

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

RECEIVED

Oct 14 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

XZARIERA OKEVIS GRAY,

APPELLANT

APPELLATE CASE NO. 2019-001109

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #2 (CD); STATE’S EXHIBIT #6 (PICTURE); STATE’S EXHIBIT #10 (PICTURE); STATE’S EXHIBIT #11 (PICTURE); STATE’S EXHIBIT #12 (PICTURE).

1 seconds.

2 **THE COURT:** All right. Bring them out, please.

3 (Whereupon the jury entered the courtroom at 1:36 pm)

4 **THE COURT:** Ladies and gentlemen of the jury, before we
5 cue the video up, just a couple of housekeeping matters. I
6 did get your note requesting to watch the entire 19 minute
7 video. The solicitor has that cued up. He'll begin playing
8 it.

9 If you get to a point where you've seen everything that
10 you need to see, I don't know who it is that's requesting to
11 see it, but if you get to that point, Mr. Foreman, just sort
12 of indicate to me, hey, we're good, okay?

13 **MR. FOREMAN:** Okay.

14 **THE COURT:** The second matter that I wanted to clarify,
15 the first note that y'all -- the note that y'all sent out
16 concerning the pubic hair on the pistol, I just wanted to
17 clarify first that that reference came from -- apparently
18 the pubic hair was taken at autopsy and was sent down to
19 SLED. And I believe that no analysis of it was performed.
20 And I just wanted to clarify that.

21 But generally speaking, again, you have to -- I can't
22 normally help you with factual questions. So you're going
23 to have to judge the case based on what your recollection of
24 the facts and testimony is. With that, solicitor, if you
25 want to go ahead and play the video, please.

1 (Whereupon the video, State's exhibit 2, was played for
2 the jury)

3 THE COURT: You want to replay a little bit of it?

4 MR. FOREMAN: Yeah.

5 THE COURT: How far do you want us to take it back?

6 MR. FOREMAN: About to like seven minutes.

7 THE COURT: Take it back seven minutes?

8 MR. FOREMAN: Yeah.

9 THE COURT: To the seven minute mark or take it all the
10 way back ---

11 MR. FOREMAN: To the seven minute mark.

12 THE COURT: Seven minute mark.

13 (Whereupon the video was played for the jury)

14 THE COURT: Do it again?

15 MR. FOREMAN: One more time.

16 THE COURT: Let's do it again.

17 (Whereupon the video was played for the jury)

18 THE COURT: Y'all good?

19 MR. FOREMAN: Thank you.

20 THE COURT: Okay. No problem. Y'all continue your
21 deliberations. Let us know. And your food should be here
22 shortly, okay? Lunch is here. He'll bring it in in just a
23 moment.

24 (Whereupon the jury exited the courtroom at 1:47 pm)

25 THE COURT: All right. We'll remain at ease.

1 (Whereupon court was in recess at 1:47 pm)

2 (Whereupon court reconvened at 3:00 pm)

3 (Whereupon Court's exhibit 3 was marked)

4 **THE COURT:** We'll go back on the record in the State
5 versus Mr. Gray. I'm told the jury has desired or expressed
6 a desire to see the video starting at 6:30 mark to eight
7 minutes. I guess you have that booted up?

8 **MR. THOMAS:** Yes, I do, Your Honor.

9 **THE COURT:** Let us have the jury.

10 (Whereupon the jury entered the courtroom at 3:00 pm)

11 **THE COURT:** All right. I think we have it cued up to
12 the point that y'all requested. So, solicitor, go ahead and
13 play it.

14 (Whereupon the video was played for the jury)

15 **JURORS:** Could we replay that?

16 **THE COURT:** Back that back and little bit, if you
17 could, please.

18 (Whereupon the video was played for the jury)

19 **MR. FOREMAN:** One more time, please.

20 **THE COURT:** Do it again, please.

21 (Whereupon the video was played for the jury)

22 **THE COURT:** Do it again, please.

23 (Whereupon the video was played for the jury)

24 **JURORS:** Could we see it one more time?

25 (Whereupon the video was played for the jury)

1 **THE COURT:** Y'all good? You need to see it again? Are
2 you good?

3 **MR. FOREMAN:** I believe we're good. Thank you.

4 **THE COURT:** Good enough. Continue working on it and
5 let us know when you've reached -- all right. We've got
6 another request for one more time.

7 (Whereupon the video was played for the jury)

8 **THE COURT:** Everybody good? Anyone need to see it
9 again? No? Okay. Let us know when you have a verdict,
10 please. Thank you.

11 (Whereupon the jury exited the courtroom at 3:05 pm)

12 **THE COURT:** We'll remain at ease on Gray.

13 (Whereupon court was in recess at 3:06 pm)

14 (Whereupon court reconvened at 4:02 pm)

15 (Whereupon Court's exhibit 4 was marked)

16 **THE COURT:** If we may, we're going to go back on the
17 record. And, of course, the record will reflect that the
18 defendant's present with counsel.

19 I received a communication from the foreman, who
20 writes, "We need high school level explanation of the
21 difference between murder and voluntary manslaughter." And
22 I've discussed this with the attorneys in chambers.

23 And I located in my bookshelf -- it's an older volume
24 by William McAninch, M-c-A-n-i-n-c-h, that's basically a
25 high school/tech school primer on the criminal law of South

1 Carolina. And I'm going to borrow from it.

2 And what we have essentially decided to agree to
3 instruct the jury is that in both murder and voluntary
4 manslaughter the intent to kill is present in both of those
5 crimes, but it's the presence of malice that distinguishes
6 murder from manslaughter. Malice is present in murder. It
7 is not present necessarily in voluntary manslaughter.

8 Voluntary manslaughter, the mental state is sudden heat
9 of passion brought on by sufficient legal provocation and
10 basically that murder is simply the unlawful killing of
11 another, which is not manslaughter in the sense that murder
12 is accompanied by malice and manslaughter has the elements
13 of sufficient legal provocation and sudden heat of passion,
14 words to that effect.

15 So that's kind of how I'm going to instruct them on it.
16 And I'll refer them, of course, back to the original
17 instructions that has this in greater detail and, again,
18 instruct them that malice is meant -- is defined as hatred,
19 ill will or hostility towards another person. That's about
20 as simple as I can make it. So let's have the jury, please.

21 (Whereupon the jury entered the courtroom at 4:05 pm)

22 **THE COURT:** All right. The jury is back. Mr. Foreman,
23 I received your note wherein you asked basically for a
24 simpler explanation of difference or the distinction between
25 murder and voluntary manslaughter. And I'm going to try and

1 assist you in that regard. Of course, as I said earlier,
2 the instructions that I sent back are a much more detailed
3 instruction on this, but I'm going to try and draw the
4 distinction between those two offenses, make that a little
5 bit more clearer for all of you.

6 In a nutshell the difference between murder and
7 voluntary manslaughter is the presence of malice. Malice is
8 present in murder. And, again, malice is defined as hatred,
9 ill will or hostility towards another person.

10 In voluntary manslaughter, in that offense of voluntary
11 manslaughter the motivating factor, the mental state of the
12 person who commits voluntary manslaughter is that they are
13 -- they act out of a sudden heat of passion based on
14 sufficient legal provocation. So there's something that
15 happens that sets them off in voluntary manslaughter
16 creating an irresistible, essentially an irresistible
17 impulse based on sufficient legal provocation.

18 But in both of those, of course, the intent to kill is
19 present in both the offense of murder and voluntary
20 manslaughter. The distinction between the two is that
21 malice is present in murder whereas in voluntary
22 manslaughter the motivating factor is a killing in sudden
23 heat of passion based on sufficient legal provocation.

24 I wish I could make it more simple, but that's
25 basically the way that it gets broken down. I consulted

1 actually a much more simpler text book on that definition to
2 help draw that distinction for you, okay? So if you would,
3 return to your deliberations and let me know when you have a
4 verdict, please, or if there's anything else we can do.

5 (Whereupon the jury exited the courtroom at 4:08 pm)

6 **THE COURT:** Okay. We'll remain at ease. Anything
7 else?

8 **MS. NELSON:** Just that that seemed to go a little bit
9 further than what we discussed in chambers with talking
10 about an irresistible impulse. And I don't know if the word
11 aforethought was used. And I don't know that we said
12 anything about aforethought back there.

13 **THE COURT:** And one of the reasons I avoided the word
14 aforethought and I emphasized in the instructions back
15 there, of course, do reference the need for malice to exist
16 in the mind of the actor at the time the act is committed.
17 Aforethought is one of those lovely lingual legal common law
18 from England words that I don't think has common usage
19 nowadays anyway. And it would only muddy the water more.

20 I think by just saying that malice is present in murder
21 and it's not in voluntary manslaughter is about as clear as
22 I can get. But I felt like I needed to go ahead and define
23 voluntary. But your objection is noted. They asked for a
24 simpler definition. That's about as simple as I can make
25 it.

1 **MS. NELSON:** Shane just said what about the
2 irrisistible impulse? And I think that's what I just said
3 for the record ---

4 **THE COURT:** Yes.

5 **MS. NELSON:** --- that that just -- it went further than
6 the sudden heat of passion without sufficient legal
7 provocation.

8 **THE COURT:** With sufficient legal provocation, but ---

9 **MS. NELSON:** Right. Yes, sir.

10 **THE COURT:** Okay.

11 **MR. THOMAS:** I think that's just kind of like when you
12 define malice as hatred or ill will. You just defined a
13 sudden heat of passion as an irresistible impulse.

14 **THE COURT:** The objective here was to make it simple.
15 And I tried my best to simplify it as well as I knew how to
16 without getting too technical, but your objections are
17 noted.

18 And to the extent that I had to deviate from the
19 technical definitions, which are several paragraphs long in
20 order to try to answer their questions -- they've got my law
21 back there. And if they don't understand it, I'm sure
22 they'll ask me, again, because they have not been shy about
23 making inquiry if they -- all right. We'll be at ease on
24 this.

25 (Whereupon court was in recess at 4:10 pm)

1 (Whereupon court reconvened at 5:43 pm)

2 (Whereupon Court's exhibit 5 was marked)

3 **THE COURT:** We'll go back on the record. And I've
4 received another communication from the jury, which has been
5 marked as Court's 5. I think my clerk or somebody has
6 already shared this with y'all.

7 First issue, can we watch the video, six to -- six
8 minute to 7:30 minutes where we can talk without an
9 audience? Logistically, that's just not possible because
10 we're, obviously, ---

11 **MR. THOMAS:** I've got Ms. Chapel bringing a computer.

12 **THE COURT:** Okay.

13 **MR. THOMAS:** It's clean, allegedly. There's nothing on
14 it, but ---

15 **THE COURT:** All right. What we'll do then is when Ms.
16 Chapel gets back, if you could go ahead and cue up that 6:30
17 and then we'll play it for them one more time for them out
18 here. I'll just explain that when court's in session,
19 everybody has to be present and that's a simple rule, but
20 that we're trying to find a computer, and we will send it
21 back there when we get one.

22 **MR. THOMAS:** Okay.

23 **THE COURT:** The second problem is some jurors are
24 concerned about kids at home. So I'm just going to afford
25 them a chance to make a phone call or check on them. That's

1 really all I can do.

2 **MR. THOMAS:** What Mr. Brown just proposed, this as a
3 possible solution, what if we just cleared the courtroom
4 except for, perhaps, Your Honor, and let them watch it, have
5 access to it? That way you can at least make sure they're
6 not messing around on the computer, or your law clerk or one
7 of the ---

8 **THE COURT:** I'm uncomfortable being privy to any kind
9 of discussions ---

10 **MR. THOMAS:** Right. Yeah.

11 **THE COURT:** --- myself. And I think that the
12 defendant's got the right to be present if the jury is
13 present. So that's probably going to raise more issues ---

14 **MR. THOMAS:** Fair enough.

15 **THE COURT:** And I do not want to, under any
16 circumstances, be privy to what they're talking about. So
17 let us have the jury, please.

18 (Whereupon the jury entered the courtroom at 5:45 pm)

19 **THE COURT:** All right. Ladies and gentlemen, I know
20 that you've been working very, very hard on this case. I
21 got your note where you request to watch the video during
22 the six to 7:30 minute mark without an audience.

23 Legally -- we've kind of got logistical problems with
24 that and legal problems with that. The only TV we've got
25 right now is the one in here, but we are trying to locate

1 another laptop that's clean that you can take back there
2 that still will play the video, okay? So you'll be able to
3 watch it back there momentarily in private and be able to
4 talk about it in private. But we're going to go ahead and
5 play it again out here.

6 Constitutionally, if y'all are out here, I have to be
7 here, they have to be there. And that's just one of those
8 rules. So it's not like we can clear the courtroom and
9 still comply with the law.

10 Second concern was about kids at home. We can get
11 y'all to a phone if you need to make a call and check on the
12 kids. That's perfectly fine. But we'll need to continue
13 our deliberations this evening, okay?

14 So if you need -- if that'll help you or if you can
15 make a few calls, we can get you to a telephone and y'all
16 can make those calls, whoever needs to. But if it's okay
17 with you, what we'll do is go ahead and play out here that
18 portion of the video that you want to see.

19 Hopefully we will have a computer that we can bring to
20 you by then. And after we look at the video again the
21 bailiffs can get you to some telephones where you can make
22 some calls in private, okay? So that's how we'll handle
23 that, all right? Thanks. Solicitor.

24 **MR. THOMAS:** Your Honor, what was the ...

25 **THE COURT:** Six -- it says the six minute mark to the

1 7:30 minute mark.

2 (Whereupon the video was played for the jury)

3 **THE FOREMAN:** Can we see it again?

4 (Whereupon the video was played for the jury)

5 **THE COURT:** Do it again? Do it again.

6 (Whereupon the video was played for the jury)

7 **THE FOREMAN:** Can we pause it at 7:12?

8 **THE COURT:** Pause it at 7:12. And we have the laptop
9 now if you want to be able to take it to the back and view
10 it back there at your ---

11 **THE FOREMAN:** Okay.

12 **THE COURT:** --- leisure. Is that okay with y'all? Or
13 ---

14 **THE FOREMAN:** That'd be great.

15 **THE COURT:** --- you want to do it back here again?

16 Okay. While we're taking that back, and I'm assuming
17 somebody knows how to work that, and if not, we'll help you,
18 but if anybody needs -- who needs to make a call home? One,
19 two -- okay. Just take them into my office, they can use my
20 clerk's office, and then the court reporter's office, they
21 can use the phones in there. You just have to dial 9 to get
22 out, okay, ladies?

23 **THE FOREMAN:** Okay. Thank you, Your Honor.

24 **THE COURT:** Thank you.

25 (Whereupon the jury exited the courtroom at 5:52 pm)

1 **THE COURT:** We'll remain at ease.

2 (Whereupon court was in recess at 5:52 pm)

3 (Whereupon court reconvened at 8:58 pm)

4 (Whereupon Court's exhibit 6 was marked)

5 **THE COURT:** We'll go back on the record in the State
6 versus Gray. I did share a recent communication with the
7 attorneys that I received from the jury. They have
8 requested to use the phone again and to have a smoke break.

9 They also indicated that they were getting a little bit
10 deadlocked in the opinion of the foreperson. And after
11 consulting with the attorneys in chambers, I'm going to
12 offer them the option -- I would come back tomorrow if it
13 was feasible and if I was permitted to do so.

14 In lieu of that, I'm going to give them the option of
15 coming back on Monday and resuming their deliberations
16 because it is getting late, and I think that some of the
17 jurors do have small children and they're feeling some
18 stress. And I, obviously, do not want the verdict to be the
19 result of any potential stress that they may or may not be
20 feeling. So let's go ahead and have the jury come out, I'm
21 going to explain that to them, okay?

22 (Whereupon the jury entered the courtroom at 9:00 pm)

23 **THE COURT:** Ladies and gentlemen, after I got the
24 foreperson's note I just wanted to provide you with this
25 option. I do realize it's getting a little bit late in the

1 evening and everyone has obligations. It's not possible to
2 reconvene tomorrow, but if y'all chose to do so, if you
3 wanted to do so, I checked the court schedule, and I've
4 checked with a judge who is going to be presiding here in
5 Greenwood next week, and if, at your discretion, you want to
6 break for the evening, we could reconvene Monday morning,
7 say around 9:00, and let you resume your deliberations at
8 that particular point in time.

9 I just wanted to let y'all know that so that that's an
10 option for you if you want to take it, okay? So I'm just
11 throwing that out there. There is no set limitation on jury
12 deliberations. However long you deliberate is entirely in
13 your discretion.

14 Again, though, the key thing is that all 12 of you must
15 be unanimous in whatever decision that you reach, okay? So
16 that's an option that might be appealing to some, a few, or
17 all of you. You can discuss it. That's an option that's on
18 the table to reconvene, okay? So if you would, just return
19 to the jury room and keep us informed. Thank you.

20 (Whereupon the jury exited the courtroom at 9:02 pm)

21 **THE COURT:** We will remain at ease.

22 (Whereupon court was in recess at 9:02 pm)

23 (Whereupon court reconvened at 10:50 pm)

24 **THE COURT:** We'll go back on the record, if we may.

25 Mr. Gray, of course, is present with counsel. I'm informed

VERDICT OF THE JURY

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1 by Mr. Willingham that the jury has, quote, unquote, reached
2 a decision. Anything prior to the jury being received back
3 into the courtroom from the State?

4 **MR. THOMAS:** Nothing from the State.

5 **THE COURT:** From the defense?

6 **MS. NELSON:** No, sir.

7 **THE COURT:** All right. Let's have them, please.

8 (Whereupon the jury entered the courtroom at 10:51 pm)

9 **THE COURT:** All right. Mr. Foreman, I'm told that the
10 jury has reached a verdict, is ---

11 **MR. FOREMAN:** We have.

12 **THE COURT:** --- that correct? All right. All 12 of
13 you agree on the outcome?

14 **MR. FOREMAN:** Yes, sir.

15 **THE COURT:** All right. If you would, please hand the
16 verdict form to Mr. Willingham. Thank you, sir.

17 (Pause)

18 **THE COURT:** Madam Clerk, if you'll publish, please.

19 **MADAM CLERK:** The State of South Carolina, the County
20 of Greenwood, State of South Carolina versus Xzariera Okevis
21 Gray, in indictment number 2018-GS-24-829 and 2018-GS-24-
22 830, we, the jury, in the above-captioned case on the charge
23 of murder unanimously find Xzariera Gray guilty. We, the
24 jury, in the above-captioned case on the charge of
25 possession of a weapon during the commission of a violent

VERDICT OF THE JURY

1 crime unanimously find Xzariera Gray guilty. Signed
2 Foreperson, George Sugden.

3 **THE COURT:** All right. Ladies and gentlemen, if this
4 is your verdict, please indicate by raising your right hand.

5 (Whereupon all jurors raised their right hand)

6 **THE COURT:** All right. The record will reflect that
7 all 12 hands have gone up. Anything from the jury prior to
8 their discharge from the State?

9 **MR. THOMAS:** Nothing from the State, Your Honor.

10 **THE COURT:** Anything from the defense?

11 **MS. NELSON:** We'd ask that they be polled, Your Honor.

12 **THE COURT:** All right. Ladies and gentlemen, in a
13 moment the clerk's going to call your names. When your name
14 is called she's going to ask you a simple question, if this
15 is your verdict and is it still your verdict, and just
16 answer appropriately. So, Madam Clerk, if you'll poll the
17 jury, please.

18 **MADAM CLERK:** George Sugden, ---

19 **MR. SUGDEN:** Yes.

20 **MADAM CLERK:** --- is this your verdict? Is it still
21 your verdict?

22 **MR. SUGDEN:** Yes.

23 **MADAM CLERK:** Gray Detwiler.

24 **MR. DETWILER:** Yes.

25 **MADAM CLERK:** Is this your verdict?

1 like about it, definitely let me know. I am tough as nails.
2 I have been doing this for 25 plus years, and there is no
3 way you are going to hurt my feelings. So anything that you
4 don't like about it, didn't like about it, be frank with me,
5 okay?

6 With that, ladies and gentlemen, I would invite you to
7 stay for sentencing. I'm actually going to potentially
8 entertain any motions to delay sentencing because quite
9 candidly my blood sugar is dangerously low as, perhaps,
10 yours is, and I would not want to -- I want to be at the top
11 of my game. So that may very well be delayed.

12 If you will, meet the clerk of court outside. The
13 quickest way to your cars, the bailiff will show you. We'll
14 need those juror badges back. And she will explain to you
15 how the debit card thing works, okay?

16 With that, you have my most sincere appreciation, my
17 most sincere thanks, and you are all free to go. Take care
18 of yourselves, okay? Mr. Foreman, I do need you, however,
19 to sign the actual indictments, okay?

20 (Whereupon the jury exited the courtroom at 10:56 pm)

21 **THE COURT:** For the record, Ms. Nelson, I assume that
22 you do move for a new trial and you renew all prior motions,
23 is that correct?

24 **MS. NELSON:** Yes, sir, Your Honor.

25 **THE COURT:** I made the suggestion without consulting

1 with you folks. Since this now falls to me, I would feel
2 better about my faculties if I was not as fatigued and
3 tired. And I think I would be more attentive to everything
4 that has to be said both from the victim's family and, of
5 course, from Mr. Gray's family.

6 May I take that personal liberty and we can, perhaps,
7 schedule this next week sometime either in Saluda or I could
8 be here Tuesday morning, potentially, or we could be in
9 touch?

10 **MR. THOMAS:** I would venture to say maybe Tuesday
11 morning here.

12 **THE COURT:** I'm sorry?

13 **MR. THOMAS:** I would vote Tuesday morning here.

14 **THE COURT:** Okay. Would that be ---

15 **MR. THOMAS:** Just my victim's family, I believe, ---

16 **THE COURT:** Would that be doable and more convenient
17 for your people, too?

18 **MS. NELSON:** It's certainly fine with me. And I would
19 prefer -- I would at least prefer that it not be done now as
20 Your Honor has suggested and certainly would like to have
21 the opportunity to be able to get his family back up here.

22 **THE COURT:** All right. I think that's fair. And I
23 really don't think anybody -- I'm sure you guys are always
24 at the top of your games, but maybe it would be best if your
25 comments are made after a little bit more rest than we have

1 had today. So ---

2 MS. NELSON: Yes, sir.

3 THE COURT: --- sentencing will be deferred. The
4 verdict has been enrolled. And I will be in touch with all
5 of you.

6 I'll probably need to have my court reporter from
7 Saluda, and I don't know who she is, but I may need her to
8 come here first on Tuesday, assuming that I cannot hijack
9 Judge Keesley's court reporter for the hearing Tuesday
10 morning. I know he'll be done on Monday, but we'll
11 tentatively plan for Tuesday morning around 9:30 or so,
12 okay?

13 MS. NELSON: Your Honor, could ---

14 THE COURT: Yes, ma'am.

15 MS. NELSON: I don't know -- I know you might not have
16 a ton of control over this, but I would like to ask that in
17 the interim that if it's possible that Zay get to go back to
18 Lieber where he's being housed rather than ---

19 THE COURT: Remain here?

20 MS. NELSON: Rather than remain here.

21 (Whereupon Ms. Nelson was speaking with the defendant)

22 THE COURT: We're dealing with the logistics of getting
23 him back on Tuesday is the only concern. And, honestly,
24 it's 11:00. Department of Corrections transportation's
25 going to be closed tomorrow. Arranging his transport back

1 to Lieber is ...

2 MR. THOMAS: That would take some work on your part,
3 Your Honor. They're not going to do it for me.

4 MS. NELSON: Part of the problem is that he has high
5 blood pressure. The jail doesn't have his medicine. He's
6 not getting it. He feels like his blood pressure's up right
7 now. So ---

8 THE COURT: Okay. All right.

9 MS. NELSON: That's part of why I asked.

10 THE COURT: I'll make that effort in the morning. I
11 don't know how successful I will be. I do have the number
12 for transportation. I don't know if I'm going to be able to
13 reach them, though, candidly.

14 MR. THOMAS: Well, I think if it's just a medication
15 issue, hopefully the jail or should be able to ---

16 MS. NELSON: They should ---

17 MR. THOMAS: I would hope they would.

18 THE COURT: All right. Would y'all mention that to the
19 medical people first thing in the morning to have him
20 checked out ---

21 THE OFFICER: He could probably be checked out this
22 evening ---

23 THE COURT: All right. Or have him checked out this
24 evening if need be, okay.

25 MS. NELSON: That'd be great. Thank you.

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF GREENWOOD

4 State of South Carolina,
5 Plaintiff,

6 vs. Transcript of Record
7 2018-GS-24-00829 &
8 2018-GS-24-00830

9 Xzariera Okevis Gray,
10 Defendant.

11 May 14, 2019
12 Greenwood, South Carolina
13 (Sentencing hearing)

14 B E F O R E:

15 The Honorable FRANK R. ADDY

16 A P P E A R A N C E S:

17 Joshua Thomas, Representing the State of South
18 Carolina

19 Janna Nelson, Representing the Defendant

20

21

22

23

24

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

25

1 Court imposes on the murder charge will be served
2 day for day. And, obviously, it will be a long
3 time since you are -- until you are able to
4 interact with your kids, and they're going to be
5 grown by the time you get out of the Department of
6 Corrections.

7 Understand though, you still have the
8 hope of, sometime in the future, perhaps, holding
9 them again, being with them again. Mr. Fuller's
10 mom doesn't have that opportunity. His family
11 doesn't have that opportunity. All of his
12 tomorrows have been taken away from him by you, by
13 your actions.

14 I've taken a number of things into
15 consideration in this case, Mr. Gray. Obviously,
16 your criminal history is of concern to the Court.
17 You have been in trouble a great deal recently.
18 I'm not considering, obviously, the armed robbery
19 or the other charges -- or attempted armed robbery
20 or the other charges which are being dismissed.
21 I'll take Miss Nelson's word for the fact that
22 they, perhaps, had some proof problems.
23 Obviously, they would have been resolved sooner if
24 that were not the case.

25 But, Mr. Gray, I've taken all this into

1 account. I do believe that perhaps you do have
2 some very admirable qualities. Your daughter
3 clearly loves you from the letter that she
4 provided to me, but having gotten into trouble
5 over and over and over again throughout your life,
6 and with what's going on in our community with
7 people resorting to guns to try and solve
8 problems, I mean, the Solicitor has a point.
9 Okay? And the message does need to be sent. But
10 I'm trying to balance the loss that the family to
11 my right has suffered against your history and the
12 heinousness of what you did on this particular
13 occasion.

14 So, Mr. Gray, on the murder charge what
15 I've done is, I've imposed a sentence of 35 years.
16 So you got 35 years to do on that. You do get
17 credit for 624 days that you served, and this is
18 concurrent with the SCDC sentence that you're
19 currently serving on the probation violation that
20 the Solicitor referenced.

21 On the possession of weapon charge, the
22 sentence is five years. That sentence will be
23 consecutive to the murder charge. You do, of
24 course, receive credit for the same time that you
25 previously served on that charge.

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 5/9/19

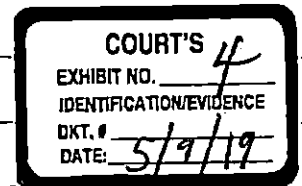
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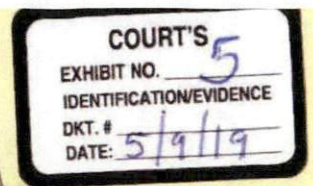
May we watch the whole
19 minute video?

COURT'S
EXHIBIT NO. <u>3</u>
IDENTIFICATION/EVIDENCE
DKT. #
DATE: <u>5/9/19</u>

He would like to watch video
from 6:30 - 8:00 minute mark

We need High School level
explanation of the
difference between
Murder and Voluntary
manslaughter





①

Can we watch the video
(6:00 - 7:30 mins) where we can
talk w/o an audience

②

Some jurors are concerned
about kids at home

Concerned parents & workers
need to use phone plus smoke
break phase 1

We are pretty deadlocked at 10:2

STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
)	FOR GREENWOOD COUNTY
v.)	
)	INDICTMENT NOS. 18GS24-820; -830
XZARIERA OKEVIS GRAY,)	
Defendant.)	
_____)	MOTION TO DISMISS PURSUANT TO
)	S.C. CODE ANN. SEC. 16-11-450

Defendant XZARIERA OKEVIS GRAY (Gray) moves for an order to dismiss the above-referenced indictment and charges pursuant to Section 16-11-450, South Carolina Code of Laws (1976)(Suppl.), and *State v. Duncan* 392 S.C. 404, 709 S.E.2d 662 (2011).

Facts

The Defendant's motion is based upon the following facts:

1. On or about August 30, 2017, the Defendant was arrested for the alleged murder of Demetrious "Meatball" Fuller. This incident is alleged to have occurred on August 26, 2017 at [REDACTED] Gray Street, Greenwood, South Carolina, where Gray was visiting a friend as an invited guest.
2. At that time, the property at [REDACTED] Gray Street was occupied by Ricky Grant, a friend of Gray.
3. The Defendant will present evidence that he was visiting Grant when Fuller came onto the property and confronted Gray. Gray stepped outside the house and the two men, Gray and Fuller, began arguing. Fuller swung at Gray and a physical altercation ensued. During the fight, Gray saw Fuller reach for a gun Fuller was carrying in the waistband of his shorts. Gray was able to wrest the gun away from Fuller and retreated with the gun. When Fuller again came toward Gray, Gray shot Fuller in the abdomen with a single gunshot. Both Gray and Fuller fled, and police shortly afterward located Fuller at [REDACTED] Tanyard Street.
4. Because Fuller came to the property where Gray was visiting as an invited guest and then provoked a physical confrontation with Gray, resulting in Fuller attempting to pull a gun on Gray, Mr. Gray reasonably believed himself to be in danger. In a lawful attempt to protect himself, Gray wrested the gun away from Fuller and shot him once. Mr. Fuller died as a result of that single gunshot wound.

Statement of the Law

The South Carolina legislature passed 16-11-410 et seq. in 2006. This act, called the Protection of Persons and Property Act (hereinafter, the Act), codified the doctrine known under the common law as the Castle Doctrine. S.C. Code Ann. Sec. 16-11-420(A). The statute, as well as the common law rule, states that a person should be able to protect himself against "intruders and attackers" without fear of criminal prosecution. S.C. Code Ann. Sec. 16-11-420. Additionally, there is no duty to retreat when one is attacked at one's own home. S.C. Code Ann. Sec. 16-11-420(E), 16-11-440(C). The Protection of Persons and Property Act further extended the common law Castle Doctrine to include protection not only of one's home, but also of one's business and car. S.C. Code Ann. Sec. 16-11-420(A). The legislative intent behind the 2006 statute was to codify the common law Castle Doctrine, as well as expand the individual's right to protect himself and his property. S.C. Code Ann. Sec. 16-11-420(A). The legislature stated in the Act that individuals have the right to expect to be safe and at peace within their own homes. The Act also provides that individuals have the right to expect to be safe and at peace in places where they have a legal right to be. Both the Act and the common law Castle Doctrine recognize that a

person's home is his castle, and that she should thus be entitled to protect herself and her home against unwarranted attacks.

Both the common law Castle Doctrine and the Protection of Persons and Property Act provide a complete bar to prosecution. Immunity is granted to those who act in accordance with the Act. S.C. Code Ann Sec. 16-11-420; 16-11-450. The South Carolina appellate courts have held that a person acting under the Act is immune from prosecution. See *State v. Duncan*, 392 S.C 404, 709 S.E. 2d 662 (2011). In *Duncan*, our state Supreme Court held that the Act provided complete immunity from prosecution, rather than merely providing an affirmative defense. Prior to the codification of the castle doctrine by the legislature, the courts likewise held that those acting under the Castle Doctrine were protected from prosecution. See *State v. Petit*, 144 S.C. 452, 142 S.E. 725 (1928).

Since the Castle Doctrine provides complete immunity from prosecution, rather than merely providing a defense, our courts have held that any issues arising under the doctrine are properly decided pre-trial. See *Duncan, supra*, in which the South Carolina Supreme Court held that immunity under the Protection of Persons and Property Act was to be decided pre-trial. In conducting its analysis, the Court examined the plain language of the statute and the intent of the legislature; the Court also looked at the interpretation of similar statutes by other state supreme courts. In particular, the Court analyzed recent decisions by courts in Georgia and Florida, in which similar statutes were interpreted to create a complete immunity from prosecution. Additionally, the *Duncan* court provided that the burden of proof upon the defendant claiming immunity under the Protection of Persons and Property Act is preponderance of the evidence. See *Duncan* at page 411.

The Castle Doctrine, as well as the Act, apply not only to one's home but also the curtilage surrounding one's home. There is no duty to retreat when one is attacked in one's home or the curtilage of the home. See *State v. Brooks*, 79 S.C. 144, 60 S.E. 519 (1908); *Petit, supra*; see also *State v. Brown*, 321 S.C. 184, 467 S.E.2d 922 (1996), *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011), *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998), and *State v. Jackson*, 384 S.C. 29, 681 S.E.2d 17 (2009), all of which hold that there is no duty to retreat when attacked in one's home, and that curtilage is included in one's home. Additionally, the legislature specifically included one's business and car as protected places under the Act. Finally, the legislature also specifically included, in addition to a business or car, any other place where a person has a right to be as a protected place under the Act. This shows that the legislative intent was to expand the rights of individual protection, rather than limit those rights.

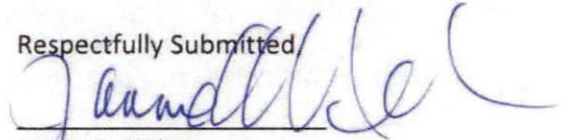
Conclusion

The evidence establishes the following:

- A. The Defendant at all times during the incident was in a place where he had a right to be; specifically, he was in the curtilage surrounding the home of Ricky Grant, where he was visiting as an invited guest;
- B. The Defendant at all times during the incident was not engaged in an unlawful activity;
- C. The Defendant knew or had reason to believe that an unlawful and forcible act against Defendant was occurring or was about to occur;
- D. The Defendant reasonably believed that he had been attacked by Mr. Fuller and would continue to be attacked by Mr. Fuller; had no duty to retreat; had the right to stand his ground; had the right to meet force with force; and reasonably believed that his actions were 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, South Carolina Code of Laws (1976)(Suppl.).

Therefore, the Defendant requests an order finding that he was justified in using deadly force and is immune from criminal prosecution pursuant to Section 16-11-450(A), South Carolina Code of Laws.

Respectfully Submitted,

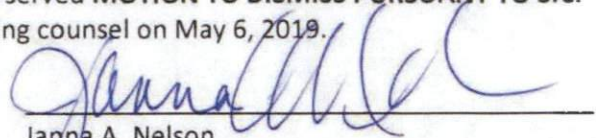
A handwritten signature in blue ink, appearing to read 'Janna A. Nelson', written over a horizontal line.

Janna A. Nelson
Circuit Defender
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

May 6, 2019
Greenwood, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that she has served **MOTION TO DISMISS PURSUANT TO S.C. CODE ANN. SEC. 16-11-450** by hand on opposing counsel on May 6, 2019.



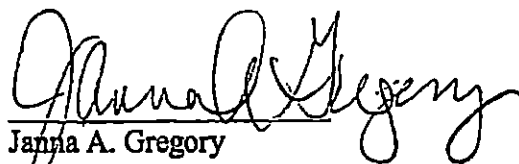
Janna A. Nelson
Attorney for Xzariera Okevis Gray

attempted to reach out to Ms. Oakman via a Facebook message, but to date our office has not received any response. Based on this Facebook post, it appears that at least one juror felt pressured to reach a verdict that night so that the jurors would not have to return on Monday and/or felt that the jury had no choice but to reach a verdict in the case.

Defendant requests that a hearing on this motion be held so that Judge Addy can inquire of each individual juror whether anyone felt pressured to change his/her verdict, whether the lack of dinner and/or adequate breaks influenced the change in the jury's vote, whether anyone felt pressured to change his/her vote based on Judge Addy's question about having the jury return to deliberate on Monday, and whether the jurors believed that they were required to reach a verdict in the case rather than having the option to remain deadlocked. If Ms. Oakman, or any other juror, felt undue pressure to render a verdict in this case, then Defendant's due process rights under the U.S. Constitution and the S.C. Constitution were violated and he is entitled to a new trial.

For the foregoing reasons, this Court should grant Defendant's motion for new trial if a hearing reveals that any juror(s) was unduly influenced to reach a verdict.

IT IS SO MOVED.



Janna A. Gregory
Circuit Defender
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

May 23, 2019
Greenwood, South Carolina



Porche Oakman

May 9 at 10:38 PM · 🌐



Wtf.... just getting out of court frm all day.... 14 long hrs!!!



8

5 Comments



Like



Comment



Share

View 1 more comment



Porche Oakman Chl general session murder trial... just couldn't leave without a verdict...

Like · Reply · 1w · Edited



1



Porche Oakman ShantelBig G Johnson enjoyed yall

Like · Reply · 1w



ShantelBig G Johnson I enjoyed too

Like · Reply · 1w



Faatma Nada 😂😂 Damn

Like · Reply · 1w




Write a comment...



CERTIFICATE OF SERVICE

The undersigned certifies that she has served this Motion for New Trial by hand on opposing counsel and by hand-delivery to the office of The Honorable Frank R. Addy, Jr. on May 23, 2019.


Janna A. Gregory
Attorney for Defendant Xzariera Okevis Gray

RECEIVED

JUL 05 2019

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS
18-GS-24-829, 830

STATE of SOUTH
CAROLINA,

ORDER DENYING MOTION FOR A NEW
TRIAL

-v-

XZARIERA
OKEVIS GRAY,
Defendant.

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JUL 05 2019

SC Court of Appeals

Addy, J.

THIS MATTER COMES BEFORE THE COURT on the Defendant's motion for a new trial which was timely filed. The Court finds that a hearing on this motion is not necessary or would otherwise aid the Court.

On Thursday, May 9, 2019 Mr. Gray was convicted of Murder and Possession of a Firearm during the Commission of a Violent crime. He was represented at trial by Janna Gregory, and the State was represented by Josh Thomas. Per the Court's notes, this case was submitted to the jury at approximately 12:18 p.m. Throughout their deliberations, the jury requested to watch a video of the shooting on several occasions and also requested additional instruction. Ultimately, the verdict was returned at 10:52 p.m. In his motion, Mr. Gray requests the Court to convene a hearing to question the jurors as to whether they felt pressured to reach a verdict due to the length of the deliberations.

First, the Court notes that at no time did the jurors indicate that they were deadlocked. The communications which the Court received from the jury did indicate that they were struggling to reach a verdict, but at no time did the Court have to give an *Allen* charge.

Second, the Court finds that a lengthy deliberation, standing alone, does not warrant conducting an inquiry into the nature of the jury deliberations. In the experience of this jurist, a serious and competent jury takes their time to evaluate the evidence and satisfy itself that their verdict is proper. Based upon the jury's repeatedly reviewing the grainy video of the shooting and the jury's request for further instruction on malice, the Court believes this jury took its obligations very seriously.

DM

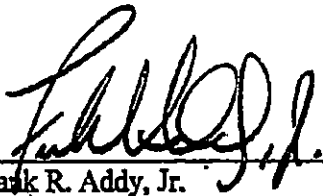
Third, under Rule 606, the inquiry suggested by Mr. Gray would likely be improper in that it would cause the jurors to reveal the subject matter of their deliberations. The Facebook post cited by the Defense does not cause the Court sufficient concern to warrant the drastic step of questioning all twelve (12) jurors.

Fourth, as it relates to the Court not ordering supper for the jury, the Court notes that a late lunch had already been provided. Additionally, the jury room was stocked with crackers, snacks, and drinks which the jury could consume if they became hungry.¹

Accordingly, the Court finds insufficient grounds exist to warrant convening a hearing in this matter as requested by the Defense. If counsel has not already done so, the Court notes that a notice of intent to appeal will need to be filed within ten (10) days of the filing of this order and that Mr. Gray has one (1) year from the date of his conviction or resolution of an appeal (whichever is later) to file any action for post-conviction relief.

WHEREFORE, Mr. Gray's motion for a new trial is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge, Eighth Judicial Circuit

June 21, 2019
Greenwood, South Carolina

¹ Out of solidarity, I did not eat supper either, nor partake of any snacks.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

WITNESSES

William Kay
Greenwood Police Department

COURT OF GENERAL SESSIONS

May Term, 2018
Indictment #2018GS24-0829

RECEIVED
JUL 05 2019
SC Court of Appeals

WARRANT NUMBER

2017A2420100837

THE STATE

vs.
XZARIERA OKEVIS GRAY

TRUE BILL

Julie Wideman
Foreman of the Grand Jury

Date: 5-4-18

INDICTMENT FOR

Murder
SC Code: § 16-03-0010

CDR: 0116

VERDICT

Guilty
George Dyer
Foreman May 9, 2019

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

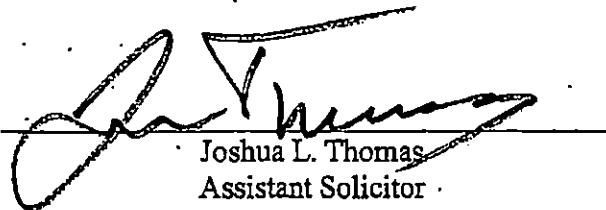
INDICTMENT FOR

Murder
§16-03-0010

At a Court of General Sessions, convened on the 4th day of May, 2018, the Grand Jurors of Greenwood County present upon their oath:

That Xzariera Okevis Gray, on or about August 26, 2017, in Greenwood County, did willfully, feloniously, and with malice aforethought kill one Demetrious Fuller by means of shooting and that the victim did die in Greenwood County shortly thereafter as a proximate result thereof, all in violation of Section 16-3-10 of the South Carolina Code of Laws (1976, as amended) and the common law.

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



Joshua L. Thomas
Assistant Solicitor

WITNESSES

William Kay
Greenwood Police Department

WARRANT NUMBER

2017A2420100838

TRUE BILL

Julia Wideman

Foreman of the Grand Jury

Date: 5-4-18

VERDICT

Guilty

George Zuggler
Foreman May 9, 2019

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

May Term, 2018

Indictment #2018GS24-0830

THE STATE

vs.

XZARIERA OKEVIS GRAY

INDICTMENT FOR

Possession Of A Weapon During The

Commission Of A Violent Crime

SC Code: § 16-23-0490

CDR: 0549

RECEIVED
JUL 05 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

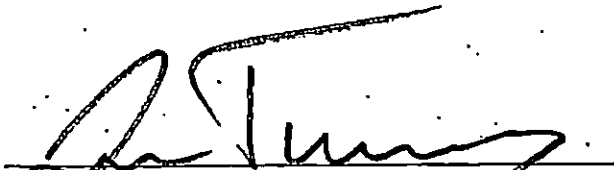
COUNTY OF GREENWOOD

Possession Of A Weapon During The
Commission Of A Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 4th day of May, 2018, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Xzariera Okevis Gray, did on or about August 26, 2017, in Greenwood County, while committing the violent crime of Murder (or any lesser included violent offense), possess a handgun in furtherance thereof, in violation of Section 16-23-0490, South Carolina Code of Laws (1976, as amended).

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



Joshua L. Thomas
Assistant Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE VS.

XZARIERA OKEVIS GRAY

AKA: Xzavieria Okevis Gray, Xzariera Gray
Race: Black Sex: M Age: 30
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2018GS24-0830
A/W: 2017A2420100838
Date of Offense: 08/26/2017
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

RECEIVED

JUL 05 2019

SC Court of Appeals
§17-25-45
(CSC w/minor 1st or CSC w/minor 1st)

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: 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 (CSC w/minor 1st or CSC w/minor 1st) §17-25-45

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)

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

ATTEN:

[Signature] 100777
Joshua L. Thomas, Assistant Solicitor SC Bar # _____ Defendant

[Signature] 70306
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 Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 18-65-24-829

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. Credit 624 days = 1 year.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____ Payment Terms: _____ Obtain GED

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

Recipient: _____ May serve W/E beginning _____

*Fine: _____ \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75

TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Charity Copeland
Court Reporter: Sharon Hargraves & Susan

Presiding Judge: [Signature]
Judge Code: 2159
Sentence Date: 5-14-19

Oct 14 2020

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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

Respectfully Submitted,

s/Susan B. Hackett

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This 14th day of October, 2020.