasis added) (citations omitted).

ARGUMENT

I. Any probative value of the body camera and dash camera footage is outweighed by the potential for prejudice.

In this case, the body camera and dash camera footage may be probative of the events that transpired during the incident between law enforcement and Jones; however, the body camera

and dash camera footage is not the only means by which the State can present evidence of said events. For example, the State may call the officers present at the scene to testify to those events, and should Jones opt to testify in his defense, the State may then cross-examine him.

Limited portions of the dash camera and body camera concededly carry less danger of prejudice in and of itself—but to allow the State to utilize those segments of footage in a repetitious manner would only serve to ultimately inflame the jury by encouraging a verdict based on emotional reactivity to civil servants being shot at rather than the merits of the case.

II. Introduction of the body camera and dash camera footage would be cumulative.

In order for the State to be able to introduce the body camera footage from Officer Densmore and dash camera footage from Officer Kathmann, the respective officers would be required to lay a proper foundation for the body camera and dash camera footage by testifying to the events contained within. Such testimony can be elicited without introducing the entirety of the video footage, as those officers were present and should thus be able to recall the events without visual aid. Permitting the State to introduce *all* of those officers' body and dash camera footage in addition to their testimony would be redundant and of little value to the fact finder(s).

III. Prior consistent statements heard within the body camera and dash camera footage would result in improper bolstering of the witnesses' testimony.

The introduction of the body camera and dash camera footage and the statements contained within are inadmissible prior consistent statements that would improperly bolster the officers' testimony. See *State v. Saltz*, 346 S.C. 114, 124, 551 S.E.2d 240, 246 (2001) (erroneously admitted prior consistent statement of witness in murder trial was not harmless—its cumulative effect enhance “the devastating impact of improper corroboration”); *State v. Foster*, 354 S.C. at 622-24, 582 S.E.2d at 430-31 (admission of prior consistent statement of witness in

murder case was error and abuse of discretion—it served only to improperly bolster the witness’ testimony and could not be harmless). As such, the introduction of the body and dash camera footage and those statements contained within would constitute improper bolstering and should be excluded and/or limited by the Court.

CONCLUSION

For the foregoing reasons, and additional argument(s) to be presented at the hearing, Defendant respectfully requests that this Court issue an Order limiting introduction and/or any unnecessary use of footage from Officer Kathmann’s dash camera and Officer Densmore’s body worn camera. To permit the State to indiscriminately introduce the collective footage in its entirety would expose the jury to inadmissible hearsay and improper bolstering; and ultimately result in an imbalance of the evidence’s probative versus prejudicial value.

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December 3, 2021
Edgefield, South Carolina

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