



# **South Carolina Bar**

Continuing Legal Education Division

## **2026 SC BAR CONVENTION**

### **Criminal Law Section**

“Back to Basics”

**Friday, January 23**

*SC Supreme Court Commission on CLE Course No. 260136*

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# **South Carolina Bar**

Continuing Legal Education Division

## Judicial Update

*The Honorable William McKinnon*

**State v. Jason E. Stoots:** 445 S.C. 127, 912 SE 2d 248

The defendant and his wife, who lived separate from him at the time, were visiting a Taco Bell Drive Thru when the altercation arose. The defendant testified his wife became angry with him and began attacking him. This attack led him to defend himself by grabbing her arms and his hand accidentally struck her in the face. The defendant's wife testified that she did not attack or touch him prior to the defendant punching her in the face.

The defendant was charged and tried for Domestic Violence 1<sup>st</sup> Degree. At his trial, the defendant requested jury instructions on the law of self-defense and accident based on the three elements of accident from *State v. Brown*, but the trial court refused. In refusing the jury instruction on self-defense, the trial court cited the size difference between the defendant and his wife along with the defendant's ability to leave the altercation. The court did not further explain its refusal to charge on the law of accident. The jury was then instructed that the State must prove the defendant acted with criminal intent defined as a "mental state of conscious wrongdoing." The jury went on to convict the defendant of Domestic Violence 2<sup>nd</sup> degree.

The Supreme Court found the trial court's refusal to instruct the jury about the law of self-defense was error. The Court went on to explain that when the defendant presents any evidence from which the jury could reasonably conclude that the defendant acted in self-defense, the Court must instruct the jury on the law of self-defense. The Court further explained that there is not a requirement that the defendant anticipate *serious* bodily harm prior to using *deadly* force because the response is proportional to the posed threat. The Court then went on to explain that when "the provoking attack is less serious, a person may still be justified in responding, but only with proportional force. Thus, there is no requirement the defendant anticipate serious bodily injury or death before responding with non-deadly force in self-defense." The Court declined to establish a bright line rule regarding non-deadly self-defense, stating: "Rather, we believe the law requires a person facing non-deadly force to act reasonably in deciding whether it is necessary to respond with defensive force instead of stepping back or otherwise avoiding engagement with the adversary."

In regard to the issue of a jury charge on instruction, the Supreme Court found the trial court did not error in its refusal. The Court explained that the jury instructions given appropriately addressed the only element in the *Brown* analysis pertinent to this case which was intent. Therefore, they found no error. However, the Court went on to say that the trial court must tailor its jury instruction on the law of accident depending on the crime charged and specific facts and circumstances of the case. The Court went on to give an example of an appropriate charge on the law of accident.

**State v. Robert Geter:** 445 S.C. 139, 912 SE 2d 255

This case involved a bar fight that led to the killing of one person and wounding of another that resulted in permanent blindness. The fight began inside a bar in Columbia, SC where the

defendant got into an altercation with another bar patron. To break up the fight, the unofficial bouncer forcibly removed the other bar patron from the bar to the outside deck. The defendant then followed outside. A witness stated that, as the defendant was walking outside to the deck, he stated, "I'm going to kill somebody tonight." The defendant seemingly came outside to reconcile with the other bar patron but then began stabbing him. When unofficial bouncer attempted to intervene, he was stabbed in the eye causing permanent blindness. The other bar patron died from the stab wounds.

The defendant was indicted for murder and attempted murder. At trial, the state argued that the defendant was guilty of attempted murder based on the doctrine of transferred intent. The jury convicted the defendant of both murder and attempted murder.

On appeal, the Court of Appeals found in favor of the defendant holding that the State needed to prove the defendant specifically intended to kill the unofficial bouncer, and therefore, reversed the attempted murder conviction.

The Supreme Court held that the doctrine of transferred intent does not apply to attempted murder, affirming the Court of Appeals decision. They went on to explain the State must prove malice, specific intent to kill, and an attempt to kill in order to successfully prove attempted murder. The Court explained that attempted murder is not concerned with the result of the attempt. The Court further emphasized that the doctrine of transferred intent is a valid legal theory for crimes requiring proof of a result, such as murder, but not attempted murder. The Court gave the following examples of hypothetical scenarios that constitute attempted murder in order to show that a defendant can be guilty of attempted murder even if the intended victim is not harmed, if all three elements are proven.

- A has malice and the specific intent to kill B. Acting on that intent, A attempts to shoot B but the gun jams and does not fire.
- A has malice and the specific intent to kill B. Acting on that intent, A shoots at and hits B but only wounds and does not kill him.
- A has malice and the specific intent to kill B. Acting on that intent, A shoots at B but misses him, and the bullet hits a house.
- A has malice and the specific intent to kill B. Acting on that intent, A shoots at B but misses him, and the bullet hits but does not kill a third person, C.

**State v. Rashawn Carter:** 445 SC 157, 912 SE 2d 264

The defendant in this case was convicted of several crimes stemming from his involvement with a home invasion and robbery in Aiken County, SC. Following the commission of the crimes, law enforcement officers sought to locate the suspects, including the defendant. After learning the defendant's phone number and that his provider was T-Mobile. Law enforcement contacted T-Mobile, without a warrant, to obtain the defendant's current location. T-Mobile provided law enforcement with a form titled "Exigent Circumstance Request Form." The form allows for T-

Mobile to release customer records if there is a good-faith belief that an emergency requires disclosure pursuant to the federal Stored Communications Act. Following the submission of the form by law enforcement, T-Mobile began providing law enforcement with the defendant's current location. He was found, questioned, and eventually arrested for his involvement in the home invasion and robbery.

At trial, the defendant moved to suppress the evidence obtained from T-Mobile arguing it was a violation of his 4<sup>th</sup> amendment rights under the US Constitution and the South Carolina Constitution. The trial court denied his motion and he was convicted by the jury. The Court of Appeals affirmed the convictions citing the exigent circumstances exception to the warrant requirement and the good-faith exception to the exclusionary rule.

The Supreme Court granted writ of certiorari to review the decision but only addressed one issue in the case: the good-faith exception to the exclusionary rule. The Court affirmed the conviction holding that the exception applied to these facts, as the officers acted with an objectively reasonable good-faith belief that their conduct was lawful, relying on the federal statute that permitted their actions. Therefore, even if a constitutional violation existed, the evidence obtained should not have been suppressed. The Court concluded that the good-faith exception to the exclusionary rule forecloses suppression when officers act pursuant to an explicit federal statute.

**State v. Jason McSwain:** 445 SC 276, 914 SE 2d 124

The defendant in this case challenged the constitutionality of the amended South Carolina Sex Offender Registry Act (SORA) arguing that the newly created tier system with mandatory wait times for removal from the registry were arbitrary and violated his substantive due process rights.

Prior to the amendment in 2022, the SORA required lifetime registration for sex offenders and did not afford offenders an opportunity for judicial review to assess their risk of recidivism. In response to a previous Supreme Court Case, *Powell v. Keel*, the General Assembly amended the SORA to create a three-tiered system which now allows offenders to apply for removal from the registry following a mandatory waiting period. In the case of Tier I and II offenders, their application must be granted if they have followed certain statutory guidelines. For Tier III offenders, they must establish by clear and convincing evidence that they are no longer a foreseeable risk to reoffend and it is in the best interest of justice to grant the removal from the requirement of registration.

- Tier 1: 15 years
- Tier 2: 25 years
- Tier 3: 30 years

The defendant in this case pled guilty to criminal sexual conduct with a minor and was classified as a tier II offender. He applied for removal from the registry after 19 years, but his application was denied due to it being premature. The defendant then filed a motion in circuit court arguing that his application should be granted because he no longer posed a danger to the

community and the mandatory waiting period were arbitrary. The circuit court found that the statute was rationally related to the state's legitimate interest in public safety and therefore constitutional.

The Supreme Court affirmed the Circuit Court's decision holding that the tiered system and mandatory registration periods are rationally related to SORA's legislative purposes of protecting the public and aiding law enforcement. The Court found that the statute did not violate the defendant's substantive due process rights, as the legislative act was reasonably designed to accomplish its purpose.

**State v. James E. Daniels:** ~~445 SC 401, 914 SE 2d 845~~

~~Writ of Certiorari was dismissed as improvidently granted~~

**State v. Joseph M. Swaringen:** 446 SC 16, 916 SE 2d 343 (Ct. App 2025)

The defendant in this case appealed his conviction of trafficking methamphetamine on several grounds.

Defendant was driving a motorcycle when he was involved in a motor vehicle accident. He attempted to flee the scene but was restrained by the other involved driver until EMS arrived on the scene. Defendant was transported to Greenville Memorial Hospital for treatment. During a routine inventory search, the hospital staff discovered items they believed to be drugs. The hospital staff then turned the items over to the responding officer to conduct a field test on the substances. The field test identified the items as methamphetamine. The responding officer then took photographs of the substances, packaged them, placed them into a secure evidence locker, and filled out a Property and Evidence Form. At trial, the State presented further evidence of the chain of custody of the drugs demonstrating their transportation to the Greenville County Crime Laboratory. The supervising chemist testified at trial that he received the baggies but could not weight the bags individually due to the bags having loose material around them and the substances became commingled. The chemist tested a small portion of the substance which he positively identified as methamphetamine.

- A. Defendant argues that the trial court erred in failing to direct a verdict on the trafficking charge when the chemist testified the substances in the bags were commingled. The Court of Appeals found that the evidence presented at trial was sufficient to send the issue to the jury. The issue of commingling of drugs during an investigation had not yet been addressed by South Carolina Courts, but in following the rulings of other jurisdictions, the Court noted that the random samples collected from the uniform substance tested positive for methamphetamine which supported the logical conclusion that the entirety of the substance was methamphetamine.
- B. Defendant next argued that the State failed to establish the chain of custody of the methamphetamine. The Court of Appeals disagreed, stating that the testimony from EMS staff, hospital personnel, the responding officer, property and evidence custodians, and the

supervising chemist established each step of the chain of custody from the time the drugs were received to their testing.

- C. Defendant then argued that the trial court erred in failing to instruct the jury on the lesser-included offense of possession of methamphetamine. The Court found that the evidence presented did not warrant this instruction based on the amount of methamphetamine seized. Furthermore, the additional circumstantial evidence surrounding both the motor vehicle accident and the defendant's other personal belongings supported a charge of trafficking methamphetamine rather than the lesser-included offense of possession of methamphetamine.
- D. Defendant also appealed to the Court of Appeals that the gathered substance should have been suppressed because officers did not comply with SLED regulations pursuant to Section 44-53-485. The Court of Appeals affirmed the trial court's ruling that the documentation provided by the State complied or substantially complied with SLED's regulations and established a complete chain of custody. The Court of Appeals also went on to explain the trial court's interpretation Section 44-53-485 was correct as it does not say that suppression of evidence is a remedy for a violation of the statute.
- E. Defendant next appealed that the gathering of the methamphetamine was a violation of his fourth amendment rights. The Court of Appeals found that the hospital staff were not acting as government agents and that the inventory search the staff conducted pursuant to hospital policy was not motivated by law enforcement.
- F. The Defendant lastly appealed the jury instruction given at trial by failing to give the requested charge regarding the chain of custody. The Court of Appeals found that the trial court's instructions were appropriate and that the jury was capable of determining the sufficiency and accuracy of the chain of custody based on the evidence presented during the trial.

**Rivers v. State:** 446 SC 1, 916 SE 2d 335

Defendant in this case was charged and convicted of Homicide by Child Abuse (HCA) following the death of his four-month-old, adopted child. The Defendant filed an application for post-conviction relief which was denied by the Circuit Court. The Court of Appeals then reversed the Circuit Court's denial. Following the reversal, the Supreme Court granted the State's writ of certiorari.

Defendant lived with his family including the victim who was placed with them by DSS. The victim died from asphyxiation, and Defendant was charged with HCA after giving inconsistent statements to investigating law enforcement. Prior to the trial, the State sought to admit evidence of the victim's collateral injuries, which were unrelated to the victim's death, to counter Defendant's claim that the asphyxiation was accidental. Defendant's counsel objected to the introduction of evidence relating to the victim's collateral injuries during pretrial motions but did not renew the objection during the trial which left the issue unpreserved for appeal. The State presented evidence of the victim's prior injuries and called several witnesses to testify about the



victim's injuries and cause of death. Defendant testified in his defense, claiming the victim had breathing difficulties and that he performed CPR on the victim. The jury found Defendant guilty of HCA.

Defendant filed a PCR application alleging ineffective assistance of counsel due to the failure to object to the collateral injury evidence during the trial. The PCR court found Defendant's counsel's performance was deficient but concluded that Defendant was not prejudiced because the evidence was properly admitted. The Court of Appeals reversed the decision, stating that Defendant was prejudiced by his counsel's deficient performance.

The Supreme Court reviewed the case and applied the *Strickland* test which provides "To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the applicant's case." The Court focused on the prejudice prong of the *Strickland* test and found no reasonable probability that excluding the collateral injury would have changed the jury's verdict. The Court noted that Defendants' actions demonstrated an extreme indifference to the risk of the victim's death, satisfying the requirements for HCA. Therefore, the Court concluded that Defendant failed to demonstrate a reasonable likelihood that excluding the collateral injury evidence would have changed the jury's verdict and has failed to satisfy the prejudice prong of the *Strickland* test.

**State v. Harold G. White, III:** 446 SC 276, 919 SE 2d 37 (Ct App 2025)

The defendant in this case was convicted of several crimes relating to drug possession and distribution. He appealed his convictions on several grounds.

The case originated from an investigation into the death of Defendant's infant daughter who was found to have fentanyl and norfentanyl in her bloodstream at the time of her death. Law enforcement obtained search warrants for Defendant's home and his mother's home, where the infant had been on the day of her death. During the search of Defendant's home, law enforcement seized multiple cell phones, marijuana, a scale, firearms, pills, and white substance which was later tested and identified as hydrocodone, oxycodone, and cocaine.

The defendant argued that the affidavits supporting the search warrants for his home and his mother's home were insufficient to establish probable cause. The Court found that the totality of the circumstances provided a fair probability that incriminating evidence relating to the infant's death would be found during the search, thus concluding the warrants were valid.

The defendant also argued that the messages taken from his phone constituted inadmissible evidence under Rule 404(b) of the South Carolina Rules of Evidence. The Court found the messages were relevant as they can be used to show the defendant's intent to distribute drugs, which was an element of the possession with intent to distribute hydrocodone and possession with the intent to distribute marijuana. Citing to *Gore* and *Wilson*, the Court found that the prior drug transactions can be used as evidence to show intent to distribute drugs, particularly in cases where

the amount of drugs seized by law enforcement does not meet the statutory presumption for an intent to distribute.

The defendant further claimed that the text messages' admission violated Rule 403 of the South Carolina Rules of Evidence as their probative value was substantially outweighed by the danger of unfair prejudice. The Court found the danger of unfair prejudice was low in this case, particularly due to the fact the trial was a bench trial.

Finally, the defendant argued the text messages constituted inadmissible hearsay. The Court rejected this argument and explained that the messages were admissible because they were not offered to prove the truth of the matter asserted. Rather, the messages were offered into evidence to show the effect on the defendant and provide context to his responses.

**State v. Dent:** 446 SC 121, 919 SE 2d 394

The defendant in this case was convicted of three child sex crimes stemming from the alleged abuse of his granddaughter. In regard to his conviction for criminal sexual conduct with a minor (CSCM) in the first degree, the Supreme Court granted writ of certiorari from the Court of Appeals to review the conviction due to arguments raised by the defendant concerning his indictment and the evidence presented at trial.

The defendant's granddaughter, the victim, disclosed that the defendant had sexually abused her previously. This discovery led to a forensic interview where she detailed numerous instances of abuse which included being forced to perform fellatio. The defendant was indicted on two charges of CSCM in the first degree, specifically for incidents alleged to involve fellatio. The indictments included dates that corresponded to events that took place at two different residences; however, the victim only provided details of fellatio occurring at one residence.

The State introduced evidence from the forensic interviews along with the victim's testimony during the trial. During her testimony and the portions of the interview presented at trial, the victim only made mention of once instance of fellatio without specifying any location for the incident. Following the presentation of the State's case, the defendant moved for a directed verdict on the first CSCM indictment arguing there was no evidence that he had forced the victim to perform fellatio at a second residence. The trial court denied the motion. During closing arguments, the State argued that the indictments were not limited to fellatio and that any sexual battery could support a conviction. The trial court then instructed the jury on the full definition of sexual battery, including acts not specified in the indictment, which led to the defendant's conviction for the first CSCM charge.

The defendant appealed which eventually led to the South Carolina Supreme Court granting writ of certiorari to review the case. The Court found that the trial court erred in not granting the defendant's directed verdict for the first CSCM indictment due to the lack of evidence of fellatio at a second residence. Further, the Court found it was improper for the trial court to instruct the jury on the unindicted sexual batteries. The State's limiting of the indictments to sexual battery

that involved fellatio meant that the trial court could not instruct the jury on sexual batteries that did not involve fellatio.

The Court reversed the defendant's conviction for CSCM in the first degree. The Court concluded by emphasizing the importance of indictments providing fair notice to defendants of the charges against them.

**Marcus Wright v. State:** 446 SC 475, 920 SE 2d 17 (Ct App 2025)

The defendant in this case appealed the denial of his PCR application for ineffective assistance of counsel following his conviction for murder, trafficking in cocaine, possession with intent to distribute cocaine base, and possession of a weapon during the commission of a violent crime. His appeal alleged his trial counsel failed to immediately inform the trial court of his desire to testify and did not move to reopen the record to allow him to testify.

During the defendant's trial, after the State rested, the trial court discussed the defendant's right to testify. He initially chose to remain silent. Following the defense resting their case, the defendant changed his mind and expressed an intent to testify in his own defense. However, the trial court refused his request to reopen the record, citing that the defendant's desire to testify seemed to be a reaction to the court's rulings on jury charges, which would allow him to tailor his testimony to fit the parameters for the charges presented to the jury. The defendant was subsequently convicted and sentenced to life for the murder along with concurrent sentences for the other charges. He initially appealed his conviction which the Court of Appeals affirmed, stating the trial court did not abuse its discretion in refusing to reopen the record.

The defendant then filed a PCR application which was denied. The PCR court found that even if counsel's performance was deficient, it did not constitute a structural error that would automatically presume prejudice.

The Court of Appeals then took the appeal from the PCR court and found that the defendant's case did not involve a structural error because the trial court had a legitimate reason for refusing to reopen the record and allow the defendant's testimony. The court also went on to find that the defendant failed to demonstrate any prejudice, as his testimony would not have changed the outcome of his trial.

**State v. Tony T. Sweet:** 446 SC 356, 919 SE 2d 909

The defendant in this case appeals his guilty plea for trafficking methamphetamine and trafficking illegal drugs.

After being arrested and found with 237 grams of methamphetamine and 7.64 grams of fentanyl in his vehicle, the defendant entered a deferred plea agreement and agreed to become a confidential informant in exchange for deferred sentencing on his charged offenses. The defendant arrested again six months later on new drug charges.

The defendant filed a motion to vacate his guilty plea for the trafficking charges, arguing that fentanyl did not fall under the statute he was charged with violating, which he claimed only criminalized trafficking natural opioids, not synthetic opioids such as fentanyl. He also he did not enter the plea knowingly and voluntarily because he was unaware of an order from a circuit court judge in an unrelated case that found fentanyl could not be lawfully included in an indictment under the statute. He further contended that the judge who heard and accepted his plea lacked subject matter jurisdiction to accept the plea because the indictment failed to state an offense.

The lower court denied the defendant's motion and noted that he waived all defenses at the time of his plea. He was sentenced to 22 years to be served concurrently for both trafficking offenses.

The defendant's ensuing appeal was certified by the Supreme Court who heard the matter and affirmed the lower court's denial of his motion. The Court held that even if fentanyl did not fall within the category of items prohibited under the statute, the trial court had subject matter jurisdiction to hear the defendant's guilty plea, explaining that the defects in an indictment charging a recognized crime do not deprive the court of subject matter jurisdiction. Further, as the lower court stated, the defendant waived his ability to challenge the criminal charges against him on any other basis, such as his argument that fentanyl was not included in the statute, by pleading guilty to the crime. The Court did not address the defendant's argument about fentanyl's classification as a natural or synthetic opioid; however, they did note that the South Carolina General Assembly has now enacted a statute specifically criminalizing trafficking fentanyl which would alleviate any future legal issues with the drug's scientific classification.

**State v. John J. Erb:** 2025 WL 2525354

The defendant in this case appealed the retry of his murder case after issues arose during jury polling at the conclusion of his initial trial.

The defendant was arrested and charged with murder in March 2020. He was indicted on the sole count of murder in 2023, and the case went to trial one month later. The jury was instructed on both murder and the lesser-included offense of voluntary manslaughter. The jury found the defendant not guilty of murder and guilty of voluntary manslaughter. The defense requested a polling of the jury following their verdict. During the polling, Juror 16 disagreed with the verdict of manslaughter, which led the trial court to send the jury back without ordering further deliberations. The trial court then questioned Juror 16 individually, despite objections from both parties, and subsequently declared a mistrial for the case, again without allowing either side to object.

Following the mistrial, the State listed the defendant's murder charge on a trial roster to which the defendant argued that jeopardy had attached to the murder indictment. The trial court denied the defendant's habeas corpus petition and motion for entry of a verdict stating that jeopardy had

not attached. The Supreme Court issued a common law writ of certiorari to review the trial court's ruling on the murder charge and also addressed the voluntary manslaughter charge.

The Supreme Court found that jeopardy had attached to the murder charge because the jury's not guilty verdict was final, as it was signed by the foreperson and read into the record without contest. The Court explained that the State, by declining to poll the jury, accepted the finality of the jury's verdict. The trial court's declaration of a mistrial sua sponte prevented any further deliberations. The Supreme Court additionally held that jeopardy attached to the voluntary manslaughter charge because the trial court improvidently declared a mistrial without manifest necessity. The Court held "the trial court's sua sponte declaration of a mistrial, colored by its mishandling of the polling results, was not manifestly necessary. Jeopardy attached to both the murder and voluntary manslaughter charges."

**State v. Arkevus Cauthen:** 2025 WL 2656005 (Ct App 2025)

The defendant in this case was convicted of murder, armed robbery, and two counts of possession of a weapon during the commission of a violent crime. The defendant appealed his convictions arguing the trial court erred on two grounds:

- Failing to suppress evidence that officers recovered from a filled hole in his backyard while executing a search warrant
- Allowing an investigating officer to testify that bruising on the defendant's arm resembled a bite mark

A murder victim was found deceased by her daughter in her home with multiple stab wounds. The defendant was identified as a suspect for the murder and obtained a search warrant for his home which included the language "[a]ny kind of sharp object that may have been used to cause the stab wounds." The search warrant also described the defendant's home as the premises to be searched. Specifically, the warrant stated, "[t]he search [wa]s to include all attics, basements, locked or unlocked containers, outbuildings, storage sheds, trash areas and trash containers, attached or unattached."

While executing the search warrant, officers discovered a recently-filled hole in the backyard and a nearby shovel. The officers dug into the hole and found a plastic bag containing a gun with blood stains. After examination and forensic testing of the blood, the gun was linked to another ongoing murder investigation. The defendant was indicted for the murder linked to the gun. Prior to his trial, the defendant moved to suppress the evidence found in the hole, arguing that the search of the hole exceeded the scope of the search warrant for the defendant's home. The trial court denied the motion, stating that the search was reasonable and within the scope of the issued warrant. The defendant also moved to suppress testimony from an investigating officer that bruises on the defendant's arm resembled bite marks. The trial court likewise denied this motion, stating that the testimony is admissible as lay opinion testimony rather than expert testimony. The defendant appealed both rulings to the Court of Appeals.

The Court of Appeals stated the trial court did not abuse its discretion in denying either motion. Regarding the search warrant, the Court of Appeals explained that reasonableness of the execution of the search is the main inquiry when dealing with a search conducted pursuant to a warrant. The court found that the search of the hole was reasonable and within the warrant's scope, as the hole was part of the curtilage of the defendant's house and the officers acted reasonably by limiting their search to the hole. The Court cited to several cases in other jurisdictions that have taken this same approach. In *United States v. Griffin*, the court explained the reasonableness of a search depended on whether the sought evidence could be found in the relevant surrounding areas, such as in the yard, above or below the ground.

In reviewing the motion to suppress the officer's testimony, the court found that the officers' statements were admissible as lay opinions based on his own personal observations, which did not require any specialized knowledge or training about bite marks or bruising. This ruling is consistent with South Carolina jurisprudence which allows a lay witness to testify to their opinions as long as they are rationally based on the witness's own perception and helpful to understanding the testimony.

**State v. Quayshaun Clark:** 2025 WL 2714087 (Ct App 2025)

The defendant in this case appeals his convictions for murder, discharging a firearm into a dwelling, and possession of a weapon during the commission of a violent crime, arguing that the trial court failed to charge the jury on involuntary manslaughter and voluntary manslaughter.

The incident in this case took place at a mobile home where the defendant was involved in a shootout. The defendant testified that while he was sitting in his car, he heard gunshots and saw a man shooting towards him. He then retrieved his firearm and fired approximately fifteen rounds in the direction of the gunfire, which resulted in the death of an eleven-year-old girl inside a mobile home.

At trial, the defendant requested jury instructions on involuntary and voluntary manslaughter, arguing that he acted in self-defense with reckless disregard for others' safety and under the sudden heat of passion. The trial court denied requests, stating there was no evidence of an unintentional killing or provocation by the victim. The jury convicted the defendant of murder.

The defendant appealed his conviction stating the trial court erred in not instructing the jury on involuntary and voluntary manslaughter, arguing there was a factual issue regarding whether the shooting was intentional or unintentional. In their review of the matter, the Court of Appeals found no evidence that the defendant's actions were unintentional. The trial record indicated the defendant admitted to firing his gun deliberately. Addressing the issue of voluntary manslaughter, the Court of Appeals found that the defendant did not act under an uncontrollable impulse to do violence and the provocation to fire his gun did not originate from the victim. The court explained that evidence of an act in the heat of passion and sufficient legal provocation stemming from the victim must be present to submit a charge of voluntary manslaughter to the jury.



# South Carolina Bar

Continuing Legal Education Division

## Legislative Update

*Representative Micajah “Micah” Caskey  
&  
Senator Overture Walker*

# South Carolina 126<sup>th</sup> General Assembly 2025 Regular Session Legislative Update: Criminal Law

## S.C. Bar Association

January 23, 2026



Presented by:

Rep. Micajah P. "Micah" Caskey, IV, Esq.  
Sen. Overture Walker, Esq.



Last updated: October 15, 2025

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# Legislative Update – 126<sup>th</sup> General Assembly 2025 Regular Session

## **Property Crime**

- H. 3523 / A. 1 Organized Retail Crime

## **Operating Vehicles**

- H. 3127 / A. 38 Failure to Stop a Motor Vehicle
- H. 3276 / A. 40 Hands-free and Distracted Driving

## **Homicide**

- S. 156 / A. 61 Fentanyl Induced Homicide

## **Guns**

- S. 136 / R. 86 Pending Unlawful Carry of a Gun Charges

## **Pornography**

- H. 3058 / A. 37 Revenge Porn
- S. 29 / R. 58 Morphed Images of Identifiable Minors
- S. 28 / A. 57 AI-Generated Child Sexual Abuse Material

Last updated: October 15, 2025

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# H. 3523 / A. 1



Signed into law by the Governor on March 7, 2025

Effective March 7, 2025

## ORGANIZED RETAIL CRIME

- Creates a felony crime **Organized Retail Crime** when two or more people conspire to commit theft from a retail establishment with the intent to sell the stolen goods.
- First offense:
  - Property value >\$2k but <\$10k: 0-\$5,000 and/or 0-3 years
  - Property value >\$10k but <\$20k: 0-\$10,000 and/or 0-5 years
  - Property value >\$20k but <\$50k: 0-\$20,000 and/or 0-10 years
  - Property value >\$50k: 0-\$50,000 and/or 0-20 years
- Second or subsequent offense:
  - Regardless of the value of the retail property in any offense: 0-\$50,000 and/or 0-20 years

Slide 1 of 2 for this Act

Last updated: October 15, 2025

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# H. 3523 / A. 1



Signed into law by the Governor on March 7, 2025

Effective March 7, 2025

- Allows multiple offenses occurring within a 90-day period to be aggregated into a single count with the aggregated value used to determine the total value of the property.
- Creates the offense of **Organized Retail Crime of an Aggravated Nature** if a person, while committing retail crime, maliciously causes property damage in the amount of \$2,000.00 or commits bodily harm as it is defined in the assault and battery statute. The penalty for this crime is up to 15 years.
- Provides that Organized Retail Crime is a lesser-included offense of Organized Retail Crime of an Aggravated Nature.

Slide 2 of 2 for this Act

Last updated: October 15, 2025

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# H. 3127 / A. 38



Signed into law by the Governor on May 12, 2025

Effective March 12, 2025

## **FAILURE TO STOP A MOTOR VEHICLE**

- Removes 90-day minimum for first offense.
- Increases maximum sentence for subsequent offense to 10 years.
- Creates additional aggravating offense for leading law enforcement on a high-speed pursuit.
  - Punishable by imprisonment up to 10 years and a one-year license suspension from the date of conviction.
- A high speed pursuit is occurs “when the driver of the vehicle increases speed or takes evasive actions to avoid the pursuing law enforcement vehicle.”
- Also increases penalties:
  - Great bodily injury resulted: must be imprisoned for not more than 15 years
  - Death resulted: must be imprisoned for not more than 30 years.

MELIOREM LAPSA LOCAVIT  
1776

SPES

Slide 1 of 1 for this Act

Last updated: October 15, 2025

5

# H. 3276 / A. 40



Signed into law by the Governor on May 12, 2025

Effective September 1, 2025

## **HANDS-FREE AND DISTRACTED DRIVING ACT**

### **Definitions**

- Condenses relevant definitions down to one defined term (i.e., “mobile electronic device”).

### **Prohibitions**

- Prohibits a person operating a motor vehicle from performing the following actions with a mobile electronic device:
  - Holding or supporting it with any part of the body,
  - Provides an exception for earpieces or wrist devices used to conduct voice-based communication
  - Reading, composing, or transmitting any text (e.g., email or text messages), or
  - Watching motion (e.g., movie, game, or video call).

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Slide 1 of 3 for this Act

Last updated: October 15, 2025

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# H. 3276 / A. 40



Signed into law by the Governor on May 12, 2025

Effective September 1, 2025

## **HANDS-FREE AND DISTRACTED DRIVING ACT**

### **Exceptions**

- These provisions do not apply to a motor vehicle operator who is:
  - lawfully parked or stopped,
  - initiating a voice-based communication that is automatically converted by the device so long as it is not held or supported by any part of the body,
  - reporting an accident, emergency, or safety hazard,
  - performing first responder official duties,
  - performing the following tasks that do not require typing so long as it is not held or supported by any part of the body,,
    - listening to audio-based content, or
    - initiating or ending a call
  - unlocking the device so long as it is not held or supported by any part of the body, or
  - using equipment or services installed by the original vehicle manufacturer.

Slide 2 of 3 for this Act

Last updated: May 21, 2025

Last updated: October 15, 2025

7

# H. 3276 / A. 40



Signed into law by the Governor on May 12, 2025

Effective September 1, 2025

## **HANDS-FREE AND DISTRACTED DRIVING ACT**

### **Enforcement**

- Clarifies a custodial arrest cannot be made solely because of this violation.
- Provides these violations are not subject to "citizen's arrest."
- A stop can only occur when an officer has reasonable suspicion based on that officer's unobstructed view of the device being used by the driver.

### **Penalties**

- Provides the following penalties for the offense of distracted driving:
  - A first offense is punishable by a fine of \$100.
  - Second and subsequent offenses are punishable by a fine of \$200 and have two points assessed on the driving record.
    - Only those offenses which occurred within three years, including and immediately preceding the date of the last offense shall constitute prior
- Warning tickets may only be issued for the first 180 days after enactment.

Slide 3 of 3 for this Act

Last updated: October 15, 2025

8

## S. 156 / A. 61



Signed into law by the Governor on May 22, 2025

Effective May 22, 2025

### **FENTANYL INDUCED HOMICIDE**

- A person who knowingly provides fentanyl to another person in violation of SC law relating to possession, PWID or trafficking that is the proximate cause of another's death is guilty of fentanyl induced homicide.
- May be sentenced up to 30 years
- Defense: "A person who knowingly injects, inhales, absorbs, or ingests any amount of fentanyl along with another consenting person, which is the proximate cause of the death of the consenting person, shall not be prosecuted under this section."

Slide 1 of 1 for this Act

Last updated: October 15, 2025

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## S. 136 / R. 86



Vetoed by the Governor on May 22, 2025

Senate overrode 44-0 on May 28, 2025

House has not taken up Veto

### **DISMISSAL OF PENDING GUN POSSESSION CHARGES**

- Both chambers passed this bill in 2024. The governor vetoed the bill. The Senate overrode the veto unanimously, but the veto message did not reach the House floor prior to adjourning for the year.
- Bill passed both chambers overwhelmingly again this year. Governor did not sign the bill.
- The bill requires the dismissal of misdemeanor, unlawful possession of handgun charges that were pending when the law took effect.
- Some circuit solicitors were dismissing the charges on their own initiative while others were moving forward with prosecution.
- The law would not allow dismissal of other charges that were incident to the unlawful handgun charge and does not allow for a civil cause of action by the person who was charged.

Slide 1 of 1 for this Act

Last updated: October 15, 2025

10



# H. 3058 / A. 37



Signed into law by the Governor

Effective May 12, 2025

## REVENGE PORN

- Establishes the offense of **Unauthorized Disclosure of Intimate Images** (§§ 16-15-330 and 16-15-332).
- Criminalizes the intentional dissemination of intimate or digitally forged intimate images of another person without that person's effective consent, where the person had a reasonable expectation of privacy.
  - Clarifies that consent to the creation of an image does not imply consent to its dissemination.
- A "digitally forged intimate image" includes AI-generated or machine-altered images that "appears to a reasonable person to be indistinguishable from an authentic visual depiction of the individual".
- Two-tiered penalty structure based on whether there was an intent to cause harm or profit:
  - With Intent: Felony punishable by up to 5 years for a first offense and up to 10 years for subsequent offenses;
  - Without such intent: Misdemeanor punishable by up to 1 year for a first offense and up to 5 years for repeat violations.
- It prohibits reproduction of such images for criminal discovery purposes and expressly preserves other applicable legal remedies. (Exception for law enforcement personnel acting within the scope of a investigation.)

Slide 1 of 1 for this Act

Last updated: October 15, 2025

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# S. 29 / A. 58



Signed into law by the Governor on May 22, 2025

Effective May 22, 2025

## MORPHED IMAGES OF IDENTIFIABLE MINORS

- Expands South Carolina's child sexual exploitation laws to explicitly criminalize the creation, possession, PWID, and distribution of morphed images—digitally altered depictions that make it appear an identifiable minor is engaged in sexually explicit conduct or nudity, even if the image was digitally fabricated.
- The bill adds morphed images to the statutory definitions for first, second, and third-degree sexual exploitation of a minor (§§ 16-15-395, 405, and 410), aligning the penalties with those for actual exploitative images of real children.
- The actual identity of the minor is not needed for the crime to be prosecutable, only proof beyond a reasonable doubt that the minor depicted actually existed.
- It includes felony penalties with **mandatory minimum sentences**, restricts arrest warrants for morphed image charges to grand jury indictments or ICAC task force investigations, and amends the sex offender registry laws to classify offenders as Tier I or Tier II—unless the offender is a minor adjudicated in family court for a first offense, in which case no registration is required. The bill reflects a strong legislative stance on the emerging threat of synthetic child exploitation content.

Slide 1 of 1 for this Act

Last updated: October 15, 2025

12

## S. 28 / A. 57



Signed into law by the Governor on May 22, 2025

### **AI-GENERATED OBSCENE CHILD SEXUAL ABUSE MATERIAL**

Effective May 22, 2025

- Creates a new offense criminalizing the production, possession, PWID, and distribution of obscene visual representations of child sexual abuse — including synthetic or computer-generated images that depict minors engaged in sexually explicit conduct or nudity.
- The bill explicitly states that the offense applies regardless of whether the minor depicted is real or fictitious. Covered media include undeveloped film, computer data, digital images, and other visual formats capable of conversion into an image.
- Violations carry felony penalties of up to 10 years' imprisonment.
- First-time minor offenders adjudicated in family court are eligible for a lesser misdemeanor charge and are exempt from mandatory sex offender registration. The bill also updates the sex offender registry statute to include this new offense as a Tier I registrable offense and amends the requirements for removal from the registry.
- It also restricts arrest warrants for alleged violations of this law to those supported by a grand jury indictment or probable cause determination by the Internet Crimes Against Children Task Force in conjunction with the Attorney General's Office.

Slide 1 of 1 for this Act

Last updated: October 15, 2025

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## COMING IN 2026?



- **H.3924** - Consumable hemp products
- **H.3650** - Discharging a firearm at or in a dwelling or other structures is a violent crime.
- **H. 3020** - Removes "playing a pinball machine" from the list of status offenses
- **H. 3387** - Unauthorized Occupants in Residential Dwellings (Squatters)

Slide 1 of 1 for this Act

Last updated: October 15, 2025

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## Contact Information

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Last updated: October 15, 2025



# **South Carolina Bar**

Continuing Legal Education Division

## Cell Phone Forensic Analysis

*Major Ricky Johnson*



# From Pocket to Proof: Mobile Forensics in the Courtroom

Presented by Major Ricky Johnson

Richland County Sheriff's Department



1



## Major Ricky Johnson

- Currently serves at the Major of Investigations at the Richland County Sheriff's Department.
- Mobile Forensics Examiner since 2014
- Cellebrite Certified Mobile Examiner
- Certified JTAG and BGA Chip Off (Advanced Mobile Forensics 2.0) Forensic Examiner
- Cellebrite Advanced Smartphone Analysis (CASA) Certified Examiner
- GIAC Advanced Smartphone Forensics (GASF) Certification - SANS Institute
- SANS Institute GIAC Advisory Board member
- Qualified Expert in Mobile Device Analysis (5<sup>th</sup> Judicial Circuit)

2

## Why Every Case **is Different**



No universal process due to varied devices, versions, and updates.



**"It Depends."**

— The Motto of Digital Forensics

3

## Why the First **Minutes Matter**

- ⌚ Phones are living systems – not static evidence.
- ⌚ Every second after seizure can impact what data survives or what we have access to.
- ⌚ Proper handling ensures the integrity of the evidence.
- ⌚ The device's power state, lock state and network state are evidence conditions



4

## Preserving Power & Security

- 🔒 Devices are placed on continuous power so they don't shut down
- 🔒 Devices must stay powered and locked in secure lockers with chargers.
- 🔒 Chain of custody maintained at each handoff.



5

## Encryption Evolution

### Full Disk Encryption (FDE)

One key unlocks all.

### File-Based Encryption (FBE)

Each file tied to its own key and passcode.

*Result: Full file system extractions only – no unallocated (deleted) space.*

6

## AFU vs. BFU Encryption States

### AFU (After First Unlock)

Passcode entered since power on; more data accessible.

### BFU (Before First Unlock)

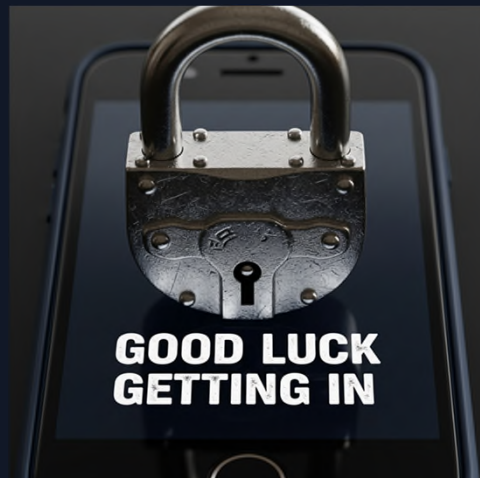
Powered off/restarted without passcode; data encrypted and limited.

*If a phone dies and restarts without the code, access becomes extremely limited.*

7

## The 72-Hour Rule

- 🕒 New iOS/Android start a 72-hour timer after last lock.
- 🕒 Once expired, devices reboot and revert to BFU state.
- 🕒 Preservation mode freezes this timer to prevent data loss.
- 🕒 Similar to holding a physical crime scene until a warrant is issued.



8

# The Extraction and Examination Process

From Locker to  
Lab

9

## Footprints in the Snow

- Every action an examiner takes during the process creates new data on the device.
- This new data can overwrite volatile evidence marked for deletion, like new footprints covering old tracks
- The solution is meticulous documentation. Every step must be recorded to distinguish the examiner's "footprints" from the original data.



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## Forensic Tools of the Trade

- Cellebrite Inseyets
- Magnet GrayKey
- Extract data securely while preserving system state.

Ins<sup>ts</sup>.UFED



11

## Importance of Training

- iOS/Android updates constantly change forensic methods.
- Improper technique = data loss or incomplete evidence.
- Continuous training and testing ensures accuracy and credibility.



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## Proprietary Exploits & Validation

- ⚙ Tools rely on proprietary exploits to access data.
- ⚙ Examiners must validate tools on known devices.
- ⚙ Reliability = admissibility in court.



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## Why Did You Delete That?

- ⚠ Entering the passcode on the device triggers iOS cleanup.
- ⚠ Time-sensitive data like cached locations may be deleted.
- ⚠ Example: iOS cached location data only stores ~14 days.



Opening the device = opening the fridge.

The system sees expired data and discards it.

Using forensic tools keeps the system unaware – preserving the data.

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# From Data to Courtroom Evidence

Turning Data into  
Truth

15

## Location, Location, **Location** – AGPS

### On-device GPS

Precise lat/long, horizontal accuracy radius, ZSpeed (speed).

### Tower data

Broad, approximate coverage zones.

*Example: GPS accuracy often within 5-10 meters; tower radius can exceed 1 km.  
Cached iOS location shows last 14 days – if preserved properly.*

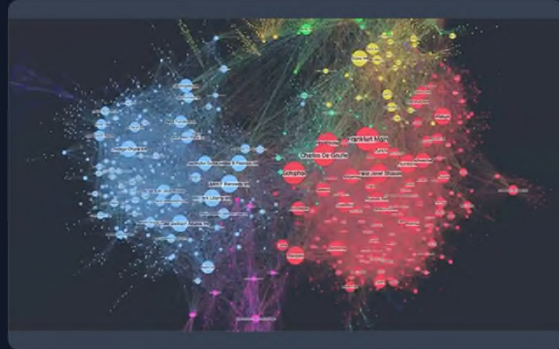
16



## Communication & Relationship Context

- Texts, calls, and messages build **timelines** and potential motive.
- Did the user power off device?  
How was the device unlocked?
- Metadata often more valuable than message content.  
Understand timestamps

Scheduled text messages example



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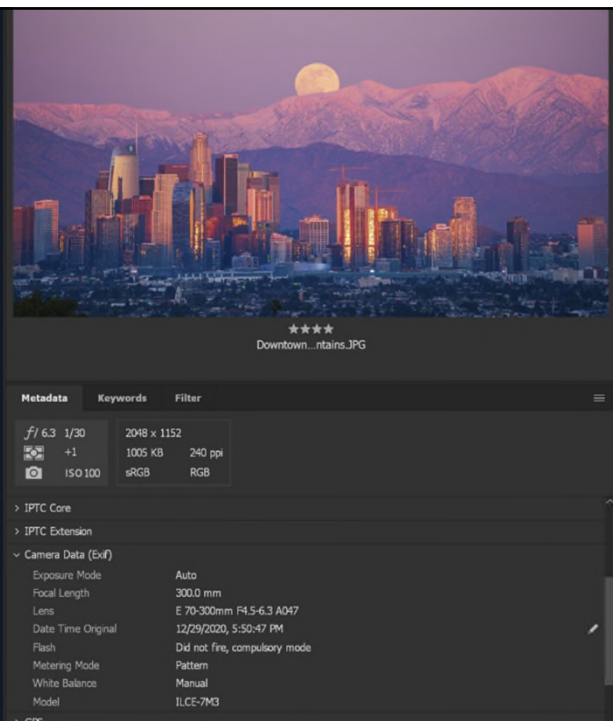
## Photos, Videos & Metadata

Embedded EXIF data = time, date, GPS, camera type.

.ktx files and .png screenshots

DCIM

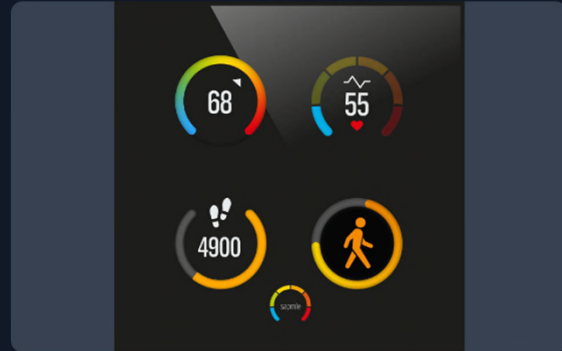
Live Photos



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## Health & Motion Data

- Steps, heart rate, or motion prove movement and timing.
- Fitbit and Apple Health data have confirmed or disproved timelines in multiple cases.



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## Unified Logs & App Focus

-  Pocket State / "FrontIR: Doppler" - indicate whether the front IR sensor was obstructed (e.g. in pocket) or not.
-  When the device was unlocked (via passcode, Face ID/biometrics), when it was locked; sometimes how long it was locked/unlocked
-  Application Focus / App Open / App Switch Events

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## Deleted Data & Limitations

- Deleted ≠ gone (journalled fragments may persist).
- File-based encryption reduces recovery of unallocated space.
- BIOME (app Intent) and knowledgeC.



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## From Pocket to Proof

Mobile forensics turns data into testimony.  
Handled correctly, a phone doesn't just record the story — it tells it.

22




# South Carolina Bar


Continuing Legal Education Division

## Cross Examination Refresher: Tips and Tricks

*The Honorable Heath Taylor*  
*The Honorable Letitia Verdin*  
*&*  
*Derek Bush*

	<h1 data-bbox="699 478 1365 716">CROSS EXAMINATION REFRESHER: TIPS &amp; TRICKS</h1> <p data-bbox="695 747 1068 842">Justice Letitia Verdin Judge Heath Tayler Derek M. Bush, Assistant Public Defender</p>


1

		
	<h2 data-bbox="354 1325 732 1419">LET'S TALK THEME AND THEORY</h2>	
	<p data-bbox="354 1556 818 1608">Cross examination begins with a good theme and theory.</p> <p data-bbox="354 1625 802 1677">The theme and theory in our trials must be on the jury can relate to and identify with.</p>	

2

<h2>The Story We Tell:</h2>	<p>As defense attorneys we tell our client's story mostly through cross examination.</p>
	<p>As prosecutors we continue to tell our victim's story (or the State's main argument) through the cross examination of any defense witnesses.</p>

3

<div>DB2</div>	<h2>FIRST LET'S TALK ABOUT WHAT YOU DON'T DO:</h2>	
	<ol style="list-style-type: none"> <li>1. Tell the witness "all my questions can be answered yes or no."</li> <li>2. "Just answer me yes or no."</li> <li>3. Constantly interrupt the witness.</li> <li>4. Asking the Judge, "your honor, would you instruct the witness to answer me yes or no."</li> <li>5. Using "who, what, where, when, or why" in an open-ended format.</li> <li>6. Asking the summation question – or famous one question too many!</li> </ol>	

4

DB1

## THE THREE RULES OF CROSS EXAMINATION:

1. Use only leading questions.
2. Only one fact per question.
3. All questions lead to a logical conclusion.



5

## Looking at Cross Like a Series of Short Stories:

The stories we tell in cross should be logical. They typically start general and become more specific while working towards a useful goal. Larry Pozner calls this the Chapter Method.

6

[illegible]

4



<b>Looping</b>	<b>Use looping to incorporate the good or important information from a witness into the next question(s).</b>
	<b>Utilize your theme, trilogies, and repetition!</b>

9



**ACTIVE LISTENING**

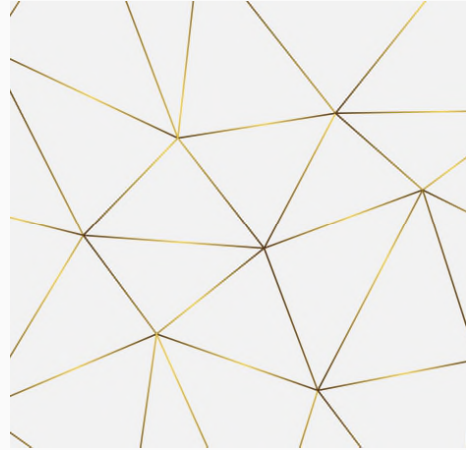
One of the MOST important things to remember is to listen to the responses from the witness!

10

DB3

## NEW METHODS:

- Not using the words, "correct," "right," "isn't that true," or "isn't that correct" at the end of questions.
- A modified way would be to drop those endings after the first few questions in favor of more simple affirmative statements with which the witness agrees.
- Short and effective cross examinations – you don't have to just stand up to talk



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# THANK YOU!

12



# South Carolina Bar

Continuing Legal Education Division

## The Art of Avoiding Potential PCR Landmines

*The Honorable Robert Hood*  
*The Honorable Debra McCaslin*  
*Josh Kendrick*  
*&*  
*Dan Goldberg*



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JUDICIAL BRANCH  
**Avoiding PCR**

Judge Hood, Judge McCaslin, and Josh Kendrick

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*Agenda – 1/23/2026*

- Brief History
- Lessons from SC Supreme Court
- What NOT to Do
- What TO Do
- Q&A



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2

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### ***Brief History: PCR Evolution (1950s-1960s)***

- **Federal Push:** U.S. Supreme Court mandated states provide ways to challenge convictions on constitutional grounds, easing federal courts (*Young v. Ragen* (1949): Needs "defined method"; *Brown v. Allen* (1953): Exhaust state remedies first).
- **Case v. Nebraska (1965):** Urged streamlined PCR—covers all claims, fast/simple, full hearings (Clark/Brennan: Reduces federal habeas).
- **State Models:** Illinois pioneered the modern PCR Act (1949), merging old tools like habeas, NC (1951); 10+ states by 1965.
- **SC Expansion:** SC adopts its own in 1969.



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### ***SC PCR Act Adoption & Modern Developments***

- **Originally,** SC was the first U.S. colony to statutorily adopt habeas.
- **1969:** South Carolina Adopts Uniform Post-Conviction Procedure Act (§§ 17-27-10 et seq.); replaces common law remedies (§ 17-27-20(b)).
- **1995:** Adds 1-year Statute of Limitations (§ 17-27-45).
- **1996:** Effective Death Penalty Act – expedites executions (§ 17-27-160), discovery (§ 17-27-150), IAC



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## *Lessons from Recent South Carolina Supreme Court PCR Decisions*

- *Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37 (2019)
  - During closing argument, the prosecutor stated that it was his job to “present the truth,” that he had a statutory duty to screen cases and would have dismissed the case if he had determined defendant was not guilty, and that the job of defense attorneys was to manipulate the truth, shroud the truth, and confuse jurors. The Supreme Court held that the prosecutor engaged in prosecutorial misconduct and that the prosecutor’s improper comments unfairly prejudiced defendant, depriving him of a fair trial and warranting a new trial.
- *Felder v. State*, 427 S.C. 518, 832 S.E.2d 591 (2019)
  - The Supreme Court found that trial counsel was ineffective for failing to object to the admission of an unredacted summary of the defendant’s police statement, which included a reference to a pending lynching charge. This reference was inadmissible under South Carolina Rules of Evidence 609 and 404(b) because it was not a conviction and constituted improper character evidence. The failure to object to this inadmissible evidence was deemed deficient performance, as it fell below an objective standard of reasonableness. Furthermore, the court found that this error prejudiced the defendant, as it could have influenced the jury’s perception and the outcome of the trial, given the circumstantial nature of the evidence against the defendant.



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## *Lessons from Recent South Carolina Supreme Court PCR Decisions*

- *Martin v. State*, 427 S.C. 450, 832 S.E.2d 277 (2019)
  - Martin’s trial attorney failed to present specific alibi testimony from his mother, which would have proven he was in Atlanta at the time of the robbery in South Carolina. The Supreme Court found that the trial counsel’s performance was deficient and prejudiced Martin, as the only evidence against him was the testimony of codefendants who had motives to lie, and there was no forensic evidence linking him to the crime. Consequently, the Court reversed the denial of post-conviction relief and remanded the case for a new trial.
- *Mack v. State*, 433 S.C. 267, 858 S.E.2d 160 (2021)
  - Mack’s DNA counsel failed to timely serve the notice of appeal from the order denying his application for post-conviction DNA testing, which prevented Mack from seeking appellate review. The Supreme Court held that Mack should be allowed to file a petition for belated appellate review, reversing the lower court’s decision and remanding for an evidentiary hearing to determine whether Mack was denied the opportunity to seek appellate review or if his right to appellate review was not knowingly and intelligently waived.



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## *Lessons from Recent South Carolina Supreme Court PCR Decisions*

- *Thompson v. State*, 423 S.C. 235, 814 S.E.2d 487 (2018)
  - Thompson's trial counsel failed to object to inadmissible hearsay and bolstering testimony. The Supreme Court found that the defense counsel's failure to object to such testimony constituted deficient performance and prejudiced the outcome of the trial. Consequently, the court reversed the denial of post-conviction relief and remanded the case for a new trial.
- *Cone v. State*, 443 S.C. 487, 905 S.E.2d 368 (2024)
  - Cone was convicted of first-degree criminal sexual conduct with a minor. The trial court refused the State's request for a jury instruction that, under S.C. Code Ann. § 16-3-657, the testimony of an alleged victim of criminal sexual conduct need not be corroborated. However, over Defense counsel's objection, the trial court allowed the State to cite and quote the statute during its closing argument. The Supreme Court found that the trial court's error in allowing the prosecutor to argue this statute during closing arguments was not harmless, as it improperly elevated the victim's testimony above that of other witnesses, leading to the reversal of the court of appeals' decision and a remand for a new trial.



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## *Lessons from Recent South Carolina Supreme Court PCR Decisions (McCaslin)*

- *Lindsey v. State*, No. 2019-001271, 2025 WL 3085693 (S.C. Nov. 5, 2025)
  - Lindsey argued the PCR court violated the remand order and his rights by blindly adopting the State's proposed order with typographical errors, without review, warranting de novo review.
  - The Supreme Court held no error, as PCR courts may request and adopt proposed orders if (1) parties are aware and allowed to respond, and (2) the court reviews it carefully; here, the record showed Lindsey was copied on requests, submitted his own proposal initially, had time to respond post-submission and post-remand opportunities were provided, affirming denial of PCR.
  - Lindsey also claimed the amended PCR order violated remand by lacking specific findings/conclusions on each of his 10 ineffective-assistance claims.
  - The Supreme Court found the order addressed each claim extensively with facts and legal conclusions, complying with remand, Pruitt, Hall, and §17-27-80, applying normal deferential review.



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## *General Pitfalls to Avoid During Trial*

- **Preservation:** Do not fail to submit motions or miss objections.
- **Ensure that you preserve motions and objections at the end of the trial**
- **Client Lapses:** No jail visits – misses exculpatory evidence
- **Failure to investigate client's defenses**



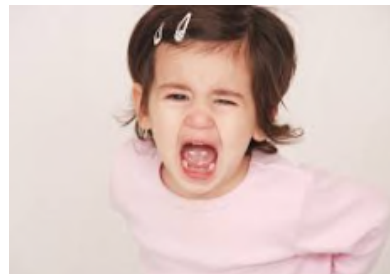
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## *Pitfalls during Trial Continued*

- **Avoid withholding discovery from the client**
- **Conflicts/Inaction:** No dual representation, file key motions.
- **Other:** Mistake/fraud; breach of confidentiality
- **Lastly, No Tantrums:** Avoid eye-rolling, foot-stomping, crying, and pouting



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### *Pitfalls during pleas:*

**“But for my lawyer, I would not have pled.”**

- Informing client of their Jury Trial rights
- Informing client of statutory penalties, I.E., severe/violent offences
- Inform client waiving indictment if applicable
- Ensure no Drugs/Alcohol on court day (you and client)
- Ensure the client knows penalties and consequences, like the sex offender registry or if it is a strike.



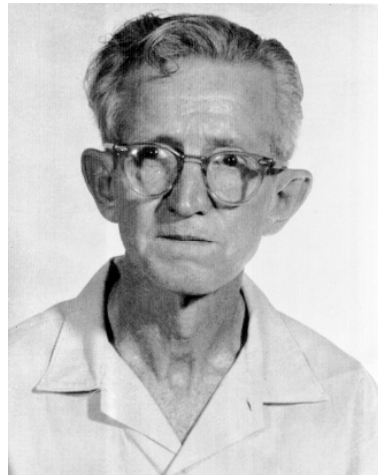
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### *How to stay Proactive*

- Record: File objections/motions; note rulings.
- Constitutional Tie: Due process (6th Amend.; *Gideon*, 372 U.S. 335 (1963)).
- Client: Regular visits; full file access/explain strategy.
- Result: In Trial/PCR: Defeats deficiency; minimizes IAC.



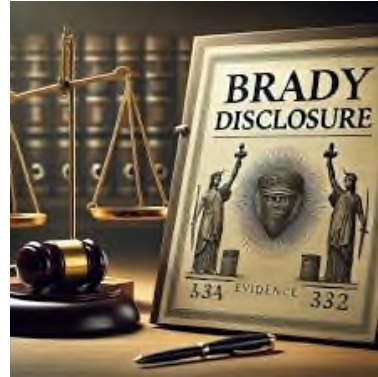
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## *How to stay Proactive part 2*

- **Ethics:** Early conflict screens (SC Rule 1.7).
- **Discovery:** Timely Brady disclosures; full investigation.
- **Motions:** Suppression/mistrial; experts (*Crawford*, 541 U.S. 36 (2004)).
- **Constitutional Tie:** Fair trial/impartiality.



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## *Best Practices Summary & Resources*

- **Checklist:** Preserve, engage, disclose, investigate.
- **Panel Discussion:** SC trial vs. PCR (e.g., hybrid rep risks).
- **Resources:** SC PCR Forms ([sccourts.org](http://sccourts.org)); ABA Strickland Checklist.
- **Takeaway:** "Effective now prevents PCR later."



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# Q/A

## Questions?



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# Thank you.



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