

**APPENDIX A**

310 Ga. 453  
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S20A1309. HUGHES v. THE STATE.

MELTON, Chief Justice.

Following a jury trial, Lawrence B. Hughes appeals his convictions for the felony murder of Jamon Epps and related offenses, contending that the evidence was insufficient, that the trial court made certain evidentiary and charging errors, and that trial counsel was constitutionally ineffective.<sup>1</sup> For the reasons set forth below, we affirm.

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<sup>1</sup> On April 20, 2016, Hughes was indicted for felony murder predicated on aggravated assault (Count 1), felony murder predicated on possession of a firearm by a convicted felon (Count 2), possession of a firearm during the commission of a felony (Counts 3, 5, 7, 9), aggravated assault (Count 4), hijacking a motor vehicle (Count 6), armed robbery (Count 8), and possession of a firearm by a convicted felon (Count 10), in connection with the shooting death of Epps and the theft of Janie Geiger's automobile. At a jury trial on September 4 to 7, 2018, Hughes was acquitted of the Count 1 felony murder charge and its predicate felony, aggravated assault, but he was found guilty of the remaining counts. Thereafter, the trial court sentenced Hughes to consecutive sentences of life in prison without parole for felony murder and armed robbery; twenty years consecutive for hijacking a motor vehicle; and five years consecutive for each of the unlawful firearm possessions in Counts 3, 7, and 10. The trial court merged the remaining firearm possession counts (Counts 5 and 9). On September 20, 2018, Hughes filed a motion for new trial, which he later amended through new counsel. The trial court denied the motion for new trial as amended on April 9, 2020. Hughes filed a timely notice of appeal, and his case, submitted on the briefs, was docketed to the August 2020 term of this Court.

1. Viewed in the light most favorable to the verdicts, the evidence admitted at trial showed that, on June 25, 2015, Epps drove Hughes and others in a black SUV to the parking area outside a Chinese restaurant in Chatham County. Hughes, a convicted felon, was sitting behind Epps, and Hughes had a firearm in his possession. Outside the restaurant, Hughes's group, while still inside the SUV, exchanged gunfire with unknown individuals. During the gunfire, Epps was shot through the back of his neck and killed. After realizing Epps had been shot, Hughes exited the SUV and approached Janie Geiger, who was sitting in her car across the street. Hughes ordered Geiger to give him her vehicle while pointing what Geiger described as a "shotgun or rifle" at her. Geiger evacuated her vehicle, and Hughes drove it away from the scene.

Later, outside the Chinese restaurant, police found numerous pieces of dark tinted glass, eighteen shell casings, and leaked gasoline. Geiger's vehicle was later recovered on a nearby street, and Hughes's blood was found on the steering wheel and driver's door. In addition, on the day after the shooting, law enforcement found the black SUV that had been driven by Epps at The Ponderosa Apartments, approximately half a mile from the restaurant. Epps's dead body was in the driver's seat. The SUV was riddled with bullet holes; the rear tinted window was shattered; and there was a trail of gasoline behind the vehicle. Hughes's fingerprints were discovered on two compact discs inside the SUV, as well as on a cell phone that was determined to belong to Hughes (as it contained several

photos taken by Hughes in which Hughes was included). The compact discs were located in the back seat of the SUV, and Hughes's cell phone was located in a compartment of the passenger's door behind the driver's seat. Investigators also found three firearms—two pistols and a rifle—and a number of spent shell casings. They later determined that the shell casings had been fired from four different weapons, including the three found in the car. The remaining shell casings had been fired from a different rifle that was not recovered.

Epps died of a single gunshot wound to the back of his neck. The medical examiner opined that, due to the irregular shape of the entry wound, the bullet struck an intermediate object before hitting Epps. This finding was consistent with the discovery of a hole caused by a bullet passing through the back of the driver's headrest. It was also consistent with observations made by Officers Timothy Powell and Jenna Rojas with regard to the origin and trajectory of the bullet that was fired from somewhere behind Epps.<sup>2</sup>

Evidence further showed that Hughes's cousin, Jason Grantham, spoke with Hughes several days after the shooting. Hughes admitted to Grantham that he

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<sup>2</sup> In a passing argument, Hughes complains that Officer Powell was not qualified as an expert to opine on this topic. Even if this were true, the same evidence was introduced through Officer Rojas, and Hughes makes no challenge to her testimony. See *Akhimie v. State*, 297 Ga. 801, 807 (3) (777 SE2d 683) (2015) (no showing of harm where testimony in question was cumulative of other admissible evidence).

had participated in the gunfight. Hughes explained that, before the gunfight began, Hughes had asked Epps “how he was gonna shoot that big gun in his lap,” after which Hughes and Epps “switched guns.” In addition, Hughes said that, after the shootout began, he reached forward, tapped Epps on the shoulder, and discovered Epps was dead. Hughes then recounted that he exited the vehicle and “took a lady[s] car.”

This evidence was sufficient to enable the jury to find Hughes guilty beyond a reasonable doubt of the crimes for which he was convicted. See *Jackson v. Virginia*, 443 U.S. 307 (99 SCt 2781, 61 LE2d 560) (1979).<sup>3</sup> And, though Hughes argues that some of the evidence was “speculative,” it is the function of the jury to determine the weight of the evidence and the credibility of witnesses at trial. See, e.g., *Cox v. State*, 306 Ga. 736 (1) (832 SE2d 354) (2019).<sup>4</sup>

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<sup>3</sup> In various sections of his brief, Hughes argues that his actions could not be considered the proximate cause of Epps’s death. He is incorrect. The evidence presented at Hughes’s trial supported the jury’s finding that Hughes both possessed a firearm as a convicted felon and was at least a party to the shootout that foreseeably led to Epps’s death. See, e.g., *Lebis v. State*, 302 Ga. 750, 753-759 (II) (B) (808 SE2d 724) (2017) (evidence was sufficient to find Lebis guilty of felony murder as a party to her husband’s possession of a firearm as a convicted felon that proximately caused the death of a police officer).

<sup>4</sup> In his argument, Hughes conflates the standards for reviewing the constitutional sufficiency of the evidence and for reviewing the weight of the evidence for purposes of granting him a new trial. This Court does not review the weight of the evidence, as that consideration lies solely within the province of the jury at

2. Hughes contends that the trial court erred by giving an incomplete charge on felony murder and proximate cause; failing to re-charge the jury on proximate cause in response to questions from the jury after deliberations began; and failing to charge the jury on the defense of justification.<sup>5</sup> We disagree.

(a) With regard to the jury charges relating to felony murder and proximate cause, Hughes made no objections. Therefore, the claim that these charges were incomplete is subject to plain error review on appeal. See *Guajardo v. State*, 290 Ga. 172, 175 (4) (718 SE2d 292) (2011). The test for plain error is comprised of four prongs:

First, there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court

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trial and, thereafter, the trial court in applying OCGA §§ 5-5-20 and 5-5-21.

<sup>5</sup> Hughes disjointedly includes within this enumeration an unrelated argument that, on the count of felony murder for which he was convicted, there was a fatal variance between the indictment and the evidence produced at trial. Hughes did not raise this issue in the trial court; therefore, it has been waived for purposes of appellate review. See *Eberhart v. State*, 307 Ga. 254, 262 (2) (a) n.7 (835 SE2d 192) (2019) (failure to raise a fatal variance issue in the trial court waives the issue for appeal).

proceedings. Fourth and finally, if the above three prongs are satisfied, the appellate court has the discretion to remedy the error—discretion which ought to be exercised only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

(Citation, punctuation and emphasis omitted.) *State v. Kelly*, 290 Ga. 29, 33 (2) (a) (718 SE2d 232) (2011). Here, there was no clear or obvious error. The charges given by the trial court tracked the pattern jury instruction on felony murder and proximate cause, see Ga. Suggested Pattern Jury Instructions, Vol. II: Criminal Cases § 2.10.30 (2020),<sup>6</sup> and Hughes has not shown that the charges were either incorrect or incomplete. Furthermore, Hughes has failed to demonstrate that any purported error affected his substantial

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<sup>6</sup> The trial court instructed the jury:

In order for a homicide . . . to be done in the commission of one of these particular felonies, there must be some connection between the felony and the homicide. The homicide . . . must have been done in carrying out the unlawful act and not collateral to it. It's not enough that the homicide occurred soon or presently after the felony was attempted or committed. There must be such a legal relationship between the homicide and felony so as to cause you to find that the homicide occurred before the felony was at an end or before the attempt to avoid conviction or arrest for the felony. The felony must have a legal relationship to the homicide, be at least concurrent with it in part, and be part of it in an actual and material sense. The homicide is committed in the carrying out of a felony, when it is committed by the accused while engaged in the performance of any act required for the full execution of the felony.

rights. Rather than attempting to make such a demonstration, Hughes again makes arguments relating to the sufficiency of the evidence against him. For example, Hughes claims that he acted in self-defense or that someone else was responsible for Epps's death.<sup>7</sup> As set forth in Division 1, however, the evidence was not only constitutionally sufficient to support Hughes's convictions, it was strong. Therefore, Hughes has not established plain error in connection with the trial court's charges on felony murder and proximate cause.

(b) With regard to Hughes's claim that the trial court failed to re-charge the jury on the issue of proximate cause after deliberations were underway, Hughes waived any error, even if error existed. The record shows that, after deliberations began, the jury sent out a note asking the following questions: "Count one and count two stated the felonies listed caused the death of [the victim] by shooting him. Does this mean that defendant simply shot [the victim]? The wording is unclear. In layman's terms what are the differences between count one and count two?" The trial court determined that the appropriate way to deal with these questions was to re-read the applicable counts of the indictment (which had also been sent out with the jury). Hughes did not object to the trial court's decisions; instead, he agreed that re-reading the indictment was the appropriate means to answer the jury's questions. By agreeing with the trial court, Hughes affirmatively waived his right to challenge the trial

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<sup>7</sup> As explained in Division 2 (c), *infra*, Hughes was not entitled to a charge on self-defense under the facts of this case.

court's action. See, e.g., *Faust v. State*, 302 Ga. 211, 215 (3) (805 SE2d 826) (2017) (invited error waived any contention of plain error for review); *Hicks v. State*, 295 Ga. 268, 275 (2) (759 SE2d 509) (2014) (concluding that, because appellant expressly told the trial court that it should not answer the jury's question during deliberation, appellant invited the alleged error, and there was no plain error). See also *United States v. Fulford*, 267 F3d 1241, 1247 (II) (C) (3) (11th Cir. 2001) (holding that a defendant's explicit agreement with a proposed jury instruction constituted invited error).

(c) Hughes argues that the trial court erred by denying his request for a charge on self-defense, a contention preserved for ordinary appellate review by a timely objection. Hughes maintains that he was entitled to this charge because there was some evidence that he fired his weapon in self-defense, after others outside the SUV began firing at him first. Hughes, however, was a convicted felon when the shooting occurred; thus, he was committing a felony by possessing a firearm even before the shootout began,<sup>8</sup> which precluded him from claiming that he acted in self-defense. See OCGA § 16-3-21 (b) (2); *Woodard v. State*, 296 Ga. 803, 808 (3) (771 SE2d 362) (2015). As Hughes was not entitled to claim self-defense, the trial court did not err by denying his request for such an instruction.

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<sup>8</sup> Hughes's statement to Grantham indicates that he was in possession of a firearm prior to the gunfight, and there was no evidence presented that Hughes could have grabbed a gun only after the shooting started.



3. Finally, Hughes contends that his trial counsel rendered constitutionally ineffective assistance in a number of ways.

To prevail on a claim of ineffective assistance of counsel, [Hughes] must prove both deficient performance and resulting prejudice. See *Strickland v. Washington*, 466 U. S. 668, 687 (104 SCt 2052, 80 LE2d 674) (1984). To establish deficient performance, [Hughes] must show that his trial counsel performed in an objectively unreasonable way, considering all the circumstances and in the light of prevailing professional norms. See *id.* at 687-690. To establish prejudice, [Hughes] must show that there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. We need not address both components of this test if [Hughes] has not proved one of them. See *Walker v. State*, 301 Ga. 482, 489 (801 SE2d 804) (2017).

*Watson v. State*, 303 Ga. 758, 761-762 (2) (d) (814 SE2d 396) (2018).

With extremely limited arguments, Hughes contends that trial counsel performed deficiently by failing to object to a laundry list of items of evidence, including shell casings recovered from the crime scenes, broken car-window glass, autopsy photos, photos of Epps’s blood, and the audiotape of Geiger’s 911 call, on the grounds that these items were “irrelevant and prejudicial.” Hughes is incorrect on all counts.

OCGA § 24-4-401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” However, relevant evidence may be excluded under OCGA § 24-4-403 “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Here, the shell casings, car-window glass, 911 call, and photos of Epps’s blood were all relevant in demonstrating the circumstances of the shooting—specifically, the existence, nature, and location of the gunfight that led to Epps’s death. Hughes contends that the evidence has no nexus to him; however, there was ample evidence that Hughes participated in the gunfight that forms the basis for his convictions. The evidence listed by Hughes was relevant to the nature and circumstances of the gunfight, and Hughes has not made any showing that he was unfairly prejudiced by the admission of this evidence, especially in light of Hughes’s admission that he was involved.

Moreover, with regard to the autopsy photos, “photographic evidence that fairly and accurately depicts a body or crime scene and is offered for a relevant purpose is not generally inadmissible under OCGA § 24-4-403 merely because it is gruesome.” (Citation and punctuation omitted.) *Calhoun v. State*, 308 Ga. 146, 152 (2) (c) (i) (839 SE2d 612) (2020). Here,

[t]he challenged photographs do not depict the victim's autopsy incisions, and they are not especially gory or gruesome in the context of autopsy photographs in a murder case; furthermore, they were relevant to show the nature and location of the victim's injuries, which corroborated the State's evidence of the circumstances of the killing.

*Pike v. State*, 302 Ga. 795, 799-800 (3) (809 SE2d 756) (2018).

With regard to the 911 call made by Geiger, Hughes makes an additional argument that trial counsel should have objected to this evidence because the call was not properly authenticated. This argument is meritless. Here, the State introduced the 911 tape through a detective who testified that he had listened to the 911 call made by Geiger beforehand, and that he recognized Geiger's voice because he had previously interviewed her. This was sufficient authentication. See OCGA § 24-9-901 (b) (5) (authentication may be done by "[i]dentification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker").

For all of the reasons set forth above, Hughes has failed to show that his trial counsel was constitutionally ineffective.

*Judgment affirmed. All the Justices concur, except Warren, J., not participating.*

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Decided November 16, 2020.

Murder. Chatham Superior Court. Before Judge Bass.

*Kimberly L. Copeland*, for appellant.

*Meg E. Heap, District Attorney, Bradley R. Thompson, Assistant District Attorney; Christopher M Carr, Attorney General, Patricia B. Attaway Burton, Deputy Attorney General, Paula K Smith, Senior Assistant Attorney General, Matthew D. O'Brien, Assistant Attorney General*, for appellee.

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**APPENDIX B**  
**IN THE SUPERIOR COURT**  
**OF CHATHAM COUNTY**  
**STATE OF GEORGIA**

STATE OF GEORGIA,	:	Indictment No.
	:	
vs.	:	CR16-0687-J1
	:	
LAWRENCE B. HUGHES, JR.	:	
	:	
Defendant.	:	

**ORDER ON MOTION FOR NEW TRIAL**

(Filed Apr. 9, 2020)

Pending before the Court is a Motion for New Trial filed by the Defendant. Having read and considered said motion and amended motion, the State's response, all argument and evidence of record, including that presented at the hearing on November 25, 2019, and the applicable law, the Court finds as follows:

**STATEMENT OF THE CASE**

Defendant was indicted on April 20, 2016 and charged with the following crimes: felony murder (two counts), possession of a firearm during the commission of a felony (four counts), and one count of aggravated assault, hijacking a motor vehicle, armed robbery and possession of a firearm by a convicted felon. Defendant was tried from September 4 through September 7, 2018, Defendant was found guilty of all counts with the exception of count four, aggravated assault. He was

sentenced on September 14, 2018 as follows: as to count two – felony murder – life without parole; count three possession of a firearm during the commission of a felony – five (5) years to serve consecutive to count two; count six – hijacking a motor vehicle – twenty (20) years to serve consecutive to count two plus a \$10,000 fine which was suspended; count seven-possession of a firearm during the commission of a felony – five (5) years to serve, consecutive to the sentenced imposed in count six; count eight – armed robbery – life with parole, consecutive to the sentence imposed in count two; and count ten – possession of a firearm by a convicted felon-five years to serve to run consecutive to all other counts upon which sentence has been imposed.

#### FINDINGS OF FACT

On June 25, 2015, Defendant, the victim Jamon Epps, and two other people were driving around in a Black GMC Yukon. In the vehicle were a number of weapons. A gun fight broke out at the Top China restaurant on Skidaway and LaRoche Avenue, in Savannah Georgia between the vehicle driven by Epps and another vehicle. As a result of this gunfight, Jamon Epps, who is the driver of the Yukon was struck by a bullet and died. The Defendant, who is a back seat passenger in the vehicle, was outside the vehicle when one of the other passengers drives away in the Yukon. The Defendant ran across the street to a laundromat and hijacked the vehicle of Janie Geiger. The DNA of the Defendant was found in the vehicle of Janie Geiger which had been abandoned. His fingerprints were

found on the vehicle where Epps' body was found. Additionally, his cell phone was found in that vehicle.

### CONCLUSIONS OF LAW

Defendant alleges the following as grounds for his Motion for New Trial:

**1. General grounds – that the weight of the evidence was contrary to the jury verdicts and the evidence was not sufficient to support the jury verdicts.**

O.C.G.A. §5-5-20 provides that the trial court is authorized to grant a new trial in any case where the verdict of a jury is found contrary to the evidence and principles of justice.

O.C.G.A. §5-5-21 provides that “[t]he presiding judge may exercise a sound discretion in granting or refusing a new trial in cases where the verdict may be decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the finding.” When this argument is raised, it requires the trial judge to sit as a “thirteenth juror”. State v. Hamilton, 299 Ga. 667, 670, 791 S.E. 2d 51 (2016). “In exercising that discretion, the trial judge must consider some of the things that she cannot when assessing the legal sufficiency of the evidence, including any conflicts in the evidence, the credibility of witnesses, and the weight of the evidence.” Id. “Although the discretion of a trial judge to award a new trial on the general grounds is not boundless – it is,

after all, a discretion that 'should be exercised with caution [and] invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. [cit omitted]. White v. State, 293 Ga. 523, 524-525, 753 S.E. 2d 115 (2013).

Defendant additionally argues that pursuant to Jackson v. Virginia 443 U.S. 307, 318-319, 99 S.Ct. 2781, 61 L.E.2d 560 (1979) there was not sufficient evidence for a jury to find beyond a reasonable doubt that he was guilty of the crimes for which he was convicted. The evidence is to be evaluated in a light most favorable to the verdict.

Although Defendant concedes that there is some evidence to support the verdict, he argues that competent evidence to support the verdict is nonexistent. The Court finds that there was sufficient evidence to support the verdict. The Defendant's DNA was found on the car he stole from Janie Geiger when he was fleeing the scene of the gunfight. Additionally, his cousin testified that the Defendant admitted the murder to him. Finally, the Defendant's finger prints were found in the vehicle and his cell phone was found in the vehicle. This evidence in addition to the testimony of other witnesses was more than sufficient to support the jury's verdict.

As to the Defendant's claim that the trial judge should sit as the 13th juror, the trial judge has weighed and considered the evidence as the thirteenth juror and finds that the verdict was not strongly against the



weight of the evidence, in particular given the scientific evidence of DNA and fingerprints.

**2. The trial court erred in failing to give a charge on justification**

The Defendant argues that the trial court erred in failing to give a charge on justification. He argues that since the predicate crimes were status crimes, justification could be a defense to felony murder. Defendant additionally argues that the jury should have been charged on No Duty to Retreat. Defendant cites to the case of Heard v. State, 261 Ga. 262, 403 S.E. 2d 438 (1991).

The State argues that the Court did not err in failing to give a charge on justification and cites to both O.C.G.A. §16-3-21(b) (2) and Woodard v. State, 296 Ga. 803, 771 S.E. 2d 362 (2015). The Court finds that the Defendant was a convicted felon at the time of the homicide. By possessing the firearm he was committing a felony. Heard was subsequently overruled by Woodard, which provided that since the Defendant *was* committing a felony he was not entitled to use the justification defense. The Court finds there was no error in failing to give this charge.

**3. Defendant received ineffective assistance of counsel.**

The standard for determining whether a defendant was denied effective assistance of counsel under

the Sixth Amendment is a two prong test, which provides that the Defendant must show that (1) the counsel's performance was deficient which requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment and (2) that the deficient performance prejudiced the defense, which requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Strickland v. Washington, 466 U.S. 668, 687 (1984).

Trial strategy and tactics do not equate with ineffective assistance of counsel. Effectiveness is not judged by hindsight or by the result. Although another lawyer may have conducted the defense in a different manner and taken another course of action, the fact that defendant and his present counsel disagree with decisions made by trial counsel does not require a finding that defendant's original representation was inadequate. Leon v. State, 237 Ga. App. 99, 105, 513 S.E. 2d 227 (1999).

"The appropriate test for determining prejudice is: '[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" Miller v. State, 285 Ga. 285, 676 S.E. 2d 173, 174 (2009) quoting Strickland 466 U.S. at 694.

**a. Defendant alleges that trial counsel was ineffective for failing to object to the testimony of Janie Geiger.**

Defendant argues that trial counsel was ineffective in failing to object to Ms. Geiger's testimony with regard to the type of firearm the Defendant possessed. However, Ms. Geiger was simply describing what the gun looked like. The Court finds it was not ineffective for trial counsel to fail to object to Ms. Geiger's description of the gun.

**b. Defendant alleges that trial counsel was ineffective in failing to object to Officer Powell's testimony.**

Defendant alleges that there was no basis for Officer Powell's testimony since he had never been offered as an expert witness. Defendant argues that Powell's testimony relative to ballistics and the trajectory of the bullets should not have been admitted.

The State argues that Powell did not offer his opinion but rather testified to the facts that he observed in his years of experience. They further argue that a lay witness is allowed to testify to their opinion under either the old or the new evidence code. O.C.G.A. §24-7-701 provides that a lay witness may testify to his opinion provided that the opinion is (1) rationally based upon the perception of the witness; (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (3) not based on

scientific, technical or other specialized knowledge within the scope of 24-7-702.

The Court finds that Officer Powell's testimony was admissible and therefore trial counsel was not ineffective in failing to object.

**c. Defendant alleges trial counsel was ineffective in failing to object to the playing of the 911 call without authentication.**

The 911 call made by Janie Geiger was played for the jury. The Defendant objects arguing that the call was not authenticated. Trial counsel testified at the hearing on the Motion for New Trial that he was absolutely certain that he was given notice 10 days prior to trial that the State intended to admit the 911 recording as a business record, which was the reason he did not object to the admission of the call. The Court finds that trial counsel was not ineffective in failing to object to the admission of the 911 call since notice was given that the State intended to admit the call as a business record.

**d. Defendant alleges that evidence such as shell casings and glass that had no nexus with the defendant were admitted and that trial counsel was ineffective in failing to object to their admission.**

In the hearing on the Motion for New Trial, trial counsel testified that this evidence was relevant and probative. He further testified that he had a strategic reason for failing to object to the admission of these items because it was relevant to his justification defense, i.e. that there were multiple parties shooting at the crime scene. Trial strategy does not amount to ineffective assistance of counsel. Therefore, the Court finds that the trial counsel was not ineffective in failing to object to the admission of these pieces of evidence.

**4. Defendant alleges that the indictment is fatally at variance from the proof at trial.**

The Defendant argues that the indictment provides that the defendant caused the death of Epps by shooting him. Defendant fails to make any specific argument as to why she believes the indictment varied from the evidence presented at trial. The evidence presented at trial showed that the Defendant was involved in the gun fight which resulted in the death of Epps. Therefore, the Court finds that the evidence presented at trial did not vary from what is alleged in the indictment.

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WHEREFORE, the Court having considered the arguments made by the Defendant in support of his Motion for New Trial, and the State's response, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for New Trial is DENIED.

**SO ORDERED, THIS THE 9 DAY OF April, 2020.**

/s/ James F. Bass Jr.  
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James F. Bass, Jr. Judge  
Superior Court,  
E.J.C. of Georgia

cc: All parties

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