APPENDIX

TABLE OF APPENDICES

Appendix A: Opinion of the Supreme Court of Georgia 1a

Appendix B: Order of Gwinnett Superior Court denying motion for new trial ... 18a

Appendix C: Order of the Supreme Court of Georgia denying motion for reconsideration 24a

APPENDIX A

310 Ga. 365
FINAL COPY

S20A0718. MIDDLETON v. THE STATE.

BOGGS, Justice.

Appellant Christopher Lamont Middleton challenges his 2018 conviction for felony murder for the shooting death of Wesley Bryant. Appellant contends that the evidence was insufficient to support his conviction, that the count of the indictment charging him with felony murder based on armed robbery was void because it did not allege the essential elements of armed robbery, and that the trial court erred in refusing to charge the jury on self-defense. Seeing no reversible error, we affirm.[1]

---

[1] Bryant was killed on November 22, 2016. On March 29, 2017, a Gwinnett County grand jury indicted Appellant for malice murder, three counts of felony murder, armed robbery, aggravated assault with a deadly weapon, and possession of a firearm by a first offender probationer. At a trial from August 20 to 24, 2018, the jury acquitted Appellant of malice murder but found him guilty of two counts of felony murder and the underlying charges of armed robbery and aggravated assault. The trial court then entered an order of nolle prosequi on the firearm possession count and the associated felony murder count, which had been bifurcated for trial. On August 27, 2018, the trial court sentenced Appellant to serve life in prison for felony murder based on armed robbery. The felony murder verdict based on aggravated assault,

1. The evidence at trial showed the following. On November 11 and 12, 2016, Appellant was communicating via Facebook with an associate named Shawn "Face" Thomas, who was trying to find a gun for Appellant to purchase. Thomas messaged Appellant about different types of guns that were available and their prices, and Appellant responded, "I gotta make something shake now." Thomas messaged back saying, "told you I was going to find you one," and Appellant replied, "I'm going to try to make a play."

Bryant worked a regular job in a warehouse but also sold marijuana on the side. On Tuesday, November 22, 2016, someone listed in his cell phone only as "Check" sent Bryant a text message at 10:02 a.m. saying, "Gotta play for two zips." Bryant replied that

---

which the trial court purported to merge, was actually vacated by operation of law, see *Stewart v. State*, 299 Ga. 622, 627 (791 SE2d 61) (2016), and the armed robbery and aggravated assault verdicts merged, see *Long v. State*, 287 Ga. 886, 888-889 & n.2 (700 SE2d 399) (2010). On August 29, 2018, Appellant filed a motion for new trial, which he amended with new counsel on January 15 and March 7, 2019. After an evidentiary hearing, on April 29, 2019, the trial court denied the motion. Appellant filed a timely notice of appeal. Following the trial court's transmission of the record, on January 7, 2020, the case was docketed in this Court to the April 2020 term. On March 6, 2020, the State filed an untimely request for oral argument, which this Court denied. See Supreme Court Rule 51 (1) ("No extensions of the time for filing a request for oral argument will be allowed.").

he was at work. Check asked what time Bryant got off and said that he would "just tell him [to] hit u up when u get off." Bryant responded that he got off at "5," and Check said that he would tell the person to contact Bryant "at 6." Bryant told Check to make sure to "tell him to text first."

At 6:08 p.m., Appellant sent Bryant a text message introducing himself as "[B]lack" and saying that "[C]heck told me to text u about them 2." Appellant and Bryant arranged to meet up in a pharmacy parking lot in Gwinnett County shortly after 7:30 p.m. When Bryant arrived, he backed his car into a parking space across from the pharmacy's well-lit entrance. Bryant had a Glock .45, which he got from Anthony Tucker, who had known Bryant since middle school and who still saw Bryant four or five times a week. According to Tucker, the Glock .45 was Bryant's only gun, and every time that Tucker was in Bryant's car, including the previous Saturday, Bryant had the Glock .45 tucked between the driver's seat and the center console.

At 7:37 p.m., Bryant opened a text message from Appellant saying that Appellant was walking up to the pharmacy. At 7:40 p.m., a pharmacy surveillance camera recorded Appellant walking casually up to Bryant's car, opening the front passenger-side door, and getting inside. A little more than a minute later, the surveillance camera recorded Appellant getting out of Bryant's car holding a gun in his right hand, closing the door, and running away with what appeared to be items stuffed into the left pocket of his jacket. A few moments later, the surveillance camera recorded Bryant on the driver side of his car walking a few steps and dropping his cell phone before collapsing onto the pavement.

At around 7:45 p.m., Gwinnett County Police Department (GCPD) officers were dispatched to the pharmacy in response to a 911 call. An officer found Bryant lying on his back, shaking, with blood coming out of his mouth. Bryant was not breathing, and his pulse was faint. Paramedics soon arrived and took Bryant to the hospital, where he was pronounced dead. Bryant had no marijuana or firearms on his person and a single dollar bill in his wallet. The

police found two empty 9mm cartridge cases in Bryant's car but no marijuana, firearms, or money. Bryant's Glock .45 was never located.

The medical examiner who performed the autopsy on Bryant's body determined that Bryant had been shot twice. One bullet entered his right side and fractured a rib before coming to rest in his left flank, and the other bullet entered the top back of his right shoulder and traveled in a downward trajectory through several vital organs before coming to rest in his small intestine. Based on the entry points of the bullets, their wound paths through the body, the number of shots fired, and the physical evidence that both shots were fired at close but not contact range, the medical examiner concluded that Bryant's injuries were not self-inflicted. A GBI firearms and tool mark examiner determined that the two bullets removed from Bryant's body during the autopsy and the two cartridge cases recovered from his car were all 9mm and that the bullets could not have been fired from a Glock pistol.

Corporal Micah Hegwood of the GCPD was assigned as the lead

detective. He obtained the access code to Bryant's cell phone from Bryant's family and saw the text message exchange between Appellant and Bryant that led up to the shooting. Corporal Hegwood tried to ping Appellant's cell phone, but it had been turned off, and within a couple of hours of the shooting, Appellant contacted his cell phone provider and changed his cell phone number.

On the day after the shooting, Appellant started making arrangements to leave Gwinnett County. Two days later, he was in Augusta and messaged a contact on Facebook to say that he "came early," and the next day, he messaged his girlfriend saying, "please understand I had to go right away." Several days later, he sent his girlfriend a message saying that he was going to be back soon but had to "stay low" because he was "all on the news." He spent the next several weeks in Augusta.

On January 12, 2017, Appellant was located at a hotel in Gwinnett County and taken into custody, and Corporal Hegwood and another detective interviewed him at police headquarters. The interview was video recorded, and the recording was later played for

the jury. At first, Appellant said that he was unaware that there had been a shooting at the pharmacy, denied seeing anything about it on the news, and claimed that he sold his cell phone on the day of the shooting "at probably like 10:00 a.m." The detectives told Appellant that they had evidence proving that he was not being honest with them and left him alone in the interview room. After about five minutes, Appellant knocked on the door and said that he wanted to tell the detectives what happened because he did not commit a murder, and the detectives returned to the interview room.

Appellant then changed his story. Appellant admitted that he knew about the shooting at the pharmacy, that he did "cancel" his cell phone, and that he got a new phone the day after the shooting. Appellant said that on the evening of the shooting, he was at Face's apartment near the pharmacy with Face, Check, and another man when they decided to chip in together to buy marijuana. Appellant claimed that he gave his cell phone to Face to arrange the purchase; that the four of them walked together to a gas station across the street from the pharmacy; that he went into the gas station

convenience store to buy cigarillos while Face, Check, and the other man went across the street to get the marijuana; that he heard gunshots across the street and saw Face, Check, and the other man running from the pharmacy parking lot; and that he then met up with Face, Check, and the other man back at Face's apartment. According to Appellant, Face said that someone got shot, and Appellant responded by asking where the marijuana was. Appellant claimed that they had seven grams of marijuana and that he did not ask for his money back because "I did get my weed." The detectives told Appellant that they knew that Face had gotten Appellant a gun, which Appellant denied, stating that he did not have the money to buy a gun. He acknowledged that he was "looking for a gun" but claimed that he never found one. The detectives told Appellant that surveillance footage from the pharmacy contradicted his story.

After a break, Appellant changed his story again, telling the detectives, "I'm fixing to tell you the truth right now. Have a seat." This time, Appellant admitted that he went alone to the pharmacy to meet Bryant to purchase the marijuana and that he was in

Bryant's car when Bryant was shot. According to Appellant, Check said that a friend had a "zip" of marijuana, which sells for $185, but Appellant had only $75 or $85, so Appellant said that he would go up and "get a seven," meaning seven grams of marijuana. Appellant denied sending any of the texts from his cell phone to Bryant leading up to the shooting, stating that Face and Check sent all the texts. Appellant claimed that when he got into Bryant's car, Bryant handed him the marijuana before any money was exchanged; he asked if Bryant was trying to rip him off; and Bryant said that he did not have a scale to weigh the marijuana and accused Appellant of trying to act like Appellant was in a gang.

Appellant admitted that he got aggressive with Bryant but said that it was because Bryant got aggressive with him. Appellant stated that Bryant pulled a 9mm gun from his side and pointed it at Appellant, that Appellant grabbed Bryant's hand and the gun, and that the gun "went off" several times. Appellant also stated that his finger never touched the gun's trigger, although he said at one point that his hand "might have" pushed Bryant's finger while it was on

the trigger. Appellant was adamant that he did not shoot Bryant and that Bryant shot himself. Appellant admitted taking the 9mm gun and Bryant's marijuana when he got out of the car, claiming that the gun was in his left hand and the marijuana was in his right hand. Corporal Hegwood tried to get Appellant to tell him the location of the 9mm gun because it was connected to the murder. Appellant insisted that he did not know where it was, although he said later in the interview that Face did not have it.

Appellant did not testify or present any other evidence. The defense theory was that Bryant had a 9mm pistol in his car where he usually kept his Glock .45 and pulled it on Appellant, that Appellant grabbed Bryant's hand to keep Bryant from shooting him, and that during a struggle over the gun, the gun twice fired accidentally, striking Bryant. The trial court instructed the jury on accident but declined Appellant's written request to instruct the jury on justification based on self-defense, citing the Court of Appeals' decision in *McClure v. State*, 347 Ga. App. 68 (815 SE2d 313) (2018)

(*McClure I*), which this Court later vacated. See *McClure v. State*, 306 Ga. 856 (834 SE2d 96) (2019) (*McClure II*).[2]

When viewed in the light most favorable to the verdicts, the evidence presented at trial and summarized above was sufficient as a matter of constitutional due process to authorize a rational jury to find Appellant guilty beyond a reasonable doubt of felony murder based on armed robbery. See *Jackson v. Virginia*, 443 U. S. 307, 319 (99 SCt 2781, 61 LE2d 560) (1979). See also *Eberhart v. State*, 307 Ga. 254, 262 (835 SE2d 192) (2019) (explaining that the jury is free to reject a claim of accident, and that whether the acts charged were committed "by accident [is] a question for the jury"); *Vega v. State*, 285 Ga. 32, 33 (673 SE2d 223) (2009) ("'It was for the jury to determine the credibility of the witnesses and to resolve any conflicts or inconsistencies in the evidence.'" (citation omitted)).

---

[2] OCGA § 16-2-2 says: "A person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence." As we have previously explained, "This accident defense applies where the evidence negates the defendant's criminal intent, whatever that intent element is for the crime at issue." *State v. Ogilvie*, 292 Ga. 6, 9 (734 SE2d 50) (2012).

2. Appellant claims that his felony murder conviction on Count 2 of the indictment must be vacated because that count did not allege the essential elements of the underlying offense of armed robbery. This claim is a challenge to the form of the indictment. See *Reed v. State*, 291 Ga. 10, 11 (727 SE2d 112) (2012) (holding that a claim that a felony murder count fails to allege the essential elements of the predicate offense "is, in essence, a special demurrer seeking greater specificity with regard to the predicate felony" (citation and punctuation omitted)). Appellant waived this claim by failing to raise it before trial in a timely filed special demurrer. See id. See also OCGA §§ 17-7-110 ("All pretrial motions, including demurrers and special pleas, shall be filed within ten days after the date of arraignment, unless the time for filing is extended by the court."), 17-7-113 ("All exceptions which go merely to the form of an indictment or accusation shall be made before trial.").

3. Appellant also claims that the trial court erred in relying on the Court of Appeals' decision in *McClure I*, which this Court later vacated in *McClure II*, to deny his written request to instruct the

jury on the affirmative defense of justification based on self-defense. The State responds that an instruction on self-defense was not adjusted to the evidence, because there was not even slight evidence that Appellant shot Bryant in self-defense. Pretermitting these issues, we conclude that the error, if any, was harmless.

"'The test for determining nonconstitutional harmless error is whether it is highly probable that the error did not contribute to the verdict.'" *Smith v. State*, 299 Ga. 424, 432 (788 SE2d 433) (2016) (citation omitted). "In determining whether trial court error was harmless, we review the record de novo, and we weigh the evidence as we would expect reasonable jurors to have done so as opposed to viewing it all in the light most favorable to the jury's verdict." *Peoples v. State*, 295 Ga. 44, 55 (757 SE2d 646) (2014) (citation and punctuation omitted). Where a claim of justification based on self-defense "'is supported by only the slightest evidence and . . . is inconsistent with the defendant's own account of the events . . . ,' the failure to give a charge on the defense generally will be harmless." *Guerrero v. State*, 307 Ga. 287, 288-289 (835 SE2d 608) (2019)

(citation omitted).

Although generally "a person is justified in using force which is intended or likely to cause death or great bodily harm . . . if he . . . reasonably believes that such force is necessary to prevent death or great bodily injury to himself[,]" OCGA § 16-3-21 (a), "[a] person is not justified in using" such force "if he . . . [i]s attempting to commit, committing, or fleeing after the commission or attempted commission of a felony." OCGA § 16-3-21 (b) (2). Thus, a jury instruction on justification based on self-defense would have included an admonition that Appellant was *not* justified if he was committing or attempting to commit a felony. By his own account, Appellant was purchasing marijuana, or at least attempting to purchase marijuana, when Bryant was shot.[3]

Purchasing marijuana is a felony, regardless of the amount of marijuana involved. See OCGA § 16-13-30 (j) (making it a felony to

---

[3] Appellant claimed that the gun went off accidentally and denied shooting Bryant, although that was inconsistent with forensic evidence.

purchase marijuana).[4] See also *State v. Jackson*, 271 Ga. 5, 5 (515 SE2d 386) (1999) ("Under OCGA § 16-13-30 (j) (2), conviction of this crime [i.e., purchasing marijuana] would result in felony sentencing even though the amount of marijuana that [the defendant] allegedly purchased is less than one ounce."); *Johnson v. State*, 296 Ga. App. 697, 698 (675 SE2d 588) (2009) ("[T]he quantity of marijuana purchased is *not* an element of the crime of purchasing marijuana." (emphasis in original)). Thus, even under Appellant's own account of the events, he was attempting to commit or committing a felony at the time of the shooting. Accordingly, it is highly probable that any error in denying Appellant's request to instruct the jury on justification based on self-defense did not affect the verdicts and was

---

[4] OCGA § 16-13-30 (j) says:

(1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 [i.e., trafficking marijuana] or in Code Section 16-13-2 [i.e., possession of one ounce or less of marijuana], any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

therefore harmless. See *Bannister v. State*, 306 Ga. 289, 292 (830 SE2d 79) (2019) ("There was also evidence that Appellant was engaged in a felony drug deal at the time of the shooting, which would preclude his self-defense claim, as the jury was properly instructed." (citing OCGA § 16-3-21 (b) (2))); *Starks v. State*, 304 Ga. 308, 312 (818 SE2d 507) (2018) ("Because there is no dispute that [the defendant] shot [the alleged victim] while committing two felonies, he could not claim self-defense, and the evidence therefore was overwhelming."). See also *Reynolds v. State*, 275 Ga. 548, 549 (569 SE2d 847) (2002) ("Even under [the defendant's] version of the events, he was a party to an armed robbery and thus, the evidence did not show that he was justified in the use of deadly force. Because the evidence did not support the charge, the trial court did not err in failing to give it.").

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

Decided October 19, 2020 – Reconsideration denied November 16, 2020.

Murder. Gwinnett Superior Court. Before Judge Conner.

Frances C. Kuo, for appellant.

Daniel J. Porter, District Attorney, Christopher L. Lewis, Samuel R. d'Entremont, Assistant District Attorneys; Christopher M. Carr, Attorney General, Patricia B. Attaway GeneralBurton, Deputy Attorney General, Paula K. Smith, Senior Assistant Attorney General, Michael A. Oldham, Assistant Attorney General, for appellee.

APPENDIX B

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	*	
	*	
vs.	*	**INDICTMENT NO:**
	*	**17-B-01162-7**
CHRISTOPHER MIDDLETON,	*	

ORDER DENYING MOTION FOR NEW TRIAL

The Defendant filed a Motion for New Trial. The same came on regularly for a hearing on March 11, 2019. The Defendant was present and represented by counsel, Frances Kuo. The State was represented by Assistant District Attorney Christopher Lewis. After consideration of the Motion, Amended Motion, argument of counsel, all matters of record and the applicable and controlling authority, the Court hereby finds as follows:

The Defendant was indicted for one count of Murder, three counts of Felony Murder, one count of Armed Robbery, one count of Aggravated Assault and one count of Possession of firearm by a first offender probationer. The matter was tried before a jury on August 20-24, 2018.

After a jury trial, the Defendant was found not guilty of Count 1 murder; Counts 6 and 7 were nolle prossed. The jury convicted the Defendant on all remaining counts. The Defendant was sentenced by the Court on August 24, 2018 to Life in prison on Count 2 - Felony Murder. The Court found that Counts 3, 4 & 5 merged with Count 2 as a matter of fact and law and no sentence was entered on those counts.

On August 29, 2018, trial counsel timely filed a Motion for New Trial, raising the "general grounds" of the weight and sufficiency of the evidence, as well as alleging that material evidence was illegally admitted or withheld from the jury and that there was an error in the charge to the jury.

Thereafter, new appellate counsel was appointed and on January 15, 2019 filed an Amended Motion for New Trial adding the following grounds:

- Trial counsel was ineffective by failing to object to the excusal of jurors 3 and 4.
- Defendant's constitutional rights to be present at trial was violated when jurors 3 and 4 were excused.

- Trial counsel was ineffective for failing to file a demurrer as to Count 2.
- Defendant's conviction as to Count 2 is void *ab initio*.
- The evidence was insufficient to support the convictions.
- Trial counsel was ineffective by failing to object to the admission of the Facebook records and Instagram records
- Trial court abused its discretion in admitting State's Exhibit 47
- Trial court erred in failing to charge accident.

On March 7, 2019, the Defendant filed a Second Amended Motion for New Trial raising the additional special grounds that

- Trial counsel was ineffective by failing to argue that Count 2 should be quashed on the ground that it does not constitute a crime.
- Trial counsel was ineffective for failing to timely file a motion in arrest of judgment as to Count 2.

As to the "general grounds" in the original Motion and the Amended Motions, and Paragraph 5 of the Amended Motion, the Court reviewed the transcript of the evidence. Upon review of the evidence and sitting as the "13th" juror, the Court finds that the verdict of the jury was amply supported by the evidence, that the jury was authorized to find that the State proved the Defendant's guilt beyond a reasonable doubt and that the evidence establishes the Defendant's guilt beyond a reasonable doubt. The verdict is not decidedly and strongly against the weight of the evidence nor is the verdict contrary to the law nor principles of justice and equity.

As to the allegations that the court committed various error of law, the Court finds as follows:

Paragraphs 1 and 2) As to the grounds raised that the Defendant's constitutional right to be present was violated because the Court excused jurors 3 and 4 outside his presence, the Court finds this did not occur. Moreover, the transcript reflects and trial counsel testified that the Defendant was present when the jurors were excused for cause. Therefore, there was no violation of his Constitutional rights and trial counsel was not ineffective for failing to make a meritless objection.

Paragraphs 3, 4, 9 and 10) Defendant argues that trial counsel was ineffective by failing to file a demurrer, motion to quash or motion in arrest of judgment as to Count 2 of the indictment, and that Defendant's conviction on Count 2 is *void ab initio*.

A defendant may challenge the validity, specificity or form of an indictment, by filing a general and/or special demurrer. "A general demurrer challenges the validity of an indictment by asserting that the substance of the indictment is legally insufficient to charge any crime." State v. Wilson, 318 Ga. App. 88, 91 (2012). A special demurrer challenges the sufficiency of the form of the indictment. State v. Meeks, 309 Ga. App. 855, 856 (2011). The "true test" of the sufficiency of an indictment to withstand a general demurrer is whether the defendant can admit the charge as made and still be innocent of any crime. Id.; Daniels v. State, 302 Ga. 90, 97 (2017). Count 2 of the Indictment charged the defendant "did then and there unlawfully while in the commission of a felony, to wit: Armed Robbery in violation of O.C.G.A. section 16-8-41, cause the death of Wesley Bryant, a human being by shooting said person with a handgun..." This Court finds Count 2 sufficient to withstand a general demurrer because defendant cannot admit that he caused the death of the victim while in the commission of an Armed Robbery and not be guilty of the crime. See Brooks v. State, 299 Ga. 474, 475 (2016).

Defendant further alleges Count 2 was deficient because it did not contain all the essential elements of the predicate offense of Armed Robbery. Due process is satisfied when the Indictment puts the defendant on notice of the crimes charged and against which he must defend. An Indictment, as here, that omits an essential element of the predicate offense in a count charging a compound offense, such as Felony Murder, can nonetheless satisfy due process requirements as long as the Indictment charges the predicate offense completely in a separate count. State v. Grant, 274 Ga. 826 (2002). Here, the Indictment in Count 3 charged defendant

with the predicate offense of Armed Robbery in that the defendant "did then and there unlawfully with the intent to commit theft, take marijuana and a handgun, the property of Wesley Bryant, from the immediate presence of Wesley Bryant, by use of an offensive weapon, to wit: a 9mm handgun..." This Court finds the indictment sufficient when read as a whole to survive demurrer or a timely filed motion in arrest of judgment and therefore, trial counsel's representation did not fall below an objective standard of reasonableness.

Under Strickland v. Washington, 466 U.S. 668, (1984), a two-part test exists for determining whether a defendant's trial counsel was ineffective. The first prong of the test is whether the attorney's representation in specified instances fell below an objective standard of reasonableness. The second prong of the test is whether, but for trial counsel's unprofessional conduct, there is a reasonable probability that the outcome of the trial would have been different. "The decisions on which witnesses to call, whether and how to conduct cross examinations, what jurors to accept or strike, what trial motions should be made, and all other strategies and tactical decisions are the exclusive province of the lawyer after consultation with his client." Cheesman v. State, 230 Ga. App. 525 (1998). "In every criminal case, there is a strong presumption that trial counsel provided effective representation for the appellant." Flanigan v. State, 269 Ga. 160, 162 (1998).

6) As to the ground raised that trial counsel was ineffective by failing to object to the admission of the Facebook records and Instagram records. Trial counsel testified at the hearing on defendant's motions that he had researched the issue prior to trial and had reached the conclusion that the records were likely admissible for multiple reasons and therefore didn't make an objection at trial. This Court finds that the Facebook records and Instagram records were admissible as admissions by a party opponent. See Johnson v. State, 347 Ga. App. 831, 842

(2018). As such, trial counsel's failure to object to admissible evidence cannot constitute ineffective assistance of counsel.

7) As to the ground raised that the trial court abused its discretion in admitting State's Exhibit 47, a post-incision autopsy; the Court finds that the photograph was necessary to the presentation of the medical examiner's testimony. It depicted the internal tract of the projectile responsible for the injuries leading to the death of the victim. "A photograph that depicts the victim after autopsy incisions or after the pathologist changes the state of the body is admissible when 'necessary to show some material fact which becomes apparent only because of the autopsy.'" Norton v. State, 293 Ga. 332, 335 (2013) citing Brown v. State, 250 Ga. 862, 867 (1983). Here, Dr. Terry testified as to the angle and trajectory of the fatal projectile. State's Exhibit 47 was illustrative in showing the angle and trajectory of wound tract. The State, like in Norton, relied, in part, on this evidence to rebut the defendant's defense of accident. This Court finds it was not error for the trial court to admit State's Exhibit 47 into evidence.

8) Lastly, the defense alleges the trial court erred in failing to charge accident with respect to felony murder. "[W]hile accident can be a defense to the underlying felony of aggravated assault, it cannot be a defense to felony murder predicated upon the underlying felony of aggravated assault." Tessmer v. State, 273 Ga. 220, 222 (2000). This Court finds, after considering the jury charge as a whole, that the trial court did not err in charging the jury as to the defense of accident concerning the Aggravated Assault count only.

THEREFORE, for all the reasons enumerated above, Defendant's Motion for New Trial is DENIED.

So **ORDERED** this 29th day of APRIL 2019.

MELODIE SNELL CONNER, Judge
Superior Court of Gwinnett County

cc: Christopher Lewis, ADA
Frances Kuo, attorney for Defendant

APPENDIX C

SUPREME COURT OF GEORGIA
Case No. S20A0718

November 16, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

CHRISTOPHER MIDDLETON v. THE STATE.

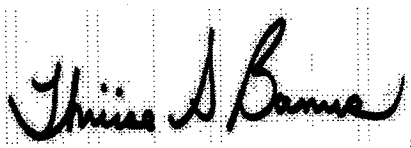
Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Warren, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.



, Clerk