VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

Apr 15 2020

S.C. SUPREME COURT

CURTIS T. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001694

APPENDIX

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throughout the trial, the timing of how the incident happened that night at the home was an issue as to when things actually happened and how the events transpired?

A. Well, not from my side of the story. No, ma'am.

Q. But from the other witnesses?

A. Yes, ma'am. They wasn't being truthful.

Q. It was inconsistencies?

A. Yes, ma'am.

Q. Okay. And as far as you know none of the witnesses were sequestered when it came to listening to other people's testimony, correct?

A. Correct.

Q. Throughout the trial there was numerous witnesses. The first witness I want to go to is A.J. Wilson and specifically we have discussed page 256. Are you aware of any prejudicial statements that you believe were prejudicial when it came to Mr. Wilson regarding his medical condition?

A. Yes. He described to the jury or to the court rather what the doctor said about his medical condition.

Q. And, in fact, that was a charge that you were, it was ABWIK, correct, that you were charged with for him?

A. Originally. Yes, ma'am.

Q. Was there ever any doctor that came and testified regarding his medical condition?

A. No, ma'am.

Q. And, in fact, he actually testified as to what the doctor was telling him about medical conditions?
A. Yes, ma'am.
Q. Did Ms. Fullwood ever object to that statement?
A. No, ma'am.
Q. Did you consider it prejudicial?
A. Yes, ma'am.
Q. And in addition Steve Collins who was an investigator with Lexington County --
MS. GOOD: And specifically page 308, Your Honor.
BY MS. GOOD:
Q. -- when he testified, did Ms. Fullwood ever object to him bolstering witnesses?
A. No, ma'am.
MR. WHITMIRE: Objection. Relevance. Calls for a legal conclusion from a lay witness.
THE COURT: Overruled. Go ahead.
MS. GOOD: Thank you, Your Honor.
BY MS. GOOD:
Q. She did actually object, correct, to hearsay?
A. No, ma'am.
MS. GOOD: Just for the record, Your Honor, she did.
THE COURT: Where is this?
MS. GOOD: It's page 308, your Honor, because he

isn't an attorney. He's not sure.

BY MS. GOOD:

Q. She did object as to hearsay but it's our position that that was the wrong objection, correct?

A. Okay. Yes, ma'am.

Q. Was he testifying regarding whether the witnesses were sure about what they saw?

A. Yes, ma'am.

Q. And then ultimately again on page 384 during Wilson Matthews' testimony he testified regarding collision reconstruction and everything regarding where the vehicle ran over a particular victim, correct?

A. Yes, ma'am.

Q. Did Ms. Fullwood ever object to him testifying or that he was not an expert or qualified in accident reconstruction?

A. No, ma'am.

Q. And, in fact, didn't he testify during his testimony that he was not certified?

A. Yes, ma'am.

Q. Finally with Jim Hickman's testimony, he was one of the CSI's, if you recall, did she ever object to him regarding trajectory of bullets or anything of that nature?

A. No, ma'am.

Q. And do you recall if during that testimony --

MS. GOOD: This is page 522, I believe, Your Honor.
BY MS. GOOD:
Q. -- whether he testified, whether he was qualified for that sort of CSI type investigation?
A. No, ma'am. I don't recall.
Q. Okay. Moving onto the closing arguments by the prosecutor. Throughout the entire closing argument did Ms. Fullwood ever object to any of the closing arguments by Solicitor Myers?
A. She did one time.
Q. And which time was that?
A. There was a misstatement of the law. Misstatement of the law.
Q. Did she ever object at any time to prejudicial statements?
A. No, ma'am.
Q. In fact, were there several prejudicial statements that you noticed that you thought she should have objected to?
A. Yes, ma'am.
MR. WHITMIRE: Objection. Renew relevance. Calls for opinion testimony from a lay witness on a legal conclusion.
THE COURT: All right. Overruled. Go ahead.
MS. GOOD: Thank you, Your Honor.

BY MS. GOOD:

Q. Specifically on page 806 he stated the body is splattered. Did she ever object to that statement?

A. No, ma'am.

Q. And again on page 814 and 819 he said the same things. Did she ever object at those times either?

A. No, ma'am.

Q. Again on page 827 he made the statement -- You had testified, correct?

A. Yes, ma'am.

Q. And he had made the statement I knew he, meaning you, couldn't prove that regarding your testimony, correct?

A. Yes, ma'am.

Q. Did she object to burden shifting in any way at that point?

A. No, ma'am.

Q. And on page 831 he testified regarding A.J. Wilson and his medical condition as he's paralyzed for life. Did she ever object to that statement?

A. No, ma'am.

Q. And again on page 833 Solicitor Myers stated he's an Iraqi war vet. The young man is asleep in the chair for the rest of his life. Did she ever object to that statement as prejudicial?

A. No, ma'am.

Q. Ultimately you were convicted of what charges?
A. Voluntary manslaughter, assault and battery of a high and aggravated nature two counts and possession of a weapon.
Q. And during the jury charge are you aware of State v. Belcher?
A. Not at the time I got convicted.
Q. And during the jury charge there was an instruction on malice. Do you remember that?
A. Yes, ma'am.
Q. And the judge instructed on malice. Use of a deadly weapon is considered malice. Do you remember that?
A. Yes, ma'am.
Q. Was there any objection by Ms. Fullwood regarding that jury charge?
A. No, ma'am.
Q. Okay. And ultimately as you said you were convicted of voluntary manslaughter. During sentencing --
MS. GOOD: On page 911, Your Honor.
BY MS. GOOD:
Q. -- did the judge tell you or tell everybody in the courtroom what his thoughts on the verdict were?
A. Yes, ma'am.
Q. What did he say his thoughts on the verdict was?
A. He said it was a compromised verdict and any

sentence that he give me and my brother would not serve justice so don't look to the sentence for justice.

Q. In fact, did he ultimately end up sentencing you to consecutive time?

A. Concurrent and consecutive. Yes, ma'am.

Q. Yeah. So you did have consecutive time. Did she ever object to the judge making his personal beliefs about whether the verdict was correct or not?

A. No, ma'am.

Q. Finally you heard Mr. Whitmire, he discussed the issue of appellant counsel and the missing transcript pieces, correct?

A. Yes, ma'am.

Q. During your appeal, at what point did it occur to everyone that there was missing parts of the transcript?

A. When the court reporter wrote in there that part of my testimony was missing. There was other missing portions from witnesses.

Q. What testimony was actually missing? You say it was a portion of your testimony.

A. Half of mines, some of Yolanda, Spencer's testimony, my stepfather's Frankie Blue's testimony and Walter Gaston's.

Q. So pretty much the entire defense other than half of your testimony, correct?

A. Yes, ma'am.
MR. WHITMIRE: Objection. Calls for speculation.
MS. GOOD: Your Honor, it's a fact that he remembers from the trial as to who testified.
THE COURT: Overruled. Go ahead.
BY MS. GOOD:
Q. During the appeal process, your attorney asked for a reconstruction of the record, correct?
A. Yes, ma'am.
Q. When y'all -- Were you present for the reconstruction of the record?
A. Yes, ma'am.
Q. When you came back for the reconstruction, do you recall how it was reconstructed?
A. Yes, ma'am.
Q. Can you explain that to the Judge?
A. Basically I felt that everything was put together and thrown together. I had to redo my testimony.
Q. Who put the majority of the testimony back on the record?
A. The State.
Q. The State?
A. Yes, ma'am.
Q. Okay. Did your attorney have any notes or questions from your defense during the trial?

A. No, ma'am.
Q. In fact, did she state to the Court she did not have any copies of questions or anything that she asked you during the testimony?
A. Yes, ma'am.
Q. Nor did she have any notes nor could she remember really what happened?
A. Yes, ma'am.
Q. And so you stated the State put their notes and their recitation of what the facts were on the record, correct?
A. Yes, ma'am.
Q. Okay. During the appellate process, did your appellate counsel ever bring up the record, bring up the issue that due process cannot be granted to you for purposes of the appeal because the entire defense was missing pretty much in the transcript?
A. No, ma'am.
Q. Okay. In fact, you actually filed an Anders Brief also, correct, your own pro-se brief?
A. Yes, ma'am.
Q. Were you able to say everything you wanted to say in that since you did not have a copy of the full transcript?
A. No, ma'am.
Q. Ultimately today you are here asking Judge Goldsmith

to overturn your guilty verdicts, correct?

A. Yes, ma'am.

Q. And for a new trial?

A. Yes, ma'am.

Q. Based on all of these issues?

A. Yes, ma'am. And other issues I have to present also.

Q. What other issues would you like to tell the Judge?

A. Okay. I have a lot of issues here. I have appellate counsel was ineffective for filing the Anders Brief and not filing a merit brief on the issue of whether the trial court erred in refusing to grant a directed verdict for the charges against appellant because his actions were in self defense and the defense of another. I have appellate counsel ineffective for failing to argue to merit issue of insufficient evidence to convict voluntary manslaughter. I have appellant counsel ineffective for failing to raise an argument merit issue of the trial court erred in instructing the jury on the charge of mutual combat since the instruction was highly prejudicial to appellant's defense and the instruction denied appellant his right to a fair trial. You want me to read my trial counsel's ineffective issues also?

Q. The ones that, I guess, aren't tied into the ones we have already gone through.

A. Okay. Trial counsel ineffective issues. I have trial counsel ineffective for not filing a pretrial motion for protection of person and property act. Trial counsel failed to motion for a new trial or an acquittal when the trial court declared that the jury's verdict was a compromised verdict and that the trial court sentence would not serve justice. Trial counsel failed to file for a sentence reconsideration after sentencing when the trial court declared that the jury's instruction -- Excuse me. When the trial court declared that the jury's verdict was a compromised verdict and the trial court sentence would not serve justice.

Trial counsel failed to present expert witnesses to testify that petitioner's behavior was consistent with the defenses of defense of another and self defense. Trial counsel failed to present character witnesses and evidence of petitioner's good character. Trial counsel was ineffective for making improper comments during closing arguments. Trial counsel failed to pretrial interview and investigate the witnesses and victims. Trial counsel failed to cross examine and impeach witnesses and victims with relevant evidence.

Trial counsel ineffective for requesting erroneous, prejudicial and burden shifting jury instructions of voluntary manslaughter and assault and battery of a high and aggravated nature. Trial counsel failed to request and tender jury instructions to support defenses of defense of another and

self defense. Trial counsel failed to object to erroneous, prejudicial burden shifting jury instructions and failed to motion for a mistrial because petitioner was denied a fair trial.

Trial counsel failed to object to prosecutor's unconstitutional burden shifting and prejudicial closing argument and motion for mistrial. Trial counsel failed to present, submit into evidence and argue favorable evidence during trial in the closing arguments. Trial counsel failed to file a pretrial motion to suppress prejudicial evidence and object to prejudicial evidence during trial. Trial counsel failed to investigate and test evidence. Trial counsel failed to present evidence at the reconstruction hearing to show that omissions and errors were still in petitioner's trial transcript during the reconstruction hearing.

I have also prosecutor misconduct. The chief investigative officer Steve Collins failed to secure and search the scene of the incident when he was informed of other weapons were present at the scene of the incident. I have also due process violation. Petitioner's convictions are a compromised verdict which denied petitioner the right to a fair trial and his rights to life and liberty because his actions were in defense of another and self defense making petitioner innocent and petitioner's convictions and imprisonment and mischaracter of justice. That's what I have.

MS. GOOD: Answer any questions the Attorney General has for you.

THE WITNESS: Yes, ma'am.

THE COURT: Cross examination.

MR. WHITMIRE: May it please the Court.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. WHITMIRE:

Q. Mr. Johnson, if I recall correctly, you said that Ms. Fullwood met with you four times before trial?

A. A couple of times. I have my visitation log.

Q. Did you tell her everything you could tell her about the case?

A. Yes, sir. I told her it was defense of another and was self defense.

Q. Not the legal, just the facts?

A. Yes, sir.

Q. Did you and your brother have the same defense?

A. Yes, sir.

Q. It's always been your version that you did the shootings to protect him?

A. Yes, sir. To protect him and me.

Q. And he had a different attorney?

A. Yes, sir.

Q. Did Ms. Fullwood and Mr. Duncan get an investigator

on your case?
A. Yes, sir.
Q. He testified at trial, correct?
A. Yes, sir.
Q. Do you recall that your attorneys introducing 20 plus exhibits on your behalf?
A. I didn't understand you.
Q. Do you recall your attorneys introducing 20 plus exhibits at trial on your behalf?
A. I don't know how many exhibits she introduced.
Q. As I understand it and as the record also reflects you're upset and disgruntled about the reconstruction hearing, correct?
A. Yes, sir.
Q. You testified that you feel like that most of your trial testimony just disappeared because of the court reporter; is that correct?
A. The court reporter said it was equipment malfunction.
Q. Okay. But if I heard you correctly, if I'm wrong, please correct me, that you feel as if the majority of your trial testimony is unaccounted for?
A. Yes, sir.
Q. Now, doesn't the record reflect that from pages 653 to 687 Ms. Fullwood directed you at trial as a defense

witness?
A. Explain that.
Q. You have 30 pages of actual trial testimony; is that correct?
A. My testimony at trial?
Q. Yes.
A. Half of it.
Q. That's half. And the Solicitor I recall from 694 to 742 almost 50 pages of cross examination?
A. I'm not sure of how many pages.
Q. At the reconstruction hearing didn't Judge Stillwell give you every opportunity to put everything you wanted to on the record?
A. Yes. And I told him also there were still omissions and things still missing out of the transcript.
Q. Even your attorney vouched for you; is that correct?
A. Yes. She admitted also that there were things still missing.
MS. GOOD: Allow him to answer the question, Your Honor.
THE COURT: Go ahead. Let him answer the question. Finish the answer I guess is what it was.
BY THE WITNESS:
A. Ms. Fullwood admitted also, if you will look on page

-- Let me get it together. Okay. Let me find the page number it would be at. Okay. On page 998, line 25 to 999 line 23, trial counsel even admitted to the Court that portions of Yolanda F. Spencer's testimony was still missing. That's after I told her to stand up and please explain that her testimony is still missing.

BY MR. WHITMIRE:

Q. What was the purpose of her testimony? You're at trial. You know this record very well. What was the purpose of her testimony in your case?

A. Well, Yolanda's testimony was relevant evidence to the facts of the detective at the time David McDougal, he had a statement, a report rather of Yolanda F. Spencer and this was Yolanda F. Spencer's September 11, 2009 interview report with David McDougal that stated Yolanda said that Amy is coming around and realizes she needs to tell the truth and get not shade it to get back at Curtis.

Q. I don't mean to cut you off, Mr. Johnson, but just for the Court's record, clarification, Yolanda Spencer is the sister of Amy and Rebecca; is that correct?

A. Yes, sir.

Q. And she's testifying to some information that they told her later or that's her purpose?

A. Yeah. Well, they told her what really happened. Yes.

Q. She wasn't present at the apartment that night?
A. No, sir.
Q. She wasn't present when the shooting went down?
A. No, sir. She was present at the hospital after it happened when the girls was still in an emotional state and they actually came around and told the truth about what happened.
Q. And the jury was able to hear all of her testimony?
A. Yes, sir. But it was not all in the transcript.
Q. Now, what other witnesses -- I believe you said Frankie Blue.
A. Can I read off what Yolanda Spencer testified to, portions that were missing?
Q. What source are you reading from, your notes?
A. Yes. Also Mr. David McDougal's report. He has in there what Yolanda said, what Yolanda told him rather and what was actually put in the transcript was tooken out.
Q. Who gave you that report? Where did you get it from?
A. That was in my discovery material.
Q. And they got it from counsel, correct?
A. Yes, sir. So can I read off what was said in the report?
Q. I would rather ask you some other questions at this

point. What was the purpose in your own words, in your own summary of having Frankie Blue testify for you? What was he going to do for your case?

A. He was going to tell what happened as far as what he seen, what happened after the incident.

Q. Afterwards?

A. Yes, sir.

Q. And you remained at the incident scene after the shootings?

A. Yes, sir.

Q. Your brother Kerwin ends up back at the family house?

A. Yes. He left to go get help after the incident.

Q. What would he have testified to in your summary? Or what would you have wanted him to testify to is a better way of putting it?

A. The truth is what he really would have testified to is that I saved my life and his life also and he would have testified to the exact same facts that I presented.

Q. Was Mr. Blue at the scene that night?

A. No, sir.

Q. Was Mr. Blue at Mr. Fleming's house that afternoon when you guys had your original altercation?

A. No, sir.

Q. What else do you think was materially missing from

your transcript? I'm interested. I'm just trying to wrap my head around it.

A. What was missing from Yolanda's testimony?

Q. After Yolanda and Mr. Blue.

A. As far as you have a little misstatement of words here and there that wasn't correct.

Q. And back to your testimony. What part of your testimony is missing just to clarify for the record and for me? What part of it was missing from the transcript?

A. My testimony is in there.

Q. Yeah. The part that was reconstructed.

A. Well, half of my testimony that I testified to with Ms. Fullwood at trial was missing.

Q. Ms. Fullwood went chronologically with you leading up to the night of the incident and then the incident itself; am I correct?

A. Yes, sir.

Q. The part that's missing is the part where you say your brother is being held at gunpoint; is that correct?

A. No. The part that's missing is as soon as everything starts happening.

Q. And that's when?

A. It's in the transcript. I would have to refer to the transcript.

Q. Absolutely. Do you have one in front of you?

A. The transcript is over there on the table.
MR. WHITMIRE: If I may, Your Honor.
THE COURT: Sure.
MR. WHITMIRE: May I approach?
THE COURT: Yes, sir.
BY MR. WHITMIRE:
Q. Mr. Johnson, I'm showing you what's been marked as the appendix in this case which is the court record before this judge. Please, Mr. Johnson, take your time. This is important.
A. If you would turn to page 692, line 24, you will see where it says the remaining portion of defendant Johnson's testimony is missing.
Q. What was the last thing you were testifying to when the transcript went cold and stopped off?
A. The last thing I testified to is when my brother was coming back to the truck and I was bumping the horn to get his attention to come back to the truck.
Q. Do you recall in your version of events this is where you notice he's apparently being held at gunpoint?
A. No. This is after I notice that all three of the victims came out with shotguns. That's when I started bumping the horn on the truck for my brother to come back.
Q. Had you already hit Walter --
A. No, sir.

Q. Not yet?

A. No, sir.

Q. Were you able to go through all of that again starting right there leading up to when, while the victims were ultimately shot, were you able to at least testify to all of that in the reconstruction?

A. Yes, sir.

Q. Given every opportunity by the judge to put everything you wanted to on the record?

A. Yes, sir.

Q. And ultimately the jury heard your side of the events?

A. Yes, sir.

Q. Is there anything else you think was missing from the transcript, any particular detail? It's important to make a good record here today.

A. Yes. Can I put on the record about Yolanda's testimony missing?

Q. Absolutely.

A. Okay. I have here Yolanda said that Amy was coming around and realized she needs to tell the truth and not shade it to get back at Curtis. Yolanda has encouraged Amy to be truthful. Yolanda recalled that shortly after the incident Amy told her Walter had a shotgun while outside of the apartment and he racked it, chambered a round and pointed it

at Kerwin. Amy moved Walter's shotgun out of the apartment after the shooting. Elani Bradley who grew up with Isaac had it hidden a gun and drugs in her apartment at Church Hill Apartments.

Q. Mr. Johnson, if I may interrupt. I want you to come back right where you are stopping. Just for the Court's clarification. The original version that the State produced is that Isaac Wilson, the deceased victim, had the shotgun, right?

A. Yes, sir.

Q. And that what you are showing there is that one of the other victims had the shotgun?

A. Yes, sir. It was three of them.

Q. I have a question. We're gonna come back to this. You testified that all three victims had shotguns?

A. Yes, sir.

Q. That's still just one shotgun?

A. One shotgun that they found.

Q. Now, that brings me back to an interesting point. Solicitor Myers cross examined you on it. You never left the scene?

A. No, sir.

Q. You were with Amy?

A. I was with Rebecca at the time.

Q. And you claim these other two shotguns just

disappear from the scene? You don't know about it when you are there?

A. I didn't claim that they disappeared. From the facts, even Ms. Fullwood, you can ask her right now and the evidence that was presented everyone can tell there was more than one shotgun at the scene of the crime.

Q. Mr. Johnson, I'll rephrase my question. You don't know where those two shotguns went in your testimony, in your version?

A. No, sir. Because they were hidden.

Q. Now, back to what you were saying. I want to give you every opportunity to make a good record today. Sorry for the interruption. But one question first. That document you're reading from, what is that?

A. That was a report from David McDougal, September 2009.

Q. Got it. You said that earlier. My apologies on that. Go back to where you left off.

A. Okay. Neither Amy nor Rebecca has ever told Yolanda that they saw Kerwin shoot anyone. Walter and Amy have broken up. Yolanda believes Walter has been arrested for criminal domestic violence involving Amy. Had counsel presented this evidence there is a good possibility the Court would have made preparations to have Yolanda's missing testimony amended to the reconstruction transcript. Trial counsel erred by not

presenting this evidence to the court. This error prejudiced the petitioner because this was exculpatory evidence of the case and would have helped to support the petitioner's defenses of defense of another and self defense.

Q. Mr. Johnson, are you reading from what you want here today as the report stopped?

A. Sir?

Q. You read from this report but what you just testified to is an argument. Is that in the report? Like exculpatory should have been presented?

A. No. That's my point of view.

Q. I just want to clarify that for the record. This is, I guess, some impeachment character evidence used against the third victim Walter?

A. Yes, sir.

Q. Okay. Just wanted to clarify that for the record.

A. It was impeachment and also to show that evidence was missing and hidden.

Q. I believe your attorneys were able to get a self defense charge for you?

A. Self defense and defense of another.

Q. And it's always been your version and you have been consistent that you shot everyone?

A. Yes, sir. In self defense and defense of another. That's the reason why I acted that way.

Q. Even two years later at the reconstruction hearing just to clarify that's always been --

A. Yes, sir. Acting in self defense and defense of another saving me and my brother's life.

Q. One quick question. Solicitor Myers got into some of this at trial. You had spoken with the police when you were at Mr. Fleming's house when you and I believe Rebecca had an argument; is that correct?

A. Yes, sir.

Q. She called the police?

A. Yes, sir.

Q. Then you guys, then you testify at trial that the deceased victim and Walter stop you at a stoplight and engage in a fight with you?

A. Yes, sir.

Q. After just speaking with the police 45 minutes prior, why didn't you call the police at that point?

A. At the time I called the police they just assaulted me, put a weapon on me so I drove home.

Q. When you got home?

A. When I got home? What time?

Q. No. Why didn't you call the police when you got home?

A. At the time I didn't have a phone. I just went straight to the house.

Q. And you testified that they put a weapon on you?
A. Yes, sir.
Q. Why did you and your brother drive over to the deceased victim's apartment then?
A. I told my mother, stepfather and my brother what all occurred and they said it was a bunch of foolishness that happened for no reason. Basically my brother said, well, hey, if you want to go over there and talk to them, try to peace out the situation, there was a bunch of foolishness about what occurred.
Q. And this is after they pulled a gun on you?
A. Yes, sir.
Q. Can you describe, I think you testified to some of this at trial, can you describe your interactions with the police that night at Mr. Fleming's house when Rebecca called the police?
A. When the officer came, me and Mr. Fleming explained the situation to him. He felt that I was wrong for what I did as far as telling her, you know, she needs to be a better mother and help me raise the kids and the police officer told her not to call the police unless it's an emergency. Rebecca gets mad and goes into the room, storms into the room, starts throwing stuff around. The police officer told me that it was best that I go home and I told him, you know, I apologized for everything happening and I said I was going home.

Q. So you had a pretty good interaction with that responding officer that night?

A. Yes, sir.

Q. And after having that interaction, you don't call the police 45 minutes, two hours later about these two guys pulling a gun on you at a traffic stop?

A. You mean as far as after I left?

Q. Mm-hmm. I'm just curious. After having a really good solid positive interaction with the police, why didn't you call them again? You didn't think they were going to help you?

A. After the incident happened, I was kind of upset about what occurred as far as that was a bunch of foolishness for them to do that when the only thing I had done was told Rebecca to take better care of the kids. That was the only thing when I went home to tell my family what happened.

Q. Just a few more questions. So you and your brother Kerwin were just going to take matters into your own hands?

A. As the way you say it, you saying it in a negative way.

MS. GOOD: Your Honor --

THE COURT: Hold on a second.

MS. GOOD: -- I'm gonna object at this point. I don't see what the relevance of any of this has to do with the issues of ineffective assistance of counsel.

MR. WHITMIRE: He's argued -- May I be heard, Your honor?

THE COURT: All right.

MR. WHITMIRE: He's argued his attorneys were ineffective presenting self defense, defense of another. This is integral to the defense case. If he's going to come here in hindsight and attack Ms. Fullwood's amazing representation, it's only fair that I have further opportunity to question him on it.

THE COURT: Overruled. Go ahead.

BY MR. WHITMIRE:

Q. Just a few more questions. Just one more on this subject. One more line of questioning. I believe you testified that this whole fight with Rebecca centered around how she was raising her children?

A. The argument me and her had?

Q. Mm-hmm.

A. Yes, sir.

Q. And she was about to have your child?

A. Yes, sir.

Q. Did you know she was at Isaac's apartment that night?

A. That night? I found out later on she was. Yes, sir.

Q. So you went over there to take matters into your own

hands when she had her children at that apartment?

A. As far as you're saying it, sir, you're saying it in a negative way. Like I always said and constantly will say, I defended my brother life in defense of another and saved my life in self defense and the reason why me and my brother went over there was to talk to the individuals and make peace of the situation. That's the main reason why I went over there. I did not go over there to take matters in my hand in a negative way.

Q. Addressing some or your appellate concerns.

A. Yes, sir.

Q. Mr. Paycheck was your appellate attorney?

A. Yes, sir.

Q. When he filed that Anders Brief, you filed a pro-se brief attached to it?

A. Yes, sir.

Q. Did you let the Court of Appeals know that you were upset about the transcript?

A. Sir?

Q. Did you tell the Court of Appeals that you were upset? These due process arguments you made, did you let the Court of Appeals know that?

A. I let my lawyer Paycheck know in a letter that was sent.

Q. But what did you personally file to the Court of

Appeals? You have every right to do that in an Anders.

A. What I filed to the Court of Appeals was my first -- She has my materials over there. My pro-se materials. It say case brief on the folder.

MR. WHITMIRE: May I approach, Your Honor? This is the last line of questioning.

THE COURT: All right.

MR. WHITMIRE: I'm showing the witness his own personal Court of Appeals filings and related materials.

THE COURT: All right.

BY THE WITNESS:

A. On my pro-se appeal the first issue I had was appellant objects to Paycheck's petition to be relieved as counsel of record and that the granting of Paycheck petition would deny appellant his right to the effective assistance of appellate counsel on his first appeal of rights.

My second issue, whether there is insufficient evidence that can reasonably conclude that appellant acted in the element of sudden heat of passion to support a voluntary manslaughter conviction when the element of sudden heat of passion was not established and proven beyond a reasonable doubt as a matter of law by the State.

My third issue, whether the trial court erred in instructing the jury on the charge of mutual combat since the instruction was highly prejudicial to appellant and

instruction denied appellant's right to a fair trial.

I also have after I was denied, I was denied on my pro-se brief and the Anders Brief was granted, I filed a motion, I filed a petition for rehearing and reinstatement. My issues that are raised for that was petitioner objects to Paycheck's being relieved as appellate counsel for record pertaining to the Anders Brief and dismissal of petitioner's appeal has denied petitioner his right to effective assistance of appellate counsel on his first appeal of right.

The second issue, the trial court erred in refusing to grant a directed verdict to the charges against appellant because his actions were in self defense and defense of another.

The third issue, there was insufficient evidence that can reasonably conclude that appellant acted in the element of the sudden heat of passion to support a valid voluntary manslaughter conviction when the element of sudden heat of passion was not established and proven beyond a reasonable doubt as a matter of law by the State.

My fourth issue, the trial court erred in instructing the jury on a charge of mutual combat since the instruction was highly prejudicial to appellant's defenses and the instruction denied appellant his right to a fair trial.

Q. Mr. Johnson, did you raise any issues that you didn't raise in your prior pro-se brief in that petition for rehearing?

A. No, sir. Same issues.
Q. You let the Court of Appeals know all of those concerns at that time?
A. Yes, sir.
MR. WHITMIRE: At this time, Your Honor, no further questions. Thank you, Mr. Johnson, for being patient.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. GOOD:
Q. Mr. Johnson, I'm going to show you what's marked as applicant's exhibit number 1. Do you recognize that?
A. Yes, ma'am.
Q. What is that?
A. That is my letter to Mr. Paycheck referring to withdrawal of motion to remand from reconstruction of record and submit a different motion for a new trial.
Q. Based on the fact that there was transcript pieces missing?
A. Yes, ma'am.
Q. Is that a copy of the letter you sent to him?
A. Yes, ma'am.
Q. Do you make copies of all letters you send to your attorneys?
A. Yes, ma'am.
Q. Why do you do that?

A. To make sure I have something to refer to back later on.
Q. What date did you send that letter?
A. I sent this letter February 13th, 2011.
Q. Did you think with sending that letter that he would raise that issue and do that for you since he was your appellate counsel?
A. Yes, ma'am.
Q. Did he do that?
A. No, ma'am.
MS. GOOD: At this time I would like to put into evidence applicant's number 1.
MR. WHITMIRE: Without objection.
THE COURT: All right. Admitted without objection.
BY MS. GOOD:
Q. Earlier you testified regarding you went over there to make peace. Just to clarify for the record, you were no longer dating Rebecca at the time, correct?
A. No, ma'am. I was no longer dating her.
Q. Who was she dating?
A. I didn't know who she was dating at the time.
Q. Did you know Isaac was going to be around?
A. No, ma'am.
Q. You said you went over there to make peace. What were you going over there to make peace about?

A. Talk over the situation. Try and get some understanding about why did something like that occur because every time I seen them and they babysit the children when we went to college, it was no problem and the day before prior there was no problem between me and them period.

Q. When you say "them", who is "them"?

A. Isaac Wilson and A.J. Wilson and Walter Gaston.

Q. In fact, when you went over there that night, you stayed in the car, correct, because your brother was going to talk to them?

A. Yes, ma'am.

Q. And then you testified that when everything happened is because you saw shotguns on your brother, pointed at your brother?

A. Yes, ma'am.

Q. You testified earlier when Mr. Whitmire asked that you were able to put everything on the record that you wanted at the reconstruction hearing. Do you remember exactly what you said in your testimony when you testified during the trial?

A. No, ma'am.

Q. And what is the best way to preserve exactly what you said in your testimony?

A. From the recording in the court transcript.

Q. And, in fact, that's what was missing so you don't

know if what you put on the record is exactly what you said during that day, correct?

A. I don't know but I gave my testimony about what happened to best of my ability.

Q. You tried to do the best you could but you don't know if it's the exact same, correct?

A. Yes, ma'am.

MS. GOOD: No further questions, Your Honor.

MR. WHITMIRE: With the Court's indulgence, just two follow up questions.

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. WHITMIRE:

Q. If you recall correctly, Mr. Johnson, you said you made copies of all the letters you write to your attorneys?

A. Yes, sir.

Q. When did you start doing that?

A. I started doing that from day one since I write my lawyers in the county.

Q. How many letters did you write Ms. Fullwood?

A. I can't recall.

Q. Roughly. Dozens?

A. I wrote her a lot of letters.

Q. How many? Would it be more than 20 or less?

A. Like I said, sir, I can't recall. I would be

fabricating right now if I just gave you a number.

Q. More than five times? Anything?

A. I know more than five times. More than ten times.

Q. More than ten times. Okay. When you wrote those letters, was Ms. Fullwood receptive to you?

A. As far as writing me back?

Q. Or getting back with you in some fashion?

A. No, sir.

Q. What did you write? I'm interested. What did you write to her that she just ignored on what subjects?

A. I wrote to her as far as her coming to visit me. I wrote to her as far as testing the evidence. I wrote to her as far as what type of defense we was gonna present. I wrote to her as far as the letters that Rebecca wrote to me while I was in county showing that I was innocent. How Rebecca said that I saved me and my brother life and it was self defense. I gave her all those letters. Basically a lot of my letters were based off her coming to see me so we could get our defense together about what we was gonna do and present at trial.

Q. Correct me if I'm wrong. You're testifying to that you wrote your attorney letters about what the State's evidence, for example, forensics?

A. Yes, sir. And go and get the evidence tested. Because she did admit to me that there was more than one

shotgun that she could see.

Q. And talking about the defense's strategy?

A. She didn't, like I said, sir, she didn't visit me that much for us to talk about that, but I did write her multiple times and asked her to come and talk to me.

MR. WHITMIRE: No further questions.

THE COURT: Anything else?

MS. GOOD: Nothing further.

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

THE WITNESS: I've got a question for the Court.

THE COURT: You have a question for the Court?

THE WITNESS: Yes, sir.

THE COURT: Why don't you speak to your attorney.

MS. GOOD: Nothing further, Your Honor.

THE COURT: Does the applicant rest?

MS. GOOD: Sir?

THE COURT: Is that all from the applicant?

MS. GOOD: Yes, sir, Your Honor.

THE COURT: Okay.

MR. WHITMIRE: At this time, Your Honor, the State would move for a summary judgment on the issue pertaining to Belcher. It was thoroughly addressed at sentencing. Sentencing occurred four weeks when Judge Stillwell returned to Lexington County. Belcher was decided about 15, 16 days after the jury returned guilty verdicts. His

attorneys put on the record that Belcher was a concern and I think it was judicial economy to become a PCR issue. Judge Stillwell just addressed it as a PCR issue saying it's clairvoyance. It is fully addressed on the record. It's unusual to have something like that. At this time we would move for summary judgment on that one particular issue.

THE COURT: Let's talk about it.

MS. GOOD: Your Honor, I object to that. Belcher, if you look, I don't know exactly the date it came out but it's citation four. It's case is 385SC597 May 2009. This trial was in September of 2009, Your Honor, and I believe it is an issue that should be looked at considering it was heard and decided on before this trial which approximately if you look at the date is May 2009 to September 2009 and something that should have been addressed, and it's something that could have affected the way the jury thought about it. We don't know because obviously we can't have jurors come testify about how they decided on something or if they would remember a jury instruction about malice with a deadly weapon. But I think it's an issue that should not be granted on summary judgment and should be an issue in this PCR.

THE COURT: Well, what about it, Mr. Whitmire, do you have a discrepancy about when it was --

MR. WHITMIRE: It was heard then but I can put on the record it's page 89 this occurred and also having the case heard at oral argument and I think the Supreme Court just recently within the last few months started broadcasting via TV their arguments. No one sees them. We determine our law on clairvoyance. Thorn v. State, Gilmore and Strickland itself is the law decided by the Court on the date of trial, the date at the time the jury, when the jury instruction was given by the judge. Belcher was decided in October.

Both attorneys poignantly within a week or so Belcher being decided brought this to the court's attention and Judge Stillwell's direct comments on this, lines 12 through 16, quote, "Certainly you could not or would not have objected to the charge under the circumstances." Because just like you had indicated it would have been specious because that was well settled South Carolina law. Belcher came from a Judge Keesley case out of this Circuit and Justice Kittredge's opinion says this is a clear break in almost a hundred years of South Carolina tradition. No one could have saw this coming. We get to argue Belcher all the time in PCR court. Now, this is about as close as it comes to when an issue takes effect just two weeks prior. I'm moving for summary judgment as matter of law.

THE COURT: I thought we had a disagreement on when it was published?

MS. GOOD: I don't know when it was published. I just know the citation says May of 2009. But I will state, Your Honor, prior to Belcher, Tate v. State of South Carolina which was from 2002 looks at the issue of malice with the use of a deadly weapon which is charged during a judge's supplemental instructions and they found it was erroneous presumption of malice charge and it was a PCR case, Your Honor, and they found that counsel was not ineffective as it refers to the ABWIK conviction but they brought up that issue before regarding malice and use of a deadly weapon so it was something that could have been foreseeable.

THE COURT: Help me out on the date. I don't have the case in front of me. I'm trying to pull it up. Are y'all looking at two different things?

MS. GOOD: Your Honor, actually here (proffering.) It was heard May 14th, 2009. It does say it was decided October 12, 2009 so it would have been after the September date.

THE COURT: Okay. Okay. Okay. All right.

MR. WHITMIRE: Just to briefly respond to the Tate analysis, Tate's presumption, Belcher's inference, Justice Kittredge also put in the footnote at the very

end of the opinion stated in Belcher that we will not apply this retroactively, going ahead and dispensing with probably what would have been a line of further PCR cases on this matter. It's a clear opinion and this inquiry specifically just comes down to the dates and it was all put on record at this sentencing hearing.

THE COURT: All right. I agree with the State on this issue and grant summary judgment as to the Belcher issue. Now, what's next?

MR. WHITMIRE: The State would call Ms. Fullwood to the stand.

Thereupon,

ELIZABETH FULLWOOD

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat. State your name for the record.

THE WITNESS: Elizabeth Fullwood.

DIRECT EXAMINATION

BY MR. WHITMIRE:

Q. Good morning, Ms. Fullwood.

A. Good morning.

Q. Ms. Fullwood, how long have you been a public defender for Lexington County?

A. Since 1991.

Q. In that time roughly how many murder cases have you

tried?

A. I couldn't really tell you. Quite a few.

Q. Just a few more questions just for the record. Do you recall your representation in this matter?

A. I do.

Q. Had a chance to review your file?

A. To a certain extent. Yes.

Q. How big is your file in this case?

A. What I have here is just a very small portion. The file in this case is two full banker boxes.

Q. Just another question for the record. After your appointment, just roughly, if you can remember, how much time did you spend preparing his case for trial?

A. Hours and hours and hours. Do you want me to sort of just --

Q. If you have it in front of you, absolutely publish.

A. Uhm, let's see. My office was appointed to represent Mr. Johnson in November 2006. Uhm, our screener interviewed him November 30th of that year. The next week probably, well, before I had a chance to even meet with him we had a bond hearing in front of Judge Cooper. Bond was denied. I first met with him on December the 8th. Let's see. Tried to visit him again on January the 2nd of '07. Apparently could not get into the detention center. There was some problem over there.

Uhm, there was a preliminary hearing on March 30th, '07. I see in August of '08 we had a meeting with a number of lawyers and paralegals from my office, the investigator that we had hired Lee Conley, and his brother's lawyer and the investigator for his brother Dave McDougal and Lee Conley was our investigator. Met with Mr. Johnson again on August the 25th, 2008. Met with, I believe, his mother, stepfather and another individual at Mr. Duncan's office August 28th, '08. On that same day we went to the Sheriff's Department and reviewed the evidence.

Then there's some entries about it's just called trial preparation and it's just very general but it looks like we went to the scene on one day. We again went over and looked at some evidence. I had a conference with Mr. Johnson on September the 4th of 2008. Met with him, his brother, Mr. Duncan at the jail. On that one we have a time. We met for three hours. Some more trial preparation. In September a meeting with Mr. Duncan. I met with Mr. Johnson himself on September the 7th of 2008. Met with his mom and stepdad.

Met with Mr. Johnson again on September the 8th, 2008. At that time Mr. Johnson displayed that he might have some sort of emotional type of disturbance. He was very unresponsive. He eventually just kind of got hysterical and started threatening to kill himself and he was put on suicide watch at the jail. It looks like on that date also we had

been doing all that trial prep because his case was on the trial docket and we had, in fact, selected a jury. It looks like we had selected a jury on September the 8th of 2008 and that was in front of Judge McMahon. It looks like at that point we moved to recuse Judge McMahon because then his daughter worked for the Solicitor's Office in the portion of the office that represented General Sessions cases and he did recuse himself. Then later at the jail is when Mr. Johnson lost his composure to the extent that the next day I moved to have him evaluated before Judge Hayes and Judge Hayes granted that motion so we went through that process of having him evaluated.

Then it looks like case activity started picking up again in probably -- Now, this isn't written down. This is from memory. -- in August of '08 we got notice that we wanted to try the case and I do recall that I had a heavy trial schedule at that time and I was on the docket to try a rape case maybe two weeks before the start of Mr. Johnson's case and I remember going to Judge Stillwell and telling him that I had to have some leave or continuance from that case because I needed more time to work with Mr. Johnson because he was going to be - I had a client that was going to be testifying and he needed my undivided attention and so basically Judge Stillwell gave me protection from that term of court.

So at that point it looks like there was about a two

week period where I met with Mr. Johnson a great deal. We went over his trial testimony in detail. We discussed the law applicable to his case in detail. We discussed trial procedure in detail. We discussed trial strategy in detail. I remember this well because I remember Mr. Johnson well because once that started I was amazed at how somebody as young as he was at that time could focus on what he needed to do without being foolish about extraneous type of matters. Who just - he had a fine mind and he easily grasped legal principles. He could ask questions that were pertinent to what we were discussing. He didn't want to argue about what the law ought to be. He accepted it like what it was and I'll stop there because you want to ask me questions.

Q. In other words, he's a sophisticated client that was beneficial to your defense?

A. I don't know if he was sophisticated but he's a smart young man.

Q. Continue on.

A. And he certainly was capable and he did assist in the preparation of his defense.

Q. Just to review some, I guess, different legal matters that occurred during trial, and I appreciate the record you just made, Castle Doctrine, was the Castle Doctrine ever an issue in this case to bring up?

A. Not to my way of thinking. While I know it does, it

can apply when someone is in their vehicle, I think under this set of circumstances, you know, the facts of this case I wouldn't think that it was applicable.

Q. Mr. Johnson's defense and theory of facts were the same as his brother's?

A. Yes.

Q. As strategy for jury instructions on that matter, did you and Mr. Duncan approach that together as a joint team?

A. Yes. Yes.

Q. Were you able to make the requests you wanted and object to the requests that you didn't like in this case?

A. I believe so. That's my recollection.

Q. Just to put on the record. To your recollection. Some of the allegations involve Solicitor Myers' closing argument. Did you recall objecting at all during his closing argument?

A. I don't remember that.

Q. What is your general policy and how do you approach objections in argument?

A. Well, there's a fairly standard list of things Solicitors might do that's inappropriate during closing arguments and you might have a list right there on the table or you might just be carrying a list in your head but you try to catch them.

Q. If you would have caught one of those big no-nos, would you have objected?
A. I would hope so.
Q. Do you recall receiving correspondence from Mr. Johnson leading up to trial?
A. Yes. I believe I did.
Q. Were you able to discuss his correspondence with him and address his concerns?
A. I can't say that every time he wrote me a letter I ran right out there and talked to him about it but I do believe I met with him as many times and as long, because we're not talking about 30 minute meetings, we're talking about very lengthy meetings we had especially towards the couple of weeks leading up to trial that he had the opportunity to discuss anything that he was curious about, didn't know or wanted me to hear.
Q. If I recall correctly, you testified that just a few weeks leading up to trial as a transformative experience he became a very beneficial and a very intelligent client about his case?
A. Yes. He just had a good serious open attitude. He was just the type of client that's just a pleasure to work with.
Q. Just a handful more questions. When were you notified that there was potentially some issues with the

transcript?

A. I believe appellate defense contacted me and told me they were going to have a reconstruction hearing.

Q. If you can recall, how much time passed between when you were contacted to when Judge Stillwell actually convened that hearing?

A. I have no idea.

Q. Do you recall having any notes or anything from your direct examination of Mr. Johnson or the circumstances surrounding that?

A. This is what I recall. What I have was printed out questions that I used at trial. I had I think virtually no notes as far as Mr. Myers or whoever cross examined him. And again, this is my recollection of it. Judge Stillwell asked us to try to reconstruct Mr. Johnson's testimony and we tried to do so by asking him the same questions at the reconstruction hearing as I did at the trial.

Q. But you still have that printed list?

A. Right.

Q. I guess your strategy or approach to presenting him as a witness, you went chronological; is that correct?

A. Yes. I believe so.

Q. Were you able to ask him any and every question that you thought was needed to ask to make the record at the reconstruction hearing?

A. I asked every question that I asked him in trial.
Q. Ms. Fullwood, did you try this case to the best of your ability?
A. I did.
MR. WHITMIRE: At this time, Your Honor, no further questions. Thank you. Please answer any questions that applicant's attorney may have for you.
THE COURT: Cross examination.
MS. GOOD: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. GOOD:
Q. I'll pick up right where we left off on the transcript reconstruction. You stated that you still had the questions that you asked him?
A. Mm-hmm.
Q. Do you have a copy of the transcript?
A. Of the transcript?
Q. Mm-hmm.
A. Not up here.
Q. I want to show you page 934 on this transcript. Can you read that page and refresh your recollection as to what you told the judge regarding your notes and questions from that day?
A. Okay. What I told the judge at the hearing and I think what I said then at the hearing would be more accurate

than my recollection now, that what I was working from was a draft of the questions that I had that apparently - and unfortunately the draft ended where I guess the direct testimony ended in the portion of the transcript that apparently contains some of his testimony. I told him I couldn't find the final version of the questions. But let's see. Okay. So I told him that I had been working with the jump drive. My home computer got infected with a virus and that compromised the jump drive. So okay. So I told him that the questions weren't going to be exact. So apparently I just had some of the questions rather than all of the questions.

Q. So it's fair to say that at the reconstruction hearing the majority of what was put on the record was the State's version of the notes that they took?

A. I think so. I do recall having him testify.

Q. Mr. Johnson?

A. Yes.

Q. Yes.

A. Okay.

Q. Regarding the Castle Doctrine, can you explain why you didn't think that this was potentially an issue to bring in a Castle Doctrine if it was gonna be self defense and protection of others?

A. Because - I guess I thought that because they had gone - this - they had gone there in their vehicle for the

purpose of meeting these people. I would think that when we're talking about a Castle Doctrine and in a vehicle, that's more for the type of situation where, say, an individual is just in their car in traffic and somebody tries to carjack them or something.

Q. So it never went through your mind that if you're just meeting with somebody randomly, there's no weapons involved at that time, that if somebody pulls a weapon on you you could potentially defend yourself and it would be a Castle Doctrine issue?

A. I didn't think it was.

Q. In prior to the trial, there were pretrial motions. Do you make it a practice to sequester witnesses during the trial so that they don't hear testimony of other witnesses?

A. Not usually.

Q. And why is that?

A. Well, for one thing they're usually denied here in this circuit and for another sometimes I might want my witnesses in the courtroom during the trial as well.

Q. In this case which witnesses would you have wanted in the courtroom to hear testimony?

A. Uhm, I don't know that in this case that I especially considered that.

Q. And isn't it true that in this case since there are two versions of the story as to what happened a lot is based

on eye witness testimony of lay witnesses that were at the scene that night?

A. Yes.

Q. And isn't it true there were a lot of inconsistencies between the different witnesses?

A. The transcript would reflect that. There probably was though.

Q. Okay. I'm going to move to prejudicial statements that, you were in here listening to Mr. Johnson testify, regarding testimony throughout the trial. During A.J. Wilson's testimony regarding him testifying about his mental condition and what the doctor told him about his medical condition, did you ever object at that time to hearsay?

A. Apparently not.

Q. Isn't it true he went into detail about what was wrong with him, his medical condition?

A. Again, the transcript would show what he testified to.

Q. Regarding Steve Collins' testimony, did you ever object at any point regarding him bolstering what the witnesses were saying about how much they believed what they saw was a hundred percent true?

A. Again, if the record says I didn't, I guess I did not.

Q. I direct you to page 308. In fact, you do object

for purposes of hearsay but you do not object for purposes of bolstering the witness regarding his statement about one of the witnesses how sure they were of what they saw.

A. That's right. My objection was hearsay.

Q. Okay. Page 384 regarding Wilson Matthew's testimony, do you recall he was one of the, I guess, CSI reconstruction people from the Sheriff's Department?

A. Wilson. Okay. All right. So 384?

Q. Yes, ma'am. Do you recall he testified regarding reconstruction of I guess the vehicle where it hit the wall, where it hit the potential victim and that sort of thing. Did you ever object regarding him being an expert in that field or qualified in accident reconstruction?

A. It doesn't appear that I did.

Q. In fact, he wasn't qualified as an expert, was he?

A. No. The State didn't seek to qualify him as expert.

Q. In fact, he testified he was not certified because they don't have certification for reconstruction?

A. He may have.

Q. Okay. Moving onto the closing arguments. You testified as a general policy that you don't object unless there are several of the big no-nos. Which big no-nos do you normally object to?

A. The golden rule type of argument. Try to catch

burden shifting arguments. Arguments what I call tending to, asking for a verdict based on something outside of the evidence.

Q. Do you ever object to the prosecutors trying to stir the emotions of the jury if it gets out of hand?

A. That's what I mean by urging a verdict based on something outside of the evidence.

Q. In this case the Solicitor who closed was the head Solicitor, Donnie Myers, correct?

A. Mm-hmm.

Q. Bless his heart, we all know Donnie. There's been several cases where he's been overturned based on prejudicial comments during closing arguments?

A. That's correct.

MR. WHITMIRE: Objection. Relevance.

MS. GOOD: This goes to her general policy, Your Honor, as to who she objects to and how.

THE COURT: Overruled. Go ahead.

MS. GOOD: Thank you.

BY MS. GOOD:

Q. In this case Solicitor Myers was closing and on page 806 he starts discussing how the victim's body was splattered. Do you recall that?

A. Let me go to page 806, okay?

Q. Yes, ma'am.

A. Where do you have splattered?
Q. I just have page 806.
A. You don't have a line. Okay. I see it.
Q. And, in fact, at that point you did not object?
A. No. I didn't.
Q. Again on page 814 and again on page 819 he also mentions the body being splattered. During the trial were there any photographs introduced regarding the body of the victim?
A. I don't remember.
Q. In fact, there were several that were left out for purposes that they were too prejudicial, correct?
A. Probably.
Q. After the third time of him stating the body is splattered, did you not think that he was trying to stir the emotions of the jury at that point?
A. I don't remember at this point what I thought then.
Q. A second ago you just testified that you like to, or one of the big no-nos you object to is burden shifting?
A. Mm-hmm.
Q. On page 827 Solicitor Myers makes the comment I knew he, meaning Curtis Johnson, couldn't prove that. Did you object at that point to burden shifting as the defense having to prove?

A. No. I did not object to that on that basis.
Q. On page 831 he makes the comment again about the victim being paralyzed for life. Did you object at that point for him stirring the emotions of the jury?
A. I did not.
Q. Finally on page 833 he goes into the victim being an Iraqi war vet but now he's a young man asleep in a chair for the rest of his life. Did you object at that point?
A. It doesn't appear so.
Q. Altogether those six separate statements you did not consider that him trying to stir the emotions of the jury?
A. Apparently not since I didn't object.
Q. Finally I'm going to go to the sentencing of Mr. Johnson. The jury came back with a voluntary manslaughter, correct?
A. That's right.
Q. And during the sentencing, do you recall on page 911 the judge stating that he believed that jury was a compromised verdict and that justice would be doled out by God?
A. It's in the transcript.
Q. Then he ultimately sentenced him to consecutive time, correct?
A. That's right.
Q. At that point did you object regarding the judge saying he believed it was a compromised verdict basically

saying he believed it should have been murder?

MR. WHITMIRE: Objection. Relevance. There's no basis for --

BY THE WITNESS:

A. I'm not sure that that's what --

THE COURT: Hold on one second. The objection is relevance.

MS. GOOD: Your Honor, one of our issues for the PCR is that she failed to object to the judge's comments on the case and his beliefs regarding what the verdict should have been and then ultimately sentencing him to consecutive time which tying into his belief of what he thought the jury should have come back with.

MR. WHITMIRE: The relevance objection was there's no prejudice value tied to his testimony. The judge's comments in sentencing are completely proper and the prohibition to compromised verdicts was taken away decades ago.

THE COURT: Well, I understand your argument. Overrule the objection. Go ahead.

MS. GOOD: Thank you, Your Honor.

BY MS. GOOD:

Q. Did you object at that point to his beliefs about what he thought the verdict should have been?

A. First of all, I didn't take it then and I don't take

it now of him expressing an opinion that the verdict should have been murder. And at that point in the trial the jury has already done its job. The judge has heard the facts and he's got to base his sentence on a number of factors including the facts of the trial and I don't see anything improper about him making any comments as to his opinion of the facts.

MS. GOOD: No further questions, Your Honor.

MR. WHITMIRE: No further questions of this witness, Your Honor. The State rests. I would just ask that Ms. Fullwood be released from her subpoena because she's got some more cases today.

MS. GOOD: No objection, Your Honor. Can I get my transcript?

THE COURT: Thank you, ma'am. You may step down and you may be excused.

MS. GOOD: Your Honor, I do believe my client would like to address Your Honor.

THE COURT: All right. Well, let me see. The State has rested?

MR. WHITMIRE: The State has rested.

THE COURT: Okay. I'll be glad to hear from him now, the applicant.

MR. JOHNSON: Your Honor, I do have a constitutional right to present all my issues as far as PCR, sir.

THE COURT: Yes, sir.

MR. JOHNSON: When I was standing right there and I was telling what my issues were, I didn't know at the time that I could go into my issues in detail. I was giving a brief summary of what my issues would be and I assumed that we was gonna go back to my issues later after the proper matters were done. So, Your Honor, can I now present my issues in detail that I want to raise for the Court? Because at that time, Your Honor, I did not know from my counsel that any issues that I have right then and there present them and go in detail. I just thought as far as I was told that I just give a summary of what my issues was gonna be and then we was gonna come back to my issues. But since I didn't know that and she told me now that I had a chance to present my issues while I was up there on the stand, can I go back on the stand and present my issues since I didn't know at the time that I could present my issues in detail while I was on the stand at that time, sir?

MR. WHITMIRE: Your Honor, the State would object. There is a pre-determined prohibition against hybrid representation in post conviction relief. Applicant is present and he's represented by Ms. Good. If there's some motion matter or that if she wishes to take up in her case in chief, I think that's the best way of handling it.

MR. JOHNSON: Well, Your Honor, can my counsel get up and make a motion for me to get back on the stand and present my issues so I can present them in detail, sir, as it is my constitutional right to present all my PCR issues?

THE COURT: Well, the case is over with.

MR. JOHNSON: Sir, I did not know at the time on the stand that I could go into detail when I was telling what my issues were.

THE COURT: I will be glad to hear any motions that your attorney may wish to make though.

MS. GOOD: Your Honor, I guess at this time I make a motion to put my client back on the stand so he can present what issues he would like to present.

THE COURT: Continues to be opposed?

MR. WHITMIRE: Yes, Your Honor. General objection. The record has been closed. To be reopened we would just say for cause. That's for Your Honor to determine.

THE COURT: All right. I'll deny the motion.

MR. WHITMIRE: Thank you, Your Honor.

THE COURT: I'll be glad to hear argument.

MR. JOHNSON: Sir, while I was sitting here with my counsel, even on the stand, I told her can I go into details with my issues. Even when I asked you can I speak to you because at the time I wanted to present my

issues to you when I was on the stand and I asked can I speak to you and you told me no. Talk to my counsel. That's what I was trying to refer to you right then and there that I wanted to present my issues before the record was closed. That's what I wanted to talk to you about, Your Honor, before I got off the stand to present my issues.

THE COURT: And I asked you to talk to your attorney about it.

MR. JOHNSON: And I talked to her about it and she said we gonna come right back to them. She didn't do this before the record was closed and the record is closed, Your Honor. I didn't know that at the time. I'm not a lawyer, Your Honor. If anything my counsel should let me know, all right, this is your time to present all your issues in detail and let me help you with them. That's what I'm asking, Your Honor. I did not know at the time. That's why I asked to speak to you. When I talked to her, she said we're gonna get back to it not just go over what the State has and what she has --

THE COURT: Say that again. She told you you were gonna be able to retake the witness stand?

MR. JOHNSON: Yes, sir, and go back over my issues.

MS. GOOD: I did not say that, Your Honor. I said a lot of his issues tied into issues we had already

presented.

MR. JOHNSON: A lot of them doesn't, Your Honor. I have my own individual issues that have evidence that I have to present with them, Your Honor. I ask the Court, I beg the Court's indulgence can I please get back on the stand --

THE COURT: Do you have witnesses to call?

MR. JOHNSON: Sir?

THE COURT: You say you have witnesses to call?

MR. JOHNSON: I have issues of evidence that I have to present my other individual issues that I have that weren't presented. Because at the time, Your Honor, I didn't know I could go into detail about my issues.

THE COURT: I understand. I understand. I understand. But I have already ruled on it and I'm not going to reconsider it, all right? Thank you. Be glad to hear argument of counsel.

MS. GOOD: Thank you, Your Honor. Basically you have heard all the testimony. I don't want to rehash everything but I would like to state that we believe that based on everything put together, the issues that were presented that Ms. Fullwood while each individually by itself may not be ineffective when you look at it in totality of the circumstances, putting them altogether, she was ineffective for several reasons.

The first is regarding the Castle Doctrine, protection of others. She knew very early on and she's testified that both Mr. Johnson and his brother had the same issues and the same recitation of the facts and that recitation of the facts which is from the record that was presented was that they went over there to talk about what happened and to try to make peace. There was no mention of guns just being brought out until it was mentioned that one of the victims had put a shotgun on Mr. Parker. So we believe that should have been a Castle Doctrine to be determined by the judge and obviously we don't know what the determination would have been by the judge. That's something we will never be able to find but we do believe that that is something she should have done, Your Honor.

In addition, throughout the trial we believe she should have made several objections regarding prejudicial statements regarding bolstering the witnesses, hearsay, doctors telling what the medical condition of Mr. Wilson is which was very prejudicial as well as not objecting to collision reconstruction regarding the vehicle and acceleration at the incident nor the fact that he was an expert qualified in that field.

And the last two issues, Your Honor, are regarding the prejudicial statements by Solicitor Myers in closing

arguments. I believe there were six of them that were made purely to stir the emotions of the jury. There was one that we believe could have potentially been harmless but the fact that there were six separate statements that we believe stirred the emotions that she should have just begin objecting once it became obvious that these statements were being made.

Finally, Your Honor, ineffective for the purpose of while nobody can know that there was going to be an equipment malfunctioning of the court reporter and that pieces of the transcript were going to be gone, we believe two part regarding the reconstruction is that one, Ms. Fullwood was ineffective because she had no notes. She had no questions. She had no way to help reconstruct the record when it came to Mr. Johnson's testimony, to any of the witnesses that were missing, their testimony. They relied solely on the State and Mr. Johnson's memory of what happened at the trial and she had nothing to fall back on to say I guess that sounds right.

And then appellate counsel did not bring up this issue. There was issues he could not potentially have even briefed because there were portions of the transcript missing that there could have been issues there that they don't know about and he never made an

argument regarding due process or the fact that he cannot even make those arguments. In fact, Mr. Johnson has indicated by the letter he sent to his appellate counsel asked him to do so and he did not do so.

THE COURT: All right. Thank you, ma'am. Mr. Whitmire.

MR. WHITMIRE: May it please the Court. I'll start with the more structural allegation, structural error. First, as counsel has just noted the cumulative error looking at everything in its totality. Now, our Supreme Court has expressly declined to comment on this. However, the Fourth Circuit has made it abundantly clear in the Sixth Amendment inquiry we will not, this Federal Circuit will not apply cumulative error analysis and the Federal District of South Caroline will do so also. At this time, Your Honor, I would request that this Court not extend a potential, a line of a prejudice analysis.

It comes down to a very specific reason. When you are comparing one type of error to another type of error when you're discussing in terms of just the allegations pled, something that could have happened during the trial, something that could have happened in five months, it's impossible with regularity to do this in any consistent fashion and it's also impossible for the Appellate Courts to review it in a consistent fashion.

Typically the errors get bunched together that are related that essentially cause the same harm and that's what we look at just as the Appellate Courts do and I have substantial case law on this. I didn't know at the time she was pleading it this prejudice analysis but I'll be happy to get it to Your Honor because it's really an important issue at this current juncture of our state's PCR case law.

THE COURT: I'm aware of the law in that area. Go ahead.

MR. WHITMIRE: The second issue is dealing with the reconstruction of the transcript. First I would, the State would say that this really isn't the forum for it. The Court of Appeal did identify the problem, sent it back, got it reconstructed to the best of everyone's ability. The judge accepted it. I mean, it's a long PCR transcript. It's important because what is he reconstructing? A very important piece of the applicant's testimony, trial testimony the jury heard, however he got to put it all in and probably more. I think he received fairness by the fact that counsel was very methodical and chronological how she approached her questioning of him. She had her original earlier drafts. The final one she couldn't locate but at this point it would be outside the scope of Strickland to assign error

to her. She was completely unforeseeing that would be an issue.

I think what is important here is that she had spent countless hours in preparation and it all came back to her. It's clearly not the type of trial where the trial attorney is winging it or something kind of thrown together at the last minute and this was a significant and important trial for Ms. Fullwood and she put her, by far put her best efforts into it.

But the testimony goes to, I mean, the very end of his testimony, the actual shooting, it also involves his father-in-law, a basic character witness who would be more relevant to his brother's case and then some possible impeachment testimony of one of the State's witnesses. Notably the issues that he has identified and the issues he's proceeding on today are issues of failure to object to the State's evidence. The failure to object to the State's testimony. Failure to object to closing argument. Also failure to move for a directed verdict or challenge that on appeal. None of this minute tiny testimony that was ultimately preserved go to these issues.

And ultimately appellate counsel filed an Anders Brief. If the Court of Appeals is unsatisfied or didn't find an issue that they wanted briefed, they would have

done so. But importantly they identified that issue and it related to some of this testimony that had to be reconstructed then I think he quite fairly had a valid argument. Regardless it's exhausted as far as his due process what remedies and what was done for him at the corrective appeal level.

This forum is specifically addressing what counsel did and how she worked to make the reconstruction better essentially. It could come up in Federal Court in due process but for right now it's very limited but we believe regardless just the overall looking at it in fairness, looking at it in the light best to the applicant I think he has little leg to stand on on this particular issue.

To the specific parts of the State's case that are being alleged or inadmissible and there is no objection starting with first the paralyzed victim, A.J. Wilson testifying to the extent of his injuries, the original physician that treated him on page 615, Your Honor, Dr. Fann from Richland Memorial testified to I believe it was the thoracic injury he incurred to the upper part of his back, there's no question he's paralyzed and the State could have presented 40, 50 pages more of testimony but that then would have created the issue, he would be here saying the State went for overkill with a sympathetic,

paralyzed victim. So, you know, essentially you're damned if you do, you're damned if you don't.

It was certainly unobjectionable them getting Detective Collins. The concerns mostly involve Biggers identification and there's no question he was at the scene. He admits to being at the scene. It's just that his version of the events are different. He claims self defense. The State put their case based on the overwhelming evidence of malice. The overwhelming evidence that ties into the State's case where even under his version of all three victims apparently had shotguns, yet one victim is now deceased, one is paralyzed and the other was ran over by a car. There was no ballistics found from those shotguns. Everything goes back to one single gun when the SLED ballistics examiner testified at trial and that gun was owned by his brother.

Next dealing with some law enforcement testimony about accident reconstruction, no one disputes the fact that he ran over the victim and hit him. What's in dispute is why he did so. Dragged him 15 foot, ran him into a wall. This isn't a DUI resulting in death case. This isn't something where the highway department comes in and we're talking about 95 miles an hour. It's very simple facts and it was within the opinion of his experience and background. We don't get into expert

qualifications and Ms. Good made the point about certification. Well, as he testified at trial there's only one place in the country that does it and I think his testimony is pretty vanilla and sticks to the issue without trying to be something that it's not and bolstering scientific evidence from someone who should not and lacks the capacity and ability to do so.

In the last group of errors the closing argument, failure to object, first the State would note in order to prevail on that on direct appeal or through PCR by showing deficient performance you have the highest threshold of any potential issue in criminal litigation. You have to show that your Fifth Amendment rights at trial have been violated, I mean, by just absolutely awful techniques, argument. As Ms. Fullwood pointed out in her 20 years of experience in this county burden shifting, blatant burden shifting, golden rule, it's not just one or two arguments. I mean, it has to be prevalent through the entire closing argument. If you look at it as a whole it's just natural inferences on the State's evidence. The State did comment on some of the defense's case and with the weaknesses but he testified that he presented a case, he opened it up. That was the trial strategy. It opens up closing arguments to a certain extent.

With that being said the State would request that you deny this application. We would be happy to brief any issue that's been brought up before you today.

THE COURT: Any response or reply?

MR. JOHNSON: Yes. Yes, sir. Can I please talk to you and address these concerns?

THE COURT: No, sir. Your attorney is speaking to me right now.

MR. JOHNSON: Can she please tell you that I have matters to address to you please, sir?

THE COURT: She's -- I guess she's -- I don't know what she's getting ready to tell me but you can't interrupt her.

MR. JOHNSON: I'm sorry. I just want to make sure my rights are properly protected, sir, and I feel right now my rights are being violated. I have not had the proper opportunity to present my PCR issues.

THE COURT: I'll give you a chance to speak in just a minute. Ms. Good.

MS. GOOD: Thank you, Your Honor. I don't have anything else regarding arguments. I've made our arguments. You have heard the testimony. My client would like me to ask you if he can present his issues. I know you have already ruled on it, Your Honor, but he would like me to ask you again.

THE COURT: I have already ruled on it. Now, what is it you wish to say, Mr. Johnson?

MR. JOHNSON: Your Honor, I briefed all my PCR issues that I have myself as far as the facts of the case and the law. I gave them to my PCR attorney to address to the Court. The majority of all of my issues, Your Honor, she did not address to the Court. From the last visit that I had from her to what she told me was that she was gonna present my issues. I didn't know she was going to present her issues only.

The issues that I have, sir, are very important to my case and they're a part of my rights on PCR as far as my due process rights in law, Your Honor. They are my constitutional rights. I feel right now that my rights are being violated if I cannot raise my issues, Your Honor. Your Honor, is there another way that I can put another PCR application in --

MR. WHITMIRE: Objection.

MR. JOHNSON: -- so I can raise my issues, Your Honor? Because this is a violation of my rights, Your Honor. This is a total violation of my rights, Your Honor. My counsel should have presented my issues. If I would have presented my issues on the stand myself, Your Honor, wouldn't that have been hybrid representation? As my lawyer is supposed to represent me on my issues.

These issues are already briefed, Your Honor, with the facts and the law and given to her. She should have presented my issues to you, Your Honor, or ask for a continuance which I told her to do before and I wrote a letter to her asking for a continuance so me and her could be on the same page with my issues.

So, Your Honor, may I get a continuance to come back and present my issues? Because you have other clients here also that would like to present their PCR issues? Or can I put in another PCR application to present my issues or do a Martinez Motion so I could be able to properly present my issues for PCR, Your Honor? Because right now my issues have not been fully presented. I felt at the time that y'all just wanted me to just go over what my issues would be and then we would come back to them at a later time. I did not know that I could address all my issues at that time on the stand and that's before the State had rested their case. That's why I addressed you again before I left the stand could I talk to you please so that I can present my issues to you.

I ask you now, sir, do I have to put in another PCR application? Put in a Martinez Motion? What do I have to do so I can be able to properly present all of my issues that I have for my PCR? Because this is part of

my due process rights, Your Honor. This is a part of my constitutional rights. This is my freedom here. As I said before, my case is the defense of another and a self defense case, Your Honor. The State did not prove their case beyond a reasonable doubt, Your Honor. I got convicted of what my trial counsel asked for and that is not justice, Your Honor. I'm an innocent man. My brother is innocent. I'm convicted of charges that the State did not even try to convict me of, Your Honor. So what am I doing incarcerated when I went to trial and I defeated all the charges the State had against me?

I ask, Your Honor, what can I do to preserve my rights? I know that you ruled already. Your Honor, can you please, please tell me what can I do so I can bring up my issues again? Because I did not know my PCR lawyer was gonna do this to me, Your Honor.

THE COURT: I thank you, Mr. Johnson.

MR. JOHNSON: I briefed my issues - since I already briefed my issues and gave them to her for her representing me in a proper --

THE COURT: Thank you. Thank you, Mr. Johnson. You may be seated.

MR. JOHNSON: Thank you.

MR. WHITMIRE: Objection to protect on the record renewal on the hybrid representation.

THE COURT: All right. Y'all give me a couple more minutes. I want to review part of the transcript that we referred to earlier.

I have reviewed and thought through the position of the applicant and the position of the State and reviewed each of the arguments set forth by the applicant. I agree with the State's position as to each of these matters. As to the issue of the sequestration I find that's part of trial strategy and that oftentimes attorneys don't request it or will get it. As to all the other issues I agree with the State's position and would deny the application and ask Mr. Whitmire if he would prepare an order.

MR. WHITMIRE: Yes, Your Honor. I'll get --

THE COURT: Which includes, I guess, the summary judgment on both.

MR. WHITMIRE: Yes, Your Honor. Thank you.

MS. GOOD: Thank you, Your Honor.

MR. JOHNSON: Your Honor, can I please talk to you, sir? This is a violation.

THE COURT: The case is over with.

MR. JOHNSON: This is a violation of my rights. Please, I'm an innocent man, Your Honor. I'm an innocent man, Your Honor. Me and my brother are innocent. I saved me and my brother life. I can't present none of my

issues? My family is right here. They know. Everybody know what really happened. Everybody know this is a mischaracter of justice, Your Honor. And I can't present my PCR issues for my rights? And I'm innocent.

THE COURT: Court will be in recess for five minutes.

MR. WHITMIRE: Thank you, Judge.

WHEREUPON, THE HEARING WAS CONCLUDED.

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 21st day of April, 2015.

I FURTHER CERTIFY that the forgoing 84 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 25th day of July, 2017.

By:s/Steven E. LeBlanc
_____
Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Curtis T. Johnson, #337543 Applicant, v. State of South Carolina, Respondent.	)	C/A No. 2013-CP-32-02941 **ORDER OF DISMISSAL**

2019 JUL 15 AM 8:21
LISA M. COVER
CLERK OF COURT
LEXINGTON, SC

This matter comes before the undersigned by way of a post-conviction relief (PCR) application filed by Curtis T. Johnson (Applicant) on August 22, 2015. This matter convened for an evidentiary hearing on April 21, 2015, at the Lexington County Judicial Center, at which Applicant and appointed PCR counsel Anna R. Good, Esquire, were present. Assistant Attorney General Walt Whitmire appeared on behalf of Respondent, the State of South Carolina (the State). In addition to the pleadings in this action, this Court had before it at the hearing the records of the Lexington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the complete transcript of Applicant's trial, and Applicant's remaining direct appeal records. Applicant testified on his own behalf at the evidentiary hearing. The State presented testimony from Applicant's trial counsel Elizabeth Fullwood, Esquire (trial counsel).

After carefully considering the testimony presented at the hearing, the arguments presented by the parties, and the records pertaining to this action, the undersigned denied and dismissed the PCR application in a Form Order issued April 28, 2015. At that same time the undersigned directed the State to submit a formal proposed order of dismissal. The Lexington County Clerk of Court entered this Court's judgment on May 15, 2015. Subsequently, Applicant

moved and was granted leave to proceed *pro se* in a consent order issued on September 22, 2015, by the Honorable William P. Keesley in his capacity as the Chief Administrative Judge for the Eleventh Judicial Circuit.

The State finally submitted its Order on June 3, 2019. After conducting a full review of the PCR evidentiary hearing transcript and the records submitted to this Court at the time of the evidentiary hearing, this Court issues the following findings of fact and conclusions of law in accord with S.C. Code Ann. § 17-27-80.

I. PROCEDURAL HISTORY

Applicant is serving an aggregate 35-year sentence within the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment by the Lexington County Clerk of Court. This sentence stems from April 2007 indictments for murder (2009-GS-32-1473); two counts of assault and battery with intent to kill (2009-GS-32-1474, 1476); and possession of a firearm of knife during a violent crime (2007-GS-32-1475).

Applicant proceeded to a jury trial taking place September 14 through 18, 2009 before the Honorable Robin B. Stillwell. Applicant was jointly tried with Kerwin S. Parker. The jury convicted Applicant of the lesser-included offense of voluntary manslaughter, two counts of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), and guilty as indicted on the possession of a weapon offense.

Judge Stillwell postponed sentencing to October 21, 2009, at which time Applicant received a sentence of 30 years for voluntary manslaughter, ten years for each of two assault and battery of a high and aggravated nature convictions, and a consecutive five years for the possession of a weapon during the commission of a violent crime. Judge Stillwell ordered the

sentences for voluntary manslaughter and assaults and batteries of a high and aggravated nature issued to be served concurrently.

A timely notice of appeal was filed on Applicant's behalf. Appellate Defender Robert Pachak, Esquire, perfected the appeal pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967). During the pendency of the appeal, Applicant's case was remanded to the trial court for the purpose of reconstructing a portion of the record. The reconstruction hearing convened before Judge Stillwell on October 3, 2011. Following the submission of *Anders* briefs by appellate counsel and by Applicant, the South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. *State v. Johnson*, 2013-UP-022 (S.C. Ct. App. filed Jan. 16, 2013). *Pro se*, Applicant subsequently petitioned for rehearing which was denied on February 21, 2013. The Court of Appeals issued the Remittitur on April 7, 2013, and this action commenced thereafter.

II. THE ALLEGATIONS BEFORE THIS COURT

By and through PCR counsel and pursuant to Rule 71.1(d), SCRCP, Applicant filed a series of amendments to the *pro se* PCR application prior to the evidentiary hearing. At the outset of the hearing, an again in accord with Rule 71.1(d), SCRCP, PCR counsel defined the allegations pursued before this Court:

i. Ineffective assistance of trial counsel for the failure to request and perform certain pretrial motions;

ii. Ineffective assistance of trial counsel for the failure to object to prejudicial statements throughout the trial;

iii. Ineffective assistance of trial counsel for the failure to object to statements by the prosecution during closing argument;

iv. Ineffective assistance of trial counsel for the failure to object to the trial court's comments on the case regarding his beliefs during sentencing;

v. Ineffective assistance of trial counsel for the failure to object to a jury instruction issued pursuant to *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); and

vi. Ineffective assistance of counsel in regards to the reconstruction hearing.

(PCR Tr. p. 5).

III. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

> (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
>
> (2) That the court was without jurisdiction to impose sentence;
>
> (3) That the sentence exceeds the maximum authorized by law;
>
> (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive the assistance of counsel guaranteed them by the Sixth Amendment to the United States Constitution. "In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984) (seminal case developing the ineffective assistance of counsel standard)). In regards to the first prong, "[t]he proper measure of attorney performance

remains reasonableness under prevailing professional norms." *Strickland v. Washington*, 466 U.S. at 688, 104 S.Ct. at 2065. The second prong requires a showing that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018), *reh'g denied* (Mar. 29, 2018) (quoting *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)).

At all times during any PCR proceeding, the applicant maintains the burden of establishing that he is entitled to relief. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). A PCR applicant must produce facts or testimony in support of each individual allegation in order to establish that the claim meets the standard warranting relief. S.C. Code. Ann. § 17-27-50. Otherwise, dismissal is appropriate. *See Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005); *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998).

Moreover, the proceeding is coupled with "a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Morris v. State*, 371 S.C. 278, 282, 639 S.E.2d 53, 55 (2006). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011).

Therefore, Applicant must demonstrate that "'counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.'" *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 441(1985) (quoting

Strickland, 466 U.S. at 686, 104 S. Ct. at 2064). A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As PCR counsel defined the allegations being pursued in this action at the outset of the evidentiary hearing and presented testimony in furtherance of those claims, this Court finds all other claims from the *pro se* or other amended PCR applications inadequately raised and without merit in accord with S.C. Code Ann. § 17-27-90, Rule 71.1(d), SCRCP, and the record in this action. As to the surviving allegations, this Court finds that Applicant has failed to satisfy either requirement of the standard established in *Strickland v. Washington*, *supra*. This Court has reviewed and weighed the testimony presented at the evidentiary hearing after observing the witnesses and evidence presented at the hearing and passing upon its credibility. This Court makes the following findings based upon the probative evidence presented:

As a matter of general impression, this Court finds credible and persuasive the testimony of trial counsel, who presented well-recollected testimony of relevant events leading up to and during Applicant's jury trial. This Court accordingly finds applicable the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in her representation of Applicant at all stages of Applicant's trial. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland, supra*). "[W]hen counsel articulates a *valid* reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard

of reasonableness.'" *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (emphasis in original). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland,* 466 U.S. at 689, 104 S.Ct. 2052. Any post-conviction relief court must be wary of second-guessing trial counsel's tactics. *Whitehead v. State,* 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

i. Counsel's Alleged Failure to Engage in Certain Pre-trial Motions

Applicant alleges trial counsel failed to move for a hearing pursuant to *Jackson v. Denno*, 371 U.S. 967, 83 S.Ct. 553 (1963), a Castle Doctrine hearing pursuant to S.C. Code Ann. § 16-11-440, South Carolina's Protection of Persons and Property Act (the Act), and for a witness sequestration order. (PCR Tr. pp. 7-9). Applicant admitted that a *Denno* hearing occurred about a year prior to trial. (PCR Tr. p. 8). Applicant alleged he was not advised regarding the Castle Doctrine prior to trial. (PCR Tr. p. 8). As for the sequestration claim, Applicant alleged that he was prejudiced from the failure to move to sequester the witnesses because he alleged that the witnesses were not truthful and gave inconsistent statements which were material to his defense. (PCR Tr. p. 9). The undersigned will address each purported deficiency in turn.

a. Denno Hearing

This Court finds that trial counsel did not render deficient performance or prejudice Applicant in regards to any pre-trial hearing on the voluntariness of Applicant's statements to law enforcement because, as testified to by Applicant, a *Denno* hearing was indeed conducted

prior to the admission of any statement. (R.[1] pp. 709-10). After an *in camera* hearing, the trial counsel found Applicant's statement voluntary and admissible. (R. pp. 710-26). As this issue was properly raised and ruled upon, this Court finds neither deficient performance nor prejudice.

b. Immunity Hearing

This Court further finds that trial counsel did not render deficient performance or prejudice Applicant by failing to request a pre-trial immunity hearing pursuant to S.C. Code Ann. § 16-11-440. Applicant failed to present testimony which rationalized the importance of an immunity hearing in relation to the self-defense claim he presented at trial. (PCR Tr. p. 8). More importantly, trial counsel testified at PCR that her pre-trial analysis and preparation for Applicant's defense did not include a Castle Doctrine claim because, while aware that the Act can apply when someone is in their vehicle, the facts of Applicant's case did not fall subject to the Act. (PCR Tr. pp. 53-54). Trial counsel interpreted the Act's applicability to "the type of situation where, say, an individual is just in their car in traffic and somebody tries to carjack them or something." (PCR Tr. p. 59). She assessed it was not applicable to the facts of Applicant's case. (PCR Tr. pp. 59-59).

Based upon the totality of the record in Applicant's case, this Court finds trial counsel's failure to pursue an immunity hearing pursuant to the Act was properly informed upon the applicability of the Act and was therefore not an example of deficient performance, but rather of reasonably advocacy under prevailing professional norms. This Court agrees with trial counsel's assessment that the Act did not in fact apply, and thus finds no error or prejudice on the part of trial counsel for the failure to pursue an immunity hearing under the Act.

Whether a defendant is entitled to immunity under the Protection of Persons and Property

[1] Citations to R. refer to the Record on Appeal, which is a complete copy of Applicant's trial transcript and which was provided to this Court at the time of the evidentiary hearing.

Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Id.* at 411, 709 S.E.2d at 665. "Section 16–11–450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." *Id.* "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *Id.* at 371, 752 S.E.2d at 266.

The record fails to establish that the Act applied to Applicant's case. Applicant presented no evidence or testimony to support a finding the presumption afforded by S.C. Code Ann. § 16-11-440(A) would apply. S.C. Code § 16-11-440(A) states:

> A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of **unlawfully and forcefully entering**, or has **unlawfully and forcibly entered** a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; **and**
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A)(emphasis added).

Applicant also presented no evidence or testimony that would support a finding the presumption afforded by S.C. Code Ann. § 16-11-440(C) would apply. S.C. Code § 16-11-440(C) states:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

As trial counsel testified to at PCR, Applicant and his brother got in a car and drove over to the location of the shooting for the purpose of confronting the victims about a physical altercation they had engaged in earlier that day. (PCR Tr. pp. 37, 41-42, 58-59; R. pp. 90-93, 121-22, 148-79, 667-706, 749-50). The trial record evidences that Applicant initiated a confrontation between defined parties, and that Applicant was a major instigator in a physical altercation that led to a later series of events including his running into a person with his vehicle and a shooting. (R. pp. 148-53, 729-43). During this chain of events, Applicant drove his vehicle toward one or more victims, striking them with his vehicle. (R. pp. 170-73). Applicant held a pistol in his hand, got out of his truck after striking a victim, and proceeded after others on foot with his pistol. Though this victim crawled away, he heard several gunshots. (R. p. 174-77). Crucially, no eyewitness testimony identified any victim as attempting to gain access to Applicant's car. (R. pp. 151-52, 174-77, 246-53, 328-34).

The record in this case provides no evidence bearing significance to any provision of the Act. This incident occurred outside of the victims' residence. There was no evidence presented at trial that would support a finding that the victims were in the process of unlawfully and forcefully entering Applicant's dwelling, residence, or occupied vehicle. S.C. Code Ann. § 16-

11-440. Further, there was no evidence presented at trial reflecting the victims were removing or attempting to remove Applicant or his co-defendant against their will from their dwelling, residence, or occupied vehicle. *Id.* Additionally, insofar as Applicant and another decided to drive over and confront the victims about a previous altercation, Applicant was at fault in bringing about the difficulty and had no valid claim to self-defense. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013) (stating elements of self-defense and concluding appellant's immunity claim was appropriately submitted to the jury); *Duncan, supra* at 371, 752 S.E.2d at 266 (requiring valid self-defense claim in order to succeed at immunity hearing). The record otherwise establishes that Applicant's case was one concerning mutual combat. *See State v. Young*, 424 S.C. 424, 434, 818 S.E.2d 486, 491 (Ct. App. 2018). Applicant has failed to establish either deficient performance or prejudice in regards to this allegation. *See Smith v. State, supra.*

c. Witness Sequestration

Finally, Applicant failed to meet his burden of demonstrating error and prejudice from trial counsel's failure to move to sequester witnesses. Though any party may move for the sequestration of witnesses, no party is entitled to witness sequestration as a matter of right. That decision is left to the sound discretion of the trial judge. Rule 615, SCRE; *State v. Sullivan*, 277 S.C. 35, 282 S.E.2d 838 (1981); *State v. Harris*, 275 S.C. 463, 272 S.E.2d 636 (1980); *State v. LaBarge*, 275 S.C. 168, 268 S.E.2d 278 (1980); *State v. Fulton*, 333 S.C. 359, 509 S.E.2d 819 (Ct.App. 1998) (allowing the State to re-call a reply witness who was present in the courtroom during a portion of the trial).

At trial, many eyewitnesses testified about their experience at the incident. Trial counsel acknowledged at PCR that there were inconsistencies among witness testimony. (PCR Tr. pp. 59-60). Yet trial counsel also testified that it was not her practice to move to sequester witnesses.

(PCR Tr. p. 59). With ample experience within the Eleventh Circuit Public Defender's office, trial counsel testified that motions to sequester witnesses made in her circuit of practice were usually denied. She further testified that she sometimes wants her witnesses in the courtroom during the course of the trial. (PCR Tr. p. 59). She did note that she did not consider which witnesses she would have wanted in the courtroom for this particular case. (PCR Tr. p. 59).

Applicant has failed to demonstrate the prejudice caused by the failure to move for sequestration, as no testimony elicited at the PCR hearing demonstrated either a material benefit to sequestration or a material deviance from the truth caused by the failure to successfully move for sequestration. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial); *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden); *see also Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992). In short, nothing in the record establishes that any witness offered different testimony at trial merely because they had heard another eyewitness testify before them. The undersigned accordingly finds that Applicant failed to establish any prejudice flowing from trial counsel's failure to move to sequester the witnesses.

The undersigned further finds that trial counsel acted in a strategic manner by not moving to sequester witnesses and that no deficient performance can result. Trial counsel testified that it was her ordinary practice to proceed without moving to sequester the witness in part because her general assessment was that she desired the witnesses be able to listen to each other. Applicant failed to demonstrate how trial counsel's assessment of the eyewitnesses in this case should have

altered trial counsel's general strategy in this regard, and Applicant was not entitled to sequestration as a matter of right. This claim is denied and dismissed with prejudice.

ii. Counsel's Alleged Failure to Object to Prejudicial Testimony

In the second PCR allegation defined at the evidentiary hearing, Applicant asserts trial counsel was ineffective for not objecting to various pieces of trial testimony Applicant deems prejudicial. (PCR Tr. pp. 9-12). This Court finds no basis for relief pursuant to the *Strickland* standard.

a. Wilson's Testimony About Paralysis

First, referencing page 256 of the Record on Appeal, Applicant he alleges trial counsel should have objected to prejudicial testimony from A.J. Wilson, one of the ABHAN victims, who testified that doctors told him he would never be able to walk again. (PCR Tr. pp. 9-10). Applicant alleged that no doctor confirmed this testimony by Wilson. (PCR Tr. pp. 9-10). Trial counsel later acknowledged at PCR she did not object to Wilson's testimony regarding his condition on hearsay grounds. (PCR Tr. p. 60).

At trial, Wilson testified "I can't move my — like I'm paralyzed from half my stomach down. I can't move my legs, got to use a catheter to use the bathroom, you know. I really can't control anything." (R. p. 256, lines 15-8). Wilson testified that the injury resulted from being shot in the back. (R. p. 256, lines 19-21). Wilson also confirmed that doctors have told him that he would not be able to walk again. (R. p. 256, lines 22-24). Later, Wilson's treating surgeon Dr. Stephen Fann testified that Wilson suffered damage to his mid-back as a result of the shooting. (R. pp. 613-19). Specifically, the injury affected his thoracic vertebral body. (R. pp. 617-18). Fann testified that this injury resulted in paralysis. (R. p. 618).

Based upon the record before this Court, the undersigned finds Applicant has failed to establish by a preponderance of the evidence that he is entitled to relief upon this claim of ineffective assistance of counsel. An ineffective assistance of counsel allegation may be disposed on the ground of lack of sufficient prejudice. *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069. Here, Applicant fails to demonstrate how he was in fact prejudiced by any omitted objection by trial counsel because Wilson's own testimony was cumulative to testimony from his own doctor which was otherwise properly received and probative to the assault charges for which Petitioner stood trial.

b. Investigator Steve Collins' Testimony About the Photo ID

Second, Applicant contends counsel should have presented a different objection to a portion of Detective Steve Collins' trial testimony. Applicant takes issue with the following exchange:

> Q. Did you ask him how sure he was that Kerwin Parker is the man that shot him?
> MS. FULLWOOD: Objection.
> A. Yes, sir, I did.
> MS. FULLWOOD: Hearsay.
> SOLICITOR MYERS: That is an exception to the rule. He is asking him if he asked him.
> MS. FULLWOOD: But if—
> THE COURT: He can ask, answer if he asked him or not.
> MS. FULLWOOD: Yes, sir.
> THE COURT: You're anticipating a second question. He can certainly ask him if he asked him that question.
> Q. And what did he say?
> MS. FULLWOOD: Objection, Your Honor. Hearsay.
> SOLICITOR MYERS: It is an exception under the rule, Your Honor.

THE COURT: I'm going to allow that, the response to that question. The defendant has been on the stand and has testified heretofore regarding that same matter.

Q. What did A.J. Wilson say about how sure he was?

A. He said he was 100 percent sure.

Q. When you looked at these six photographs, how long did it take A.J. Wilson to pick out Kerwin Parker as the man who shot him?

A. He was very quick, a matter of seconds. I did not time it, but it was a matter of seconds from when the page was turned over, he looked at it, until he identified number three.

Q. Did he hesitate in any manner whatsoever?

A. I did not perceive any hesitation in his identification.

(R. pp. 308-09).

Applicant contends counsel should have objected to Collins' testimony on the basis of improper bolstering rather than hearsay. (PCR Tr. pp. 10-11). Applicant testified counsel did not object to Collins' testimony as improper bolstering. Trial counsel likewise acknowledged at PCR that the record reflected her objection to Collins' testimony was based on hearsay, not improper bolstering. (PCR Tr. 61).

Based upon the record before this Court, the undersigned finds Applicant has failed to establish by a preponderance of the evidence that he is entitled to relief upon this claim of ineffective assistance of counsel. Applicant has not demonstrated a deficiency on the part of trial counsel's representation during this portion of Collins' testimony because the testimony cited did not constitute improper bolstering. "[W]itnesses are generally not allowed to testify whether another witness is telling the truth." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (holding it is improper "pitting" to ask a witness "to comment on the truthfulness . . . of an adverse witness")); *State v. Sapps*, 295 S.C. 484, 485–86, 369 S.E.2d 145, 145–46 (1988) (holding it was

improper for solicitor to "ask[ ] appellant if each of the other three witnesses was lying"). Similarly, witnesses may not improperly bolster the testimony of other witnesses. *McKerley*, 397 S.C. at 464, 725 S.E.2d at 141.

However, at no point did Detective Collins indicate Wilson was telling the truth. Collins was simply relaying a portion of his role in the investigation. Collins' testimony reflected only his observations regarding Wilson's statements and demeanor during his photo ID at the police station. (R. pp. 304-09). Since the cited testimony does not constitute bolstering, trial counsel was not deficient in not raising an objection on those grounds. Applicant also fails to establish he was prejudiced because the testimony at issue points towards Applicant's co-defendant, not Applicant, as the triggerman. Further, Applicant admitted that he and his co-defendant went over to the scene of the crime with a gun in the glovebox of his car, and that he went and retrieved that gun during the course of the incident and unloaded it on victims Wilson and Isaac, and even shot his co-defendant in the process. (R. pp. 686-92, 936-50).

c. Wilson Matthews' Testimony About Tire Tracks

Third, Applicant points to the lack of objection to Wilson Matthews' lay witness testimony concerning evidence of a vehicle's use during the incident. He claims it was improper accident reconstruction testimony. (PCR Tr. p. 11). Trial counsel confirmed that she did not object to Matthews' testimony and that the State did not offer the witness as an expert. (PCR Tr. p. 61). The record reflects no objection was posed to testimony by Wilson Matthews, who testified about his being called to the scene to record the physical evidence related to the vehicular portion of the crime scene. (R. pp. 384-90). Matthew also testified that he worked in the traffic division of the Sheriff's Department, that part of his training was in collision

reconstruction, and that he had completed ten to twelve reconstructions in his line of work. (R. pp. 383-84).

The State accurately categorized Matthews' testimony as "pretty vanilla" at the close of the evidentiary hearing. (PCR Tr. p. 78). The whole of Matthews' direct examination testimony was limited to his documentation of evidence he visually observed, marked, and measured—he did not reconstruct the accident or offer an opinion on the positioning of the vehicle at any stage of the incident. (R. pp. 384-90). This Court finds that because Wilson's testimony was limited to his own perceptions in carrying out the duties of his law enforcement job, it does not necessarily require expert qualification in crime scene processing as matter of prevailing professional norms of practice. *See* Rules 701 and 702, SCRE; *see also State v. Ellis*, 345 S.C. 175, 177, 547 S.E.2d 490, 491 (2001) (witness was qualified as an expert in crime scene processing and thus could testify about measurements and evidence identification and recovery, but not positioning at the time of impact). This Court finds it was not unreasonable to fail to object to the testimony. *See generally State v. Tapp*, 398 S.C. 376, 384, 728 S.E.2d 468, 472 (2012) (discussing expert testimony in crime scene analysis in a manner dissimilar to the testimony in the case *sub judice*).

This Court chiefly finds counsel's failure to object did not prejudice Applicant and therefore does not form a basis for relief. *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069. This Court finds the cited testimony could not prejudice Applicant. It was not in dispute that Applicant took actions to accelerate the vehicle he was driving and that he ended up striking one of the victims with it. Applicant testified he "pressed the gas to the truck" and drove "it towards Walter" but ended up getting wedged in by a tree. (R. pp. 940-46). Applicant also presented a photograph during his trial testimony to show the jury the path that he believed he drove the truck. (R. pp. 941-42). Matthews' testimony was cumulative to these undisputed facts. The

reason that those acts occurred was the issue at trial, and Matthews' testimony cannot be construed to offer any opinion on it. *See Ellis*, *supra* (citing Rule 704, SCRE); *see also Tapp*, *supra* at 390-91, 728 S.E.2d at 475-76 (applying harmless error standard to any improperly received expert testimony).

On the deficient performance prong of *Strickland*, this Court additional finds persuasive trial counsel's testimony that "the State didn't seek to qualify [Matthews] as an expert." (PCR Tr. p. 61). Expert qualification is paired with a jury instruction drawing attention to the witness' skill in an area, which may cause the jury to assign great weight to that testimony. From a strategical standpoint, it is reasonable for trial counsel to elect to forego objection to the State's lack of a motion to qualify an expert witness as a means of avoiding that jury instruction, particularly here where the witness' testimony was limited to their observation and actions at the crime scene. *See Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 596 (discussing presumption of counsel's exercise of reasonable professional judgment); *Lounds v. State*, 380 S.C. at 462, 670 S.E.2d at 650 (objectively reasonable strategical reason for failing to act in a certain way is not generally found to be ineffective assistance); *see also* Rule 701, SCRE. However, this allegation may be denied and dismissed solely upon lack of prejudice in accord with *Strickland* for the reasons previously stated. 466 U.S. at 697, 104 S.Ct. at 2069.

d. Jim Hickman's Testimony about the Bullet Trajectory

Fourth, Applicant alleges that counsel's performance prejudiced him when she failed to object to Jim Hickman's crime scene investigation testimony concerning bullet trajectory. (PCR Tr. p. 11). In support of this allegation, Applicant cited to the following page from the record which is part of his trial counsel's cross-examination of Hickman:

Q. You can't tell us exactly where along the plane they were, can you?

A. No, ma'am, the only thing I can do is I can tell you is they should not have been pas[t] a certain point and that would have been where the plane, as you refer to it, as, goes so high that you can't reach it.

Q. And you were able to construct those planes for two shots, is that right?

A. Yes, ma'am.

Q. Okay. But now the casings and metal fragments and bullets you collected at the scene showed you that there were more than two shots fired, is that right?

A. Yes, ma'am.

Q. And you can't tell us anything about the position of the shooter and any of the other shots that were fired, I that right?

A. Yes, ma'am, I cannot.

Q. Okay. Thank you. I don't have any further questions.

(R. p. 522).

On the prior page of testimony, the witness testified that he could only approximate position due to the large number of variables at play in a reconstruction. (R. p. 521).

Hickman initially testified on direct examination that he was a senior crime scene analyst who was called to the scene to locate, collect, and record shell casings. (R. pp. 500-13). Hickman testified as to how he examined bullet trajectories at crime scenes, identified photographs from the scene in Applicant's case which captured his on-scene trajectory analysis, and further opined that the person who fired the gun was "somewhere along" a certain area near an air conditioning unit. (R. pp. 513-18). He was not qualified as an expert in any field. (R. pp. 500-21).

Again, "if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069. Trial counsel did not object to Hickman's direct examination testimony concerning planes of trajectories in this case as our case law likely requires. *Ellis*, *supra*. However, this Court finds Hickman's testimony was like that of Wilson Matthews in that it could in no way prejudice

Applicant. Applicant testified that he grabbed his pistol from the glovebox of the car and unloaded it on the victims in the direction Hickman's testimony referenced. (R. pp. 735-38, 746, 947-50). While there was testimony by Applicant that at least one other party held a gun, his testimony also shows that no other party actually opened fire. (R. pp. 734, 746, 946-49; PCR Tr. pp. 29-31, 34; *see also* R. p. 347).

This Court further finds Applicant was not prejudiced by trial counsel's failure to object to Hickman's lack of expert qualification because she cross-examined him concerning the inability to complete his on-scene trajectory analysis to any certain degree. (PCR Tr. pp. 521-22). While trial counsel offered no testimony about the fact that the State did not seek to qualify Hickman as an expert witness, (PCR Tr. p. 61), this Court further finds applicable the same conclusion drawn on the deficient performance prong in relation to Matthews' testimony. Absent an expert qualification, there was no cause for the court to issue a jury instruction on expert witness testimony, which may then cause the jury to assign it greater weight. Further, trial counsel's cross-examination of Hickman exemplifies an objectively reasonable trial strategy utilized to discredit the admitted vagueness of Hickman's conclusions without otherwise drawing the jury's attention to whether or not he could be qualified as an expert in any field. But in any event, Applicant was not prejudiced by the testimony received without expert qualification for the reasons previously stated. *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069.

iii. Counsel's Alleged Failure to Object to The State's Closing Argument

In the third PCR allegation defined at the evidentiary hearing, Applicant asserts trial counsel was ineffective for not objecting to several portions of the State's closing argument. (PCR Tr. pp. 12-13 (citing R. pp. 806, 814, 819, 827, 831, and 833)). Trial counsel testified that the record reflected that she did not object to the verbiage cited by Applicant's PCR counsel.

(PCR Tr. pp. 62-64). Specifically, that the Solicitor said the body was splattered (R. pp. 806, 814, 819); that the Solicitor said "I knew he couldn't prove that" (R. p. 827); and that the Solicitor said one victim was paralyzed for life and otherwise identified the victims as a an Iraqi war veteran and "a young man asleep in a chair for the rest of his life" (R. pp. 831, 833).

Trial counsel otherwise testified in her general practice she was aware of "a fairly standard list of things Solicitors might do that's inappropriate during closing arguments and you might have a list right there on the table or you might just be carrying a list in your head but you try to catch them." (PCR Tr. p. 54). She aptly identified her shortlist as being "the gold rule type argument," "burden shifting arguments," and arguments she refers to as "asking for a verdict based on something outside of the evidence" such as emotion-evoking arguments. (PCR Tr. pp. 61-62). She testified she was aware that the Solicitor who tried Applicant's case had past convictions reversed for making prejudicial arguments during closing. (PCR Tr. p. 62). She testified hoped she would have objected if one of those occurred in Applicant's case. (PCR Tr. p. 55).

This Court finds no error or prejudice within trial counsel's representation of Applicant during the prosecution's closing. Regarding the alleged failure to object, there remains in this action the strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of Applicant's trial. *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 596 (citing *Strickland, supra*). Because Applicant must establish prejudice from counsel's failure to object in order to garner relief, the underlying question before this Court is "whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166–67 (1998). "Solicitors are bound to rules of fairness in

their closing arguments." *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). "[I]ts content should stay with the record and reasonable inferences to it." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The solicitor's closing argument must, of course, be based upon this principle. The argument therefore must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981). However, any excerpt of the State's closing exists as "one moment in an extended trial." *Donnelly v. DeChristoforo*, 416 U.S. 637, 645, 94 S.Ct. 1868, 1872 (1974). Accordingly, a court must conduct an "examination of the entire proceedings" in context. *Donnelly* at 643, 94 S.Ct. at 1871; *Northcutt, supra* ("We must review the [closing] argument in the context of the entire record."); *State v. Bell*, 302 S.C. 18, 35, 393 S.E.2d 364, 374 (1990).

The undersigned finds the portions of the prosecution's closing argument drawn to this Court's attention at the evidentiary hearing neither inflammatory nor improper based on the remainder of the record. The entirety of the closing argument closely pertained to evidence properly received at trial and later corroborated through Applicant's own testimony. (R. pp. 804-34). Insofar as Applicant alleges the State prejudicially referred to the condition of the victims on multiple occasions, (citing R. pp. 806, 814, and 819), this Court finds each reference closely contained to and reasonably inferred from the record of the injuries sustained. (R. pp. 331, 610-11, 617-18, 621-26, 957).

This Court further finds that the allegation of improper burden-shifting is not supported by the record. (R. p. 827). In that instance, the Solicitor was presenting reasons the jury should not believe the defendant's claim that he had been injured by a shotgun during the incident. The State at that time referenced a variety of evidentiary reasons affecting the credibility of

Applicant's claim. (R. pp. 825-29). "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." *Humphries v. State*, 351 S.C. at 373, 570 S.E.2d at 166. The State may generally argue for or against the credibility of any witness so long as the argument is contained to the record and does not include any improper vouching. *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). Neither vouching nor burden-shifting appears in this record.

Further, where Applicant alleges that the State prejudicially referenced the condition of the victim's injuries and veteran status, (R. pp. 831-33), this Court again finds the State validly identified the victims based upon facts appearing in the record. (R. pp. 240, 610-11, 617-18, 621-26). This Court finds the State did not impermissibly play to the passions or prejudices of the jury by making any more than a fleeting reference to one shooting victim's status as a veteran, and finds that the arguments were permissibly offered in furtherance of the State's requesting the jury to find malice in the acts charged based upon specific facts presented in the testimony received. (R. pp. 831-34). There was no impermissible request by the State to view the evidence from the viewpoint of the victim or to decide the case on passion rather than reason. *See Von Dohlen v. State*, 360 S.C. 598, 613, 602 S.E.2d 738, 746 (2004). This Court also notes that trial counsel was not a passive member of the courtroom during the prosecution's closing. She did object when a good faith objection arose. (R. p. 807).

This Court denies Applicant's ineffective assistance of trial counsel allegation regarding the failure to object to the prosecution's closing argument, finding Applicant has failed to meet his burden of proving *Strickland* error and prejudice. The prosecution's closing argument did not leave room for a meritorious objection by trial counsel, and neither deficient performance nor prejudice results.

iv. Counsel's Alleged Failure to Object to Comments by the Trial Court

Applicant makes a claim that the trial court impermissibly commented on the jury's verdict during the sentencing hearing and that counsel's failure to object was prejudicial. Applicant testified the trial judge said the jury's verdict was a compromised verdict and any sentence the judge could impose would not serve justice. (PCR Tr. pp. 14-15). Applicant stated he received both concurrent and consecutive sentences. (PCR Tr. 15). He also noted that counsel did not object to the trial court's expression of its personal beliefs about whether the verdict was correct. (PCR Tr. 15).

The trial court postponed sentencing in this case and indicated to all parties at the sentencing hearing that he spent a tremendous amount of time considering the appropriate sentence. (R. p. 912). The record reflects that the trial court stated prior to ruling on a post-trial motion: ". . . I think it's a fair characterization of the verdict, to call it a compromise verdict – that it was not prejudicial to your client." (R. pp. 889-90). After having heard numerous victims' relatives speak, and after having heard trial counsel's mitigation presentation and Applicant's own statement of remorse, the court asked for latitude to speak and stated: "This is an absolute tragedy. . . . The jury's verdict, as I indicated to you, seemed to me to be somewhat of a compromise verdict. . . . Now I'm saddled with the responsibility of deciding what the punishment for the defendants will be. . . ." (R. pp. 910-11). The trial court went on to pontificate that, in his analysis, each side of the aisle had a different idea of justice in this case and asked the parties not to "look to [his] sentence for justice. . . . Justice will be doled out by your Lord and Maker. . . . There's no sentence [the court could issue] that's going to be right and that's going to serve justice." (R. p. 913). The court concluded: "Having said that, with the worldly means that are at my disposal, I will try and I will impose a sentence."

At PCR, trial counsel testified that she did not interpret the comment by the trial court in the manner presented by PCR counsel. (PCR Tr. pp. 65-66). Trial counsel testified she did not object to these comments because she did not believe the judge was expressing an opinion that the verdict should have been murder rather than voluntary manslaughter, but that the trial court had "heard the facts and [had] to base his sentence on a number of factors including the facts of the trial." (PCR Tr. p. 66).

This Court finds no merit to the ineffective assistance of counsel allegation. The undersigned agrees with trial counsel's interpretation of the record and finds no deficient performance or prejudice in the failure to object to the court's remarks prior to issuing its sentence. A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing *Wasman v. United States*, 468 U.S. 559, 104 S.Ct. 3217 (1984)). There are restrictions on factors the sentencing court may take into account. They include a defendant's choice to exercise the constitutional right to jury trial or against self-incrimination, materially false or unreliable information, and a defendant's religious or political beliefs (which is distinguishable from the motivation for a crime). *E.g.*, *Mitchell v. United States*, 526 U.S. 314, 328 (1999); *United States v. Tucker*, 404 U.S. 443, 447 (1972); *Castro v. State*, 417 S.C. 77, 83, 789 S.E.2d 44, 47 (2016); *United States v. Lemon*, 723 F.2d 922, 938, 943 (D.C. Cir. 1983).

The record does not reflect any objectionable basis within the court's comments, as the court did not consider any improper factor prior to issuing its sentence. (R. pp. 910-13). Rather, the court expressly stated that it would issue a sentence within its "worldly means" at its

disposal, indicating consideration of only relevant facts and circumstances. (R. p. 913). As the record reflects no basis for objection, there can be no *Strickland* error or prejudice in counsel's representation at this stage of Applicant's criminal proceedings, and this allegation is denied.

v. Counsel's Alleged Failure to Object to an Impermissible *Belcher* Charge

Applicant asserts trial counsel was ineffective for not objecting to the trial court's instruction to the jury regarding the inference of malice from the use of a deadly weapon. (PCR Tr. p. 14; R. p. 852). However, this claim is without merit because Applicant's case went to trial in September 2009, which was approximately one month prior to the South Carolina Supreme Court's decision in *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (published Oct. 12, 2009). That opinion announced a wholly new rule of law concerning jury instructions on implied malice in trials for murder and assault and battery with intent to kill "where evidence is presented that would reduce, mitigate, excuse or justify" those charges. *Belcher* at 610, 685 S.E.2d at 809. It did instruct retroactive application to "all cases which were pending on direct review or not yet final where the issue was preserved" at trial. *Id.* at 612, 685 S.E.2d at 810.

However, Applicant's claim has no merit as it pertains his distinct case. First, the objection was not made at trial and thus it was not preserved and not subject to the retroactivity mandate in the *Belcher* opinion. (R. pp. 766-79, 868). Second, trial counsel was not ineffective for failing to object to the implied malice instruction which was later ruled defective because, in the context of a PCR action, our courts have "never required an attorney to be clairvoyant or anticipate changes in the law." *Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016). Third, Applicant was not convicted of any offense carrying malice as an element—he was convicted of lesser-included offenses such that the implied malice instruction can in no way be found to have contributed to the verdict obtained. (*See* R. pp. 853, 857, 870-74 (jury instructions

on lesser-includeds); *id.* at 876 (verdict on lesser-includeds)). On this final point, the trial court recognized the lack of prejudice flowing from the implied malice instruction despite the fact that *Belcher* was not controlling precedent at the time of trial. (R. pp. 889-890).

vi. Counsel's Alleged Failure to Adequately Reconstruct the Trial Record

The final allegation defined at the PCR hearing concerns the reconstruction hearing ordered to occur prior to the resolution of Applicant's direct appeal. That hearing took place on October 3, 2011, and included extensive testimony and incorporation of exhibits. (R. pp. 917-1004).

Applicant alleged at PCR that half of his testimony was missing, in addition to that of Yolanda Spencer, Frankie Blue, and Walter Gaston. (PCR Tr. pp. 15-16). Applicant's chief complaint was that his trial counsel did not ask the same questions of him at the reconstruction hearing as she asked of him at trial and that it appeared to him that the prosecution chiefly reconstructed the record. (PCR Tr. pp. 16-17, 23-32). Yet Applicant also testified at PCR that the trial court gave him every opportunity to place everything he wished on the record at that hearing. (PCR Tr. pp. 23, 29, 43). Applicant was also given leeway to testify at PCR about what other witnesses' testimony was that he believed was still missing. (PCR Tr. pp. 23-32). Trial counsel testified that she tried to reconstruct the trial by asking Applicant the same questions that she asked back then, but that she did not have a copy of those questions or notes about what those precise questions may have been because, as is reflected in the reconstruction hearing record, her computer became infected with a virus which caused her to lose her copy of those trial questions. (PCR Tr. pp. 56-58; R. p. 934).

This Court finds that Applicant failed to demonstrate error or prejudice in counsel's representation at the reconstruction hearing. As Applicant testified at PCR, the jury heard the

complete defense case prior to reaching its verdict and, at the reconstruction hearing itself, Applicant felt he was given ample time to present everything he wished from the incomplete trial record. (PCR Tr. pp. 23, 29, 43; R. pp. 959-60). What the reconstruction record does reflect, however, is a misunderstanding by Applicant as to the hearing's purpose and function as it pertained to appellate review. (R. pp. 927-54, 963-78, 981-84).

To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This Court can identify no basis for error by trial counsel during the record reconstruction, which was done for the benefit of Applicant's direct appeal. The full record (including the PCR testimony pertaining to this issue) fails to demonstrate that any potential appellate issue arose during the defense's presentation at trial which was not recorded for appellate purposes. (R. pp. 917-1004; PCR Tr. pp. 23-32). For example, the reconstruction record states that the defense called Walter Gadson to the stand in order to enter into evidence a CD of an interview he conducted, but that the CD, which was part of the record in this case, was entered "without objection" *at trial*. (R. p. 920). And the State's and co-defendant's cross-examinations of Applicant were fully contained in the original trial transcript. (R. p. 955). Counsel recalled no objections were lodged to any of Frankie Blue's testimony or to the exhibits entered through his testimony. (R. p. 994).

The undersigned further finds persuasive on this issue the trial court's express finding at the reconstruction hearing that "unequivocally and without reservation that there were no legal decisions made in [Applicant's] case that weren't put fully on the record during the trial." (R. p. 978). This Court finds the trial court demonstrated a solid recollection of Applicant's trial when conducting the reconstruction hearing. The trial court also found at the conclusion of the reconstruction testimony: "I don't find any evidence that there are omissions in the transcript that

we have not addressed here today. I know that there are anecdotal suggestions that perhaps there are some sentences, words, portions missing, but based on what I've heard today I can't make a finding that there are any portions that have been omitted that are material to the appellate issues in this case." (R. p. 1001).

As there is no evidence that any objection preserving an issue for appellate review was omitted from the reconstructed record, this Court can identify no basis for a finding of error or prejudice by trial counsel in regards to the reconstruction hearing and declines to grant relief.

IV. CONCLUSION AND NOTICE OF *PRO SE* APPLICANT'S RIGHT TO APPEAL

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violation or deprivation that would require this court to grant his application. "[T]he proper measure of counsel's performance is whether he has provided representation within the range of competence required by attorneys in criminal cases." *Rutland v. State*, 415 S.C. at 577, 785 S.E.2d at 353; *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). As to each of these allegations, Applicant has failed to demonstrate that he was burdened by deficient performance in any way. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."). Applicant also cannot prove on this record "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. at 117-18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). With Applicant failing to meet the two-prong burden established in *Strickland v. Washington*, *supra*, there exists no basis in the record for a grant of post-conviction relief, and the allegations pertaining to trial counsel's

representation at various stages of Applicant's trial are **DENIED AND DISMISSED WITH PREJUDICE.**

This Court further notes that since the time of the evidentiary hearing, Applicant has relieved appointed PCR counsel and is proceeding *pro se* upon consent order issued on September 22, 2015, by the Honorable William P. Keesley in his capacity as the Chief Administrative Judge for the Eleventh Judicial Circuit.

Accordingly, this Court finally notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Applicant is directed to South Carolina Appellate Court Rule 243 and South Carolina Rule of Civil Procedure 71.1(g) for appropriate procedures for service and filing any notice of appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent for completion of his sentence within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7 day of June, 2019.

BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

Walterboro, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON CURTIS T. JOHNSON, #337543 Applicant, vs STATE OF SOUTH CAROLINA, Respondent,	IN THE COURT OF COMMON PLEAS **2013-CP-32-02941** CERTIFICATE OF SERVICE BY MAIL

FILED
2019 JUN 15 AM 8:21
JEAN M. COMER
CLERK OF COURT
LEXINGTON, SC

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Email Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Curtis T. Johnson, #337543
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

DATED this the 3rd day of June, 2019.

Camille Henry

Camille Henry, Legal Assistant
For Respondent

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3202941

Curtis T Johnson #337543		**State of South Carolina**	
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	7/15/2019 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **July 15th 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **July 15th 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

Curtis T Johnson #337543 Broad River Corr Inst - Murray
188 4460 Broad River Rd Columbia, SC 29210

Taylor Smith
PO Box 11549
Columbia SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2019 JUL 26 PM 4:17

Curtis Johnson, #339543) CASE No. 2013-CP-32-02941
Applicant,)
) Honorable Brooks Goldsmith, Circuit Court Judge
V.)
) MOTION TO ALTER OR AMEND JUDGMENT
State of South Carolina) Pursuant to South Carolina Rules of Civil
Respondent.) Procedure Rules 52(a), 52(b), and 59(e)
) (Post-Conviction Relief)

PETITIONER'S PRO-SE MOTION TO ALTER OR AMEND JUDGMENT

PLEASE TAKE NOTICE that Petitioner Curtis Johnson, acting Pro-se respectfully moves the Honorable Judge Brooks Goldsmith under the rules: Rule 52(a) SCRCP, Rule 52(b) SCRCP, and Rule 59(e) SCRCP, also pursuant to Reese v. State, Appellate case No. 2017-001110 to Alter or Amend his judgment of dismissal entered in the written order of dismissal entered on April 28, 2015 and the Court's original 'order of Dismissal' signed by the court on June 7, 2019. The Court's signed original 'order of Dismissal was received and signed by the Petitioner on July 18, 2019 - Thursday at the Broad River C.I. mailroom. The Petitioner ask this court to make specific findings of fact and state expressly the conclusions of law relating to each issue raised and presented in the Petitioner's P.C.R application, Amended application(s), issues and motions raised at the Petitioner's Evidentiary Hearing held on April 21, 2015 that the Court ruled on. The Petitioner asks this court to reconsider its decision for the following reasons.

At the evidentiary hearing convened in this case on April 21, 2015 the Petitioner stated to the court the P.C.R issues that he wanted to present at the P.C.R hearing when he was on the witness stand to testify. The Petitioner assumed that he was going to be allowed to present his evidence and arguments for his stated claims later during his P.C.R hearing when he got off of the witness stand and joined his P.C.R Counsel. When the Petitioner was once

again seated with counsel at their table the Petitioner asked the Court could he go back on the stand and present his issue(s), PCR counsel also asked the court if the Petitioner could go back on the stand and present his evidence and argument for his claims by way of motion to the court. The court denied Petitioner's request and denied PCR counsel's motion. As such, Petitioner repeatedly stated to the court how his rights where being violated. (PCR. Trip. 18, ln. 6 - p. 21, ln. 3), (PCR. Tr. P. 45, lns. 7-19), (PCR. Trip. 66, ln. 21 - p. 70, ln. 17), (PCR. Trip. 79, ln. 4 - p. 84, ln. 8) In the Court's signed original 'Order of Dismissal' (dated July 7, 2019) the court did not address with specific findings of fact and conclusions of law relating to the issues the petitioner stated to the court he wanted to raise, nor did the court address with specific findings of fact and conclusions of law relating to why the court denied Petitioner's PCR counsel's motion for the court to allow the Petitioner to go back on the stand and present his evidence and argument for his claims.

[STANDARD OF REVIEW]

"Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the P.C.R Judge prior to issuance of the order, and the P.C.R Judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by 17-27-80 and Rule 52(a), SCRCP." Marlar v. State, 653 S.E.2d 266 (2007); Pruitt v. State, 423 S.E.2d 127, 128 (1992)

In Reese v. State, Appellate case No. 2017-001110, S.C. Supreme Court order dated Oct. 18, 2018 (Shearouse Adv. Sheet No. 42 at 9; the South Carolina Supreme Court [in its order] raised concerns over orders prepared by the state that do not address each claim raised and included specific findings of fact and conclusions of law. Adv. Sheet No. 42 at 10.

"If a judgment leaves some further act to be done by a court before rights of the parties are determined, judgment is not final." Tommy L. Griffin Plumbing and Heating Co. V. Jordan, Jones & Goulding, Inc, 570 S.E.2d 197 (S.C. App. 2002)

"Any judgment or decree, leaving some further act to be done by the Court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the Court has nothing further to do in the action, then it is final." Adickes V. Allison & Bratton, 21 S.C. 245 (1884); see also Mid-State Distributors, Inc. V. Century Importers, Inc. 426 S.E.2d 777 (1993)

"Pursuant to S.C. Code Ann. § 17-27-80 (2003), the P.C.R Judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues." Pruitt V. State, 423 S.E.2d 127 (1992); Marlar V. State, 653 S.E.2d 266 (2007); S.C. Code Ann. § 17-27-80 (2003) states that a P.C.R Court "shall make specific findings of facts, and state expressly its conclusions of law relating to each issue presented." This order is the final judgment. see also: Ilon, L.L.C V. Town of Mt. Pleasant, 526 S.E.2d 716, 724 (2000) (stating the purpose of a motion to alter or amend is to "enable the [court] to rule properly after it has considered all relevant facts, law, and arguments.")

[CONCLUSION]

As such, the petitioner motions this court to Alter or Amend its judgment by making specific findings of fact and stating expressly the conclusions of law relating to each issue raised and presented in the Petitioner's P.C.R application, Amended application(s), issues and motions raised at the Petitioner's Evidentiary Hearing held on April 21, 2015 that the Court ruled on.

Respectfully submitted,

s/ Curtis Johnson

Curtis Johnson, 337543
Broad River C.I. - Marion 214
4460 Broad River Rd.
Columbia, S.C. 29210

July 21, 2019

Curtis Johnson, 337543
B.R.C.I - Marion 214
4460 Broad River Rd.
Columbia, S.C. 29210
July 19, 2019 - Friday

Lisa M. Comer, clerk of Court
County of Lexington
Lexington County Judicial center
205 East Main street
Lexington, S.C. 29072

FILED
2019 JUL 26 PM 4:17
LISA M. COMER
CLERK OF COURT
LEXINGTON, S.C.

RE: Curtis Johnson V. The state; Case No. 2013-CP-32-02941

Dear Mrs. Comer!

Hello, All be well. Please find enclosed for filing in your office my Pro-se Motions for 'Motion to Alter or Amend Judgment' and my 'Motion for New Trial' to be filed in your office together. Please Clock stamp this letter and clock stamp these motions. I ask that you please send to me copies of this letter and motions. I have enclosed a self-addressed envelope for you to send these to me.

These motions are in response to Honorable Brooks Goldsmith's signed original 'Order of Dismissal' which I signed for and received on July 18, 2019 - Thursday.

I thank you for All of your help and concern. Peace and Blessings Always.

Sincerely
Curtis Johnson

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	) IN THE COURT OF COMMON PLEAS) FOR THE ELEVENTH JUDICIAL) CIRCUIT	
Curtis T. Johnson, #337543	) C/A No. 2013-CP-32-02941	
Applicant,	)	
v.	) ORDER DENYING MOTION	
State of South Carolina,	)	
Respondent	)	

FILED
2019 SEP 19 AM 7:17
LISA H. COMER
CLERK OF COURT
LEXINGTON SC

THIS MATTER COMES BEFORE THE COURT UPON APPLICANT'S MOTION TO RECONSIDER THE COURT'S ORDER OF DISMISSAL DATED JUNE 7th,2019. BOTH PARTIES SUBMITTED BRIEF'S IN SUPPORT OF THEIR RESPECTIVE POSITIONS.
AFTER CONSIDERING THE BRIEF'S OF BOTH PARTIES, I FIND NO REASON TO ALTER OR AMEND THE PRIOR OF THIS COURT.

ACCORDINGLY THE APPLICANT'S MOTION IS HEREBY DENIED.

IT IS ALL SO ORDERED.

September 10, 2019

Brooks P. Goldsmith, Circuit Judge

DOCKET NO 2007-GS-32-1923

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
CURTIS T. JOHNSON

WITNESSES

LCSD
Collins, S.M.

A-2006-32-03053 4/30/2007 1:36 PM

ARREST WARRANT NUMBER

J053026, J053028

MOTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury
Date: 4-30-07

CDR# 0116

Indictment for

Murder

§16-3-10

VERDICT

Guilty
Voluntary Manslaughter

Foreperson of Petit Jury Date: 09/18/09

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Murder

§16-3-10

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **CURTIS T. JOHNSON** , aiding, abetting, assisting and participating with KERWIN S. PARKER, in Lexington County on or about November 20, 2006, willfully, feloniously and with malice aforethought kill one ISSAC WILSON by means of shooting the victim with a Smith and Wesson 40 calibre pistol, and the victim died as a proximate result thereof in Lexington County on or about November 20, 2006.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

DOCKET NO 2007 -GS-32- 1474

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
CURTIS T. JOHNSON

WITNESSES

LCSD
Collins, S.M.

A-2006-32-03053 4/30/2007 2:09 PM

ARREST WARRANT NUMBER

J053029

ACTION OF GRAND JURY

TRUE BILL

Foreman
Foreperson of Grand Jury
Date: 4-30-07

VERDICT

Guilty ABHAN

Foreperson of Petit Jury Date: 09/18/09

CDR# 0014

Indictment for

Assault and Battery with Intent to Kill

§16-3-620

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault and Battery with Intent to Kill

§16-3-620

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **CURTIS T. JOHNSON**, aiding, abetting, assisting and participating with KERWIN S. PARKER did in Lexington County on or about November 20, 2006, wilfully, feloniously and with malice aforethought commit an Assault and Battery upon one A. J. WILSON with intent to kill the said victim in that the defendant shot the victim with a Smith and Wesson 40 calibre pistol, in violation of § 16-3-620 of the 1976 South Carolina Code of Laws, as amended

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

DOCKET NO. 2007-GS-32-1475

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
CURTIS T. JOHNSON

WITNESSES

LCSD
Collins, S.M.

A-2006-32-03053 4/30/2007 2:18 PM

ARREST WARRANT NUMBER

J053027, J-053030

ACTION OF GRAND JURY

TRUE BILL

Foreman
Foreperson of Grand Jury
Date: 4-30-07

VERDICT

GUILTY

Foreperson of Petit Jury *Date:* 08/18/09

CDR# 0549

Indictment for

Possession of Firearm or Knife during Commission of Violent Crime

§16-23-490

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of Firearm or Knife during Commission of Violent Crime

§16-23-490

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **CURTIS T. JOHNSON,** aiding, abetting, assisting and participating with KERWIN S. PARKER, did in Lexington County on or about November 20, 2006, possess a firearm, or visibly display what appeared to be a firearm, during the commission of violent crimes, to wit: a Smith and Wesson 40 calibre pistol was possessed and fired killing ISSAC WILSON and striking A. J. WILSON, committing the violent crimes of Murder and Assault and Battery With Intent to Kill, in violation of § 16-23-490 of the 1976 South Carolina Code of Laws, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

DOCKET NO 2007 -GS-32- 1476

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
CURTIS T. JOHNSON

WITNESSES

LCSD
Collins, S.M.

A-2006-32-03053 4/30/2007 1:59 PM

ARREST WARRANT NUMBER

J053031

ACTION OF GRAND JURY

TRUE BILL

Foreman
Foreperson of Grand Jury
Date: 4-30-07

VERDICT

Guilty of Assault and Battery of HAN

Foreperson of Petit Jury 9/18/09 Date:

CDR# 0014

Indictment for

Assault and Battery with Intent to Kill

§16-3-620

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Assault and Battery with Intent to Kill

§16-3-620

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **CURTIS T. JOHNSON**, aiding, abetting, assisting and participating with KERWIN S. PARKER did in Lexington County on or about November 20, 2006, wilfully, feloniously and with malice aforethought commit an Assault and Battery upon one WALTER GADSEN with intent to kill the said victim in that the defendant drove a vehicle into the victim, in violation of § 16-3-620 of the 1976 South Carolina Code of Laws, as amended.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE)
VS.)
Curtis T Johnson)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City, State, Zip: Columbia, SC 29203)
DL# SID# sc01719141)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1473
A/W#: J053026
Date of Offense: 11/20/2006
S.C. Code §: 16-03-0050
CDR Code #: 0217

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Manslaughter / Voluntary manslaughter
In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____(defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130

Random Drug/Alcohol Testing ☐
Fine may be pd. In equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk Beth A Carter /bp Judge Code: 2158

Court Reporter: Lynn Thomas Sentence Date 21 OCT 2008

SCCA/217 (06/2009)

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Lexington)
STATE)
VS.)
Curtis T Johnson)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City, State, Zip: Columbia, SC 29203)
DL# SID# sc01719141)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1474

A/W#: J053029
Date of Offense: 11/20/2006
S.C. Code §: Common Law
CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)
In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted. ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130.00

Random Drug/Alcohol Testing ☐
Fine may be pd. In equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk Beth A Carroll/BC Judge Code: 2158

Court Reporter: Lena Thomas Sentence Date 21 OCT 2008

SCCA/217 (06/2009)

Ct Rept for sentencing only
Ct Rept for Trial was Priscilla Nay

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Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE)
VS.)
Curtis T Johnson)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City, State, Zip: Columbia, SC 29203)
DL# SID# sc01719141)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1475
A/W#: J053027 J053030
Date of Offense: 4/30/2007
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Possession of a Weapon during the commission of a violent crime
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed ~ years and/or to pay a fine of $ ~ ; provided that upon the service of ~ days/months/years and or payment of $ ~ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for ~ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

~~☐~~ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$
TOTAL		$ 130.00

Random Drug/Alcohol Testing ☐
Fine may be pd. In equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk Brenda A Carey B/M Judge Code: 2158

Court Reporter: Rena Thomas Sentence Date 21 OCT 08

SCCA/217 (06/2009)

A TRUE COPY
Lex. Co. C.P. G.S. & F.C.

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE)
VS.)
Curtis T Johnson)
AKA:)
Race: B Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City, State, Zip: Columbia, SC 29203)
DL# SID# sc01719141)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-1476
A/W#: J053031
Date of Offense: 11/20/2006
S.C. Code §: Common Law
CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Assault and Battery of a High and Aggravated Nature
In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendants initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$
§14-1-211 (A)(2)(DUI Surcharge)	$100	$100.00
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$5.00
3% to County (if paid in installments)		$
TOTAL		$130.00

Random Drug/Alcohol Testing ☐
Fine may be pd. In equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk Beth A. Lawson Judge Code: 2158

Court Reporter R. Scott Thomas Sentence Date 21 OCT 08

SCCA/217 (06/2009)

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Lex. Co. C.C.C.P., G.S. & F.C.