



AlaFile E-Notice

39-CC-2023-000321.00

Judge: JOHN H GRAHAM

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF JACKSON COUNTY, ALABAMA

STATE OF ALABAMA V. HICKS JERRY CARL JR
39-CC-2023-000321.00

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In the Thirty-Eighth Judicial Circuit of Alabama Jackson County Circuit Court

State of Alabama,)	
Plaintiff,)	Case Number:
v.)	CC-2023-321
Jerry Carl Hicks, Jr.,)	
Defendant.)	

ORDER

This matter is before the court on a “stand your ground” motion to dismiss the indictment. The Defendant is indicted for murder arising out of the death of Aaron Morris Nix [hereinafter “Mr. Nix”]. The Defendant states that he killed Mr. Nix in self-defense and is, therefore, entitled to immunity from prosecution.

The court agrees with the Defendant and, for those reasons hereinbelow, the indictment is **DISMISSED**.

This matter was tried *ore tenus* October 12, 2023, on the Defendant’s motion to dismiss pursuant to *The Code of Alabama* §13A-3-23(d) [Alabama’s “Stand Your Ground” law) and pursuant to the rule promulgated in *Ex parte Watters* (--- So.3d ---- Ala.S.Ct., 2016 (WL 6135232 1150182, released October 21, 2016)), *Harrison v. State* (203 So.3rd 126, Ala.Crim.App. 2015), its progeny and other applicable law. The Defendant was present with counsel, and the State was present represented by its District Attorney and Assistant District Attorney. The Defendant testified and called a number of witnesses in support of the motion to dismiss. The State called one witness.

I. The Facts

Friday, April 7, 2023, the Defendant, his wife, and their six year old son¹ went to LaCabana Restaurant² in Scottsboro, Alabama for supper. LaCabana is a Mexican restaurant situated on Alabama Highway 35, near the Tennessee River, away from Scottsboro's main commercial districts. There are few other businesses near it.

The Defendant and family entered the restaurant and were seated in a booth. There were a few other people present; the restaurant was not crowded. The Defendant's cash register receipt shows they paid for their meal at 8:45 p.m. The Defendant testified that he drank sweetened iced tea and that he drank no alcoholic beverages while at the restaurant, nor did he consume any alcoholic beverage all day, for that matter. He also testified that he consumed no drugs that day.

The uncontroverted evidence before the court is that the Defendant was completely sober.

At some point while the Hicks family was inside LaCabana eating, Mr. Nix's sister, Valarie Snodgrass, testified that she, her boyfriend Bristen Baker, and Mr. Nix went to the LaCabana to pick up Ms. Snodgrass' daughter, Tionna, an employee of the restaurant, after her shift ended. On arrival, Mr. Nix entered the restaurant to tell Tionna that her ride was there, and to get drinks for the ones outside in the car. Later, he stated that he needed to use the restroom and he went inside to do that.

¹ The court takes judicial notice of the filings in DR-2024-900075, which cause the court to believe that the child is actually the Defendants' step-son, the wife's child from a prior relationship. But in this hearing, the Defendant referred to the child as his "son." The relationship distinction is not crucial to the court's decision today.

² At the conclusion of the hearing, the court visited the scene of the shooting, accompanied by the prosecutors, the defense attorney, and an uninvolved, non-witness Sheriff's Investigator who drove the court and acted as security for the court during the view. Court and counsel viewed the inside of the restaurant, the parking lot, and the site where Mr. Nix's body was found. No testimony was taken and no argument made during the view. No record was made. The Defendant waived his presence and attendance at the view.

Ms. Snodgrass described it like this in her testimony:

A Yes. I remember him just bluntly saying, "I'm going to see what the honeys look like," you know.

Q Okay. All right. So he was telling you he was going inside to look at the honeys?

A Yeah.

Q Okay. And he told you that he had to go pee?

....

A First time he went in to tell my daughter that we were there and get us some sweet teas.

Q Right. Right. Then he come back out.

A He come back.

Q Then he told you he had to pee?

A He said, "I need to pee."

I said, "Man, you just was in there. You should have peed."

Ms. Snodgrass and Mr. Baker remained outside in their vehicle, awaiting Mr. Nix to return, and waiting for the daughter/employee to depart the restaurant.

In the booth at the front of the restaurant and early in their meal, the little boy needed to go use the restroom, and the Defendant took him there. Later in the meal, after dessert, the child again needed to go to the restroom. This time, however, apparently because there was no one else in the restaurant and the child now knew where the toilet was, he

was allowed to go alone. The parents remained at the table, within sight of the bathroom door. The child exited the bathroom and returned to the table.

At that point, a man came out of the restroom “yelling” at the Defendant and family. It developed that the man was Mr. Nix.

The Defendant testified that he graduated Pisgah High School in 2016, attended a welding course at the local community college, then joined the United States Army. He was mostly a heavy equipment operator in the Army, but was “long gun qualified.” He had no handgun training in the Army. He was honorably discharged, and now works in the telecommunications fiber optics industry. He owns his own company.

There is no evidence that the Defendant and Mr. Nix knew one another before this incident. According to the Deposition filed as Document 3 in Jackson County District Court case numbered 39-DC-2023-757 [the preindictment case number] of which this court takes judicial notice, the Defendant is a Caucasian male, age 25 years on April 7, 2023. He is 5’9” tall and weighs 170 pounds. This description comports with the court’s observation of the Defendant during the hearing.

Mr. Nix was an African-American male, age 33 years, weighing 178 pounds and standing 5’9” tall, according to the evidence at trial.

Remarkably, both Defendant and Mr. Nix were physically about the same size and height.

Valarie Snodgrass, a sister to Mr. Nix, testified that she heard the Defendant direct a vulgar racial slur towards Mr. Nix during their parking lot fight. The Defendant, however, categorically denies this, declaring that he did not use the “N word.” “I don’t use it at all,” was his testimony. Regardless of what was or was not said leading to this

confrontation, there is absolutely no evidence that this was a racially-motivated or caused fight.

The Defendant gave this testimony³ describing what happened next and how the events unfolded leading to Mr. Nix's death. This testimony is essentially uncontroverted:

Q [By defense attorney] Okay. Did anything then at that time draw your attention to someone?

A [By the Defendant] A man walked out of the restroom, and he was screaming. He said, "Who let's their fucking kids go to the bathroom by theirselves?" And that drew my attention.

Q Okay. Did you see him go into the restroom?

A I did not.

Q When he came out of the restroom and you said he was cursing?

A Yes, sir.

Q All right. Did he walk down the aisle towards your table?

A He did, sir.

Q And did you say anything to him?

A I said, "Hey man, what's going on?"

Q All right. And why did you say, "Hey man, what's going on?"

³ Quotations are from the court's notes and are not necessarily a verbatim record of the testimony. Much of the following, however, is from an informal transcript prepared for the court's use in making its decision. Copies have been provided to counsel for both parties. It is not a final, authoritative transcript of the hearing.

A Because I was trying to find out why he was yelling about a kid being in the bathroom because my son was the one in the bathroom. I didn't know if he had, you know, made a mess or something or if something had happened so I was trying to ask him what was-- what was going on.

Q Are there times where you and your family go out to eat that you allow your seven year old to go to the bathroom by himself?

A Yes.

Q All right. And this is a place you had been many times?

A Yes, sir.

Q And in a restroom you had been in many times?

A Yes, sir.

Q All right. When you said that to Mr. Nix, did he respond to you in any way?

A No. He did not.

Q What did he do?

A He just kept walking.

Q All right. What happened next?

A Our son came back out of the restroom, and we-- once he got back to our table, we went to go pay for our food to leave.

Q Did you ask your son what had happened in the restroom?

A I did. I asked him if anything had happened. He said,

"No, Dad. Nothing." And we left it at that. I mean, there was --

Q Okay. And so you prepare to leave?

A Yeah, yes, sir.

Q What happened next?

A We walked up to the counter, and the man at the time was standing right in the-- right after the doorway. He was talking to somebody. He was doing-- he was yelling or talking to somebody in the back in the kitchen area.

THE COURT: What man?

THE WITNESS: Mr. Nix.

THE COURT: You said "the man." What man?

THE WITNESS: Mr. Nix.

Mr. Nix-- he was talking to somebody. Well, he was being pretty loud so my wife looked at me and asked me for the keys. She said that she was going to -- her and my son was going to go ahead and go out to the car. So I gave her the keys, and they walked out.

Q Okay. Let me show you what's been admitted as Defendant's Exhibit 38. And can you tell me -- describe what that photo shows?

A That's the double doors leading into the restaurant -- like, inside the restaurant.

Q All right. So there is double doors to the left. Is that the entrance to the restaurant?

A It is. Well, it's not the entrance because you've got to walk through single doors outside of the restaurant to walk in to the double doors.

Q Okay. And then on the right side, is this the counter where you check out?

A Yes, sir.

Q All right. And so when you say that your-- you went to check out and Mr. Nix came back in, where was he standing at that time?

A He was standing right above the ground mat right there talking into the kitchen.

Q Okay. And you said he was loud and he was talking into the kitchen?

A Yes.

Q And what was he asking if you know?

A I don't know.

Q Okay. And at that time, your wife and child went by him and went out to the vehicle?

A Yes.

Q All right. And what did you do?

A I was-- I stayed, and I was finishing paying up my ticket.

Q Okay. Was anything said by you to Mr. Nix?

A No, nothing.

Q Was anything said by an employee to Mr. Nix?

A Maybe whatever employee he was talking to, but not any of the other ones.

Q Okay. And I'm going to show you, then, what's marked as Defendant's Exhibit 39 and ask you if you can identify it.

A (Referring:) That's the right side doors that I walked out of.

Q Okay. So you describe that when you go in to the restaurant, there is double doors in an entryway that lead to-- I'm sorry. There is a double door on either side that you can come in to which leads to a double door in the middle where you go into the restaurant?

A Yes, sir.

Q All right. And when you exited the restaurant, did you leave before or after Mr. Nix?

A I walked out of those doors slightly after Mr. Nix.

Q All right. And which way did Mr. Nix turn?

A He went left.

Q And which way did you turn?

A I went right.

Q Once you both got out of the double doors and you each went your separate way, then as you look from the restaurant, can you describe to the Court where your car was and where Mr. Nix's vehicle was?

A So as I-- as I came out of the door, my car was on the left side, there was a parking spot, and then there was Mr. Nix's

car.

Q Okay. And was Mr. Nix's car there when you arrived at the restaurant?

A No, it wasn't, sir.

Q Okay. And so when you left out of the right side of that entryway, did you walk directly to your car?

A I did, yes, sir.

Q Where did Mr. Nix walk?

A Mr. Nix came directly to my car, as well.

Q He had his car in the parking lot?

A Yes, sir.

Q He didn't choose to walk there?

A No, sir.

Q He walked to your car?

A Yes, sir.

Q Did that cause you concern?

A It did.

Q Why?

A Because he was already yelling about my kid inside the restaurant, and now outside of the restaurant, he's also walking towards my vehicle that has my wife and my son in it.

Q Okay. And so did you walk to your vehicle?

A I did, yes, sir.

Q And did you talk to Mr. Nix?

A I asked him, "Hey man, why are you coming to my car?"

Q Where was Mr. Nix at when you say, "Hey man, why are you walking to my car?"

A He was right at the front of my hood coming around.

Q All right. And did you try to get between him and the car door?

A I did, yes, sir.

Q And you're talking to him?

A Yes, sir.

Q How was he talking to you?

A He was-- he was mad. He was just pissed-off and irate. He told me that he would do whatever the fuck he wanted to, and that's when he got in my face.

Q What was-- did he reply to you about why are you upset? Why are you mad? What about my kids?

A Yeah, yeah. So I was, like, "Man. I'm just--I'm wondering why you're coming to my car. You was just yelling about my kid in the restaurant." And at that point, Mr. Nix-- he looked at me, and he said, "Well, I wouldn't let my" -- he said, "I've got four kids, and I wouldn't let my kids go to the bathroom by theirselves." And I said, "Well, that's not your kid. That's my kid, and I let my fucking kid go to the bathroom by himself."

Q All right. Did he say it that way, or did he also cuss?

A He was-- he was cussing, as well.

Q Okay. And so did you try to match his intensity or his anger? What were you trying to do?

A I was just trying to-- I told him numerous times to, "Go on. Leave me alone. Quit touching me," because he was chest-bumping me the whole time. He was in my face. He was literally spitting on me. He was screaming in my face.

Q Okay.

A And I just kept telling him to go to his car. "Go on. Leave me alone."

Q Let me ask you: Did you know Mr. Nix from Adam?

A No, I didn't.

Q Had you ever met him before?

A No.

Q Did you know anything about Mr. Nix?

A I did not.

Q Your wife and son are in the car behind you?

A They are.

Q And you say that he was chest-bumping you?

A Yes, sir.

Q And spitting on you?

A Yes, sir.

Q And "spitting" meaning he just-- because he's yelling --

A Because he was yelling, yes.

Q -- and chest-bumping you?

A Yes, sir.

Q What happened next?

A We-- that lasted -- he chest-bumped me, I believe-- I want to say three times -- three, four times. And he--

Q Did he continue to come forward?

A He did. He did, yes, sir. I told him-- I said, "Man, go on. Go to your car. Leave me alone." And he shoved me again. When he shoved me again, he then proceeded to hit me.

Q All right. How many times did he hit you?

A He hit me three times.

Q Okay. What happened as a result of him hitting you?

A He stumbled me back to the trunk of my car.

Q Okay. Did it stun you?

A It did, yes, sir.

Q What concern did you have because of that?

A I was just-- I mean, he had just knocked the hell out of me three times. It was -- I mean, he had-- he hit me hard.

Q How fast did he hit you?

A He hit-- I mean, it was quick.

Q Let me show you what's already been admitted as Defendant's Exhibit 18. Can you describe where you were after he hit you?

A Yes. I was back here right next to the wheel of that car (indicating).

Q All right. So you're back by the driver side rear tire?

A Yes.

Q And where was Mr. Nix at?

A He was at the front-- he was still at the front of the vehicle.

Q Okay. Was there anyone else there at that time?

A So his sister and-- his sister and her boyfriend-- they were in the car next to us.

Q All right. Now, at the time of this incident, you didn't know it was his sister?

A No, I didn't.

Q Didn't know it was her boyfriend?

A No, I didn't.

Q All right. But they were there inside the vehicle?

A They was.

Q All right. And so after you were hit, what did you say to Mr. Nix?

A I told him-- I said, "Man, back up. Go on. I have a gun on me." I said, "Leave me alone."

Q Okay. Now, y'all are separated at that point to where he could walk over to his car?

A We are, yes.

Q Do you feel like you could get into your car?

A No.

Q Why not?

A Because that would require me to turn my back on him to get into the vehicle.

Q Okay. Well, you would have to walk forward towards him
—

A Towards him and then get in my vehicle.

Q -- and turn your back. Do you carry a gun?

A I do.

Q How long have you carried a gun?

A Since I was legal enough to do so.

Q All right. Do you have a permit?⁴

⁴ Although a permit is no longer required in Alabama to carry a concealed weapon, the Defendant had a valid, in effect, concealed-carry permit issued to him by the Sheriff of Jackson County. See Justice Mitchell's explanation of this recent change in the law in *Ex Parte Johnson*: We note at the outset that the law requiring gun owners to obtain a permit before carrying a concealed weapon, § 13A-11-73, Ala. Code 1975, was repealed by the Legislature shortly after Johnson's indictment, see Act No. 2022-133, § 9(2), Ala. Acts 2022, amidst a nationwide spate of litigation challenging permitting restrictions on the right to keep and bear arms, see, e.g., *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 12-15, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022).

A I do.

Q Do you understand you're not required to have a permit?

A I do.

Q But you have a permit anyway?

A Yes, sir

Q What type of gun do you have?

A It was a 9 millimeter Luger.

Q How do you carry that 9 millimeter?

A I carry it in a holster on my side.

Q Let me show you what I marked and has been admitted as Defendant's Exhibit 33. Is that your handgun?

A (Referring:) Yes, sir.

Q Is that the one that you carry?

A Yes, sir.

Q You had it loaded that night?

A I did.

Q And what did you have it loaded with if you remember?

A Hollow points.

Q Okay. Now, on that holster, 33, that photograph-- how does the holster fit into your waistband?

A So I clipped it on the-- my belt where it would clip into my belt on the outside of my pants.

Q Be on the outside of your pants clipped onto your belt?

A Yes.

Q All right. When you told Mr. Nix that you were armed and to leave you alone, what did he do?

A Well, his sister started yelling at him-- or the woman started yelling at him telling him--

Q Yelling what?

A Telling him to -- she said, "Come on, Aaron. He's got a gun. Leave him alone. Quit."

Q Did she say that over and over again?

A She was. She kept yelling at him to come on. And then Mr. Nix looked at her and said, "Well, I'll end him quicker, then." And that's when he reached down and stepped towards me again.

Q Reached down where?

A Into his waistband.

Q And his waistband -- the parking lot there, is it well lit or dim lit?

A No. It's dim lit.

Q All right. And you saw him that he was wearing what that night?

A A big black jacket.

Q Okay. And when you say he reached down in the waistband, where was he reaching if you know?

A Towards the waistband pocket area (indicating).

Q And what did you do?

A That is when I pulled my firearm and fired on him.

Q How many times did you fire?

A I fired one time.

Q And then what happened?

A And then he turned and took off running.

Q All right. You only fired one shot that night?

A Yes, sir.

Q And struck Mr. Nix one time?

A Yes, sir.

Q What did you do after that?

A I put my weapon on safe, put it back in my holster, and I walked inside the restaurant.

Q Okay. When you went inside the restaurant, was the manager or employee there on the phone?

A Yes.

Q And did they hand you the phone?

A They did.

Q All right. And did you understand that was 911?

A I did.

After Mr. Nix started the confrontation which would soon lead to his death, the Defendant's wife asked for keys to the car, and she and son went to the car and got inside. The Defendant stayed in the restaurant and paid the bill. Mr. Nix said nothing to him as he paid. The Defendant testified that he was concerned about the encounter inside the restaurant with Mr. Nix, but that he was "not pissed-off," although was "nervous" about Mr. Nix before he left the building to go to his vehicle.

Scottsboro Police Detective Scott Hamilton testified that he was the case investigator in this matter, and he responded to the scene. He found only two non-law enforcement vehicles in the parking lot on arrival—the Defendant's car and the car in which Mr. Nix had arrived at the restaurant. Detective Hamilton found a handgun atop the Hicks vehicle. He said that two calls were made via 911 about the shooting. The Defendant was one of those callers to 911; the emergency operator instructed him to place the gun on top of his car and await the arrival of law enforcement.

Detective Hamilton testified that the Defendant's meal receipt showed no alcohol purchased during the visit to the restaurant and that the check was either "closed out" or paid at 8:45 p.m. It is not clear to the court which event occurred at 8:45 p.m., although it seems inconsequential to the decision today.

Detective Hamilton also testified that the Defendant:

1. Went to the hospital complaining of chest pain after the shooting;

2. Had no drugs or alcohol in his system;
3. Was not under the influence of any substance;
4. Had a legal right to be where he was;
5. Was not involved in any criminal activity.

Officer Bailee Johnson with the Scottsboro Police Department was the first law enforcement officer on the scene. She testified that the gun was located on top of the Defendant's car as he had been instructed to place it there by the 911 dispatcher; that the Defendant walked toward her patrol unit with his hands up as she arrived; that she ordered him to turn around and go to his knees, and he complied. She cuffed the Defendant. He then began talking and she then mirandized him. The Defendant then told Officer Johnson that he wanted a lawyer and did not feel well. She said he continued talking voluntarily even after he was mirandized, saying the Mr. Nix yelled at him for letting his son go to the bathroom by himself, that Mr. Nix hit him three times before the shot was fired. Officer Johnson further testified, however, that the Defendant did not say Mr. Nix was going for a weapon.

The Defendant stated once they were both outside the restaurant, Mr. Nix went directly to the Hicks vehicle instead of walking to his vehicle. The Defendant asked him "why he was coming to my vehicle," and Mr. Nix answered, "I can do whatever the fuck I want to do." Almost immediately, Mr. Nix punched him in the face and head with a "round-house punch."

The Defendant testified, "It was pretty quick; He hit me 3 times even before I knew what was going on." A photograph was admitted into evidence showing injuries to the Defendant's face. Those injuries were inflicted by Mr. Nix, according to the testimony. The photograph was taken in the emergency department of the local hospital, where the

Defendant was taken complaining of chest pain. He testified that he “was weak to the knees,” throwing up, and “felt like I was going to have a heart attack” after the shooting. Officer Johnson testified that she saw the Defendant vomit in the parking lot, but that she saw no blood or bruise or injury on the Defendant. The Defendant did tell her repeatedly that he was assaulted by Mr. Nix.

The Defendant became emotional during his testimony. He said that the parking lot was dimly lit, that Mr. Nix wore a big black jacket and that he reached into his waistband and pocket area with both hands, causing the Defendant to believe that he was reaching for a gun or other weapon. Although the Defendant saw no gun or other weapon, the court finds that this was a reasonable belief under the circumstances testified to.

The Defendant was arrested and lodged in the Jackson County Jail. He was released on bond the next day, and those bond conditions have been subsequently relaxed by this court on motion, over the State’s objection.

The Defendant testified that he heard Valarie Snodgrass, Mr. Nix’s sister, yelling to her brother, “Come on, Aaron, he has a gun! Quit! Come on!” The Defendant testified that Mr. Nix replied to his sister about the Defendant, “I’ll end him quicker than.” Hearing this and seeing Mr. Nix reach into his clothing, the Defendant drew his gun and fired, striking Mr. Nix. The Defendant said that he fired only one shot. Mr. Nix turned quickly and ran towards the back of the restaurant. The Defendant said that he then put weapon on “safe,” put it back in its holster, and entered the restaurant to call for help, where the manager handed him the telephone with a 911 emergency dispatcher already on the line.

In describing the rapidly-developing and changing situation, the Defendant stated these things (on direct and cross-examination)

regarding his own state-of-mind as to why he shot Mr. Nix:

- I thought he was going to kill me.
- I had seconds.
- I didn't mean to kill him.
- My intent was for him to go on and stop.
- He hit me in front of my kid.
- He started hitting me.
- He threatened to kill me and he went for something and I didn't know what weapon he had.
- He had already assaulted me.
- I was scared not only for my life, but my wife's and son's, as well.
- It was a dark parking lot.
- Just me and him alone.
- Considering my wife and my kid, any grown man would be scared at that moment.
- [I] was afraid.

Asked why he “just didn't get into his car and leave”—which, under the circumstance described and pursuant to *Ala.Code* §13A-3-23 he was under absolutely no legal obligation to do—the Defendant answered that Mr. Nix approached him first, was coming menacingly towards his car where not just he, but also his wife and son were located, that he asked Mr. Nix why he was approaching the car and got the same answer, again, about why he allowed the “kid to go to the bathroom by himself.”

Most striking and impressive to this judge as to why he “just didn't get into his car and leave” was the Defendant's answer that he “...would not turn my back on him to get into car” and that “I would not open the car and unsecure a secure environment.” This answer makes sense to the court; it was a cautious and reasonable decision by the Defendant under the facts and circumstances testified to in court—not to mention that this action is compliant with Alabama law.

On the issue of the restroom, the Defendant said that “nothing happened in the bathroom” between Mr. Nix and the little boy. The

Defendant said that he did not see Mr. Nix go into the bathroom, but he did see him near the restrooms “loud and cussing” and shouting at someone in the kitchen. The Defendant testified that the bathroom incident was a nonissue for him.

The Defendant testified that his gun was holstered at his own hip and either was visible to Mr. Nix or should have been visible to him, or anyone else who looked. He did admit that “my shirt could have been over it; my shirts cover my gun most of the time.”

The State called Valarie Snodgrass. She is the only eyewitness who testified to the altercation that led to her brother’s death, other than the Defendant. She also gave a written statement to police on the night of the shooting, and that statement was admitted into evidence. Her in-court testimony varies from her statement given immediately after the events. And her story is different from the Defendant’s story, although, frankly, not all that different.

Key differences include the fact that Ms. Snodgrass insists the Defendant directed racial slurs toward Mr. Nix and insists that the Defendant shot three or four times, including even possibly at her as she ran toward her stricken brother. She testified, “If I would have been thinking, I would have filed attempted murder on me.” There is absolutely no other evidence that more than one shot was fired by the Defendant. Despite Ms. Snodgrass’ recollection to the contrary that multiple shots were fired, it did not happen. There is no physical evidence at all of multiple shots, Ms. Snodgrass’ recollection to the contrary.

This is her entire transcribed⁵ statement given to Officer Andrew Miller of the Scottsboro Police Department, immediately following the shooting death of Mr. Nix:

⁵ Transcription made by the court from the version signed by Ms. Snodgrass and the version she read into evidence at the hearing.

Valarie Snodgrass Statement

Written by Officer A. Miller as told by Valarie Snodgrass.

On 4/7/23, Bristen Baker and Aaron Nix rode with me to pick my daughter, Tionna Snodgrass, up from work. We were sitting in the parking lot waiting on Tionna. Aaron went inside to let Tionna know we were here. Aaron came back out and got in the car and was smoking a cigarette and telling me about a pretty girl that was working. Aaron said that he had to pee, so I told him to go back in and pee and not to pee in the parking lot because they would call the cops on him. Aaron went in and about five to six minutes later, the other guy came outside and Aaron was about ten seconds behind them. I could see they were talking but could not hear them. It looked like they were being friendly and know each other. The guy walked to his car, and Aaron followed him. Aaron got close to him, and I could tell it was not a friendly conversation. I told Bristen to roll his window down. I yelled at Aaron multiple times asking him if he knew the guy, but Aaron did not respond. I told Bristen we have to get my brother, and I get out of the car. As I was going to Aaron, the guy yelled, 'Fucking Nigger, back the fuck up or I will fucking kill you.' I was closest to Aaron when the guy yelled, and Aaron punched him in the side of the face. The guy began trying to draw his gun, and I was yelling Aaron he has got a gun repeatedly. "The guy got his gun out of the waistband and immediately shot Aaron from about two to three feet away. Aaron paused for a moment, took two steps back, and took off running in a zigzag pattern to the side of the building. The guy fired two more shots, and I was yelling "You already fucking shot him Quit shooting." The guy yelled, "Yeah. I fucking shot him." I ran inside and told Tionna, Aaron was shot to come help me find him. We ran out of the back door, and Aaron was laying face down in a water puddle. Tionna and I flipped him over and he was gargling and barely breathing." "I put his head on my

leg, and he took five or six breaths. I stayed with him until the police arrived. The guy told Aaron multiple times to shut up and to quit touching him and to back up or he would kill him.

Ms. Snodgrass' testimony also added another element to the story, which tends to both explain Mr. Nix's aggression and bluster towards the Defendant and corroborates the Defendant's story of the powerful blows he received from Mr. Nix:

Q Yes, ma'am. Now, your brother was a boxer? Yes?

A Not professional.

Q No, ma'am. No. But he was a boxer?

A Yes.

Q Hit the heavy bag?

A Yes.

Q And that was-- that was an exercise that he enjoyed?

A Yes.

Q Very physically fit?

A Yes

Q Very strong? Not as strong as you, but strong? Right?

A (Witness nods head.)

Q And you've seen him on the heavy bag or that bag that he hits and puts on Facebook; right?

A Oh, yeah.

Q Yeah. Okay. And then he even wears the boxing half-gloves, doesn't he, when he's hitting the bag? Those little-- it doesn't cover all your fingers?

A You know, I'm not really sure if he does.

Q Okay.

A I'm sure he would. He's a boxer but --

Q Okay. And he knows how to throw a punch? One punch and he's got somebody rocking back and forth?

A Yes, sir.

The Defendant was not just in a fight with a “regular” person, but was unwittingly pitted against a “very physically-fit” boxer, who was “strong,” who enjoyed boxing, who “hit the heavy bag,” who “knows how to throw a punch.” The element of surprise aside, it is clear to the court that the Defendant was outmatched by Mr. Nix, despite the fact that they were both approximately the same size physically.

Ms. Snodgrass further testified that “the guy told Aaron multiple times to shut up” and “told him to back up or he would kill him.” She says that the Defendant was “yelling at Aaron.” To be fair, she insists that the Defendant was the verbal aggressor, taunting and provoking Mr. Nix saying things like “talk that shit now motherfucker!” and using racial epithets, including “this is what I thought, walk away fucking nigger.”

Ms. Snodgrass also said that Mr. Nix started drinking on her porch beginning around 3:30 p.m., drinking two cans of Mike’s Hard Lemonade. She testified that he drank nothing else, but also admitted that he could

have drank outside her presence. She also opined that Mr. Nix “was not drunk—he could hold his alcohol.” She explains the discrepancies between her night-of statement and her in-court testimony, saying “I was a little crazy” when she gave the statement and that the experience was very shocking and traumatic to her. This is understandable.

At one point during the altercation, Ms. Snodgrass even thought that the two men knew each other and were friendly, saying “and I could see they were talking but could not hear them. It looked like they were being friendly and know each other.” She continued:

And the guy walked to his car, and Aaron followed him. Aaron got close to him, and I could tell it was not a friendly conversation. And I told Bristen to roll his window down. I yelled at Aaron multiple times asking him if he knew the guy, but Aaron did not respond.

Then she saw Mr. Nix punch the Defendant in the side of the face, and observed the freshly-hit Defendant “rocking back and forth against his car after Aaron hit him against the car.” Importantly, she testified that the Defendant’s hand never left his side and that he did not draw weapon until after he was hit in the head and began rocking back and forth.

She also testified that she herself “told Aaron about the gun as soon as she got out of the car.” She said that the Defendant warned her brother himself, shouting “back up or I’ll blow your ass away.”

It is obvious to the court that not only was Mr. Nix the initial aggressor, but that he escalated his attacks on the Defendant throughout the encounter. Mr. Nix ignored multiple warnings from his sister to get away from the Defendant, and ignored the warnings from the Defendant himself. He ignored a direct and pointed warning from the Defendant, who said to him, “back up or I’ll blow your ass away.” Ms. Snodgrass testified to this, saying:

Q And the last sentence of the statement that you signed says, "The guy told Aaron multiple times to shut up, quit touching him."

A I don't know why he was saying quit touching because Aaron never touched him.

Q All right.

A I remember him saying, "Back up. Back up or I'm going to blow your ass away."

Q All right.

A "Back up. Don't get in my face. Don't get in my face, boy. I'm going to blow your ass way. I'm going to blow you away."

Q Okay. So multiple times --

A He did. He did.

Q -- multiple times?

A He did.

Q And with all that, your brother was still there?

A But then when I clapped (indicating), he proceeded to walk away.

Q All right. So the comments multiple times you saying, "Come on, Aaron. He's got a gun. He's got a gun," those were ignored by Aaron? Yes?

A First few times they were ignored.

Q All right. And then the multiple times that Mr. Hicks said, "Back up. Back up. Quit touching me" or Mr. Hicks would kill him. Aaron ignored all that?

A Pretty much.

Q All right. Well, he stayed right there; right?

A No.

Q Until you clapped?

A When I clapped (indicating)--

Q All right.

A -- he came back. And he was, like -- wherever he was, he came back and proceeded to turn to leave.

Ms. Snodgrass' testimony inserts another element into the situation, as well. That element is that Mr. Nix was a fighter and that she knew him to get into fights. She testified, without objection:

Q Okay. You've known your brother to get into fights?

A Of course.

Q Okay. And even in just a few months before this, he was in a pretty serious fight with Mr.-- with Jeremiah Nix?

A Why would it have been a few months? I thought it was like the year before.

Q Okay.

A reasonable conclusion is that Mr. Nix was a fighter with a tendency to fight others. This conclusion is consistent with the testimony about the events of April 7, 2023—that Mr. Nix started, and then seriously escalated, a fight with the Defendant for no good reason at all.

The State medical examiner, Dr. Valerie Green, performed an autopsy on Mr. Nix's body. Dr. Green testified that there was one "...entrance wound on Mr. Nix's upper left chest or, like, towards the bottom of his neck." And one exit wound. She also testified that:

The direction of the gunshot wound was downward left to right and front to back, and that direction is given with the body in anatomic position, which would be essentially a person standing upright with the palms facing forward.

Dr. Green's description is consistent with the other accounts of the scene and the altercation.

Dr. Green also testified as to the toxicological examination performed, saying that "...The toxicological analysis of Mr. Nix's blood revealed the presence of Ethanol at a level of 0.158 grams per 100 milliliters." The toxicological report with those findings was admitted as evidence. She testified further that Mr. Nix's intoxication level was 0.158 or nearly twice the legal presumptive-for-intoxication blood alcohol limit for drivers in Alabama. While Mr. Nix certainly was not driving a vehicle on this occasion, it is instructive for the court to use this 0.158 finding in gauging his level of sobriety or intoxication during the altercation. Considering the blood alcohol level, considering his behavior, and considering the totality of the circumstances as testified to at the hearing, the court can only conclude that Mr. Nix was intoxicated.

II. Conclusions of Fact

The Court makes these specific findings and conclusions of fact:

1. Aaron Morris Nix was the initial and consistent aggressor throughout the altercation which lead to his death.
2. Mr. Nix instigated the fight with the Defendant, Jerry Carl Hicks, Jr.
3. Mr. Nix instigated the fight for no good reason or valid purpose.
4. Mr. Nix was intoxicated.
5. Mr. Nix was a known fighter and a boxer, but this reputation was apparently unknown to the Defendant. The fighter/boxer reputation manifested on this occasion.
6. Mr. Nix was in excellent physical condition.
7. The Defendant was not the initial aggressor.
8. The Defendant did not start the fight.
9. The Defendant did not escalate the fight.
10. The Defendant was completely sober, not under the influence of any substance, had no drugs or alcohol or other intoxicating substances in his system.
11. The Defendant had a legal right to be where he was.
12. The Defendant was not involved in any criminal activity.
13. The Defendant was under no legal duty to flee.

14. The Defendant was fearful for himself and for his wife and child.
15. The Defendant fired one shot.
16. The Defendant was physically ill following the shooting.
17. The Defendant vomited at the scene.
18. The Defendant went to the hospital complaining of chest pain after the shooting.
19. The Defendant reported the events and shooting to the 911 emergency dispatcher and followed the dispatcher's instructions to remain in place, put the gun on the roof of his car, and to await law enforcement arrival.
20. The Defendant followed law enforcement instructions and cooperated with law enforcement once they arrived.

III. The Applicable Law and Conclusions of Law

Ala. Code §13A-3-23 states this:

Use of force in defense of a person.

(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be

justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (5), if the person reasonably believes that another person is:

(1) Using or about to use unlawful deadly physical force.

....

(d)(1) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

(2) Prior to the commencement of a trial in a case in which a defense is claimed under this section, the court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section. During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution.

The standard of proof which the court must apply in this instance is that quoted hereinabove from *Ala. Code* §13A-3-23(d)(2): The defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution. Generally, preponderance of the evidence is a standard not used in criminal law, but used mostly in civil law. The Supreme Court of Alabama has promulgated criminal jury instructions which may be found at the Supreme Court and State Law Library's website. Among these instructions is this definition⁶ of the pertinent standard of proof:

⁶ http://judicial.alabama.gov/library/docs/Preponderance_of_the_Evidence.pdf [Retrieved September 4, 2024.]

Preponderance of the Evidence In this case it is the responsibility of the **[State/Defendant]** to prove every essential part of his/her/its claim[s], **[describe claim]**, by a “preponderance of the evidence.”

A “preponderance of the evidence” means an amount of evidence that is enough to persuade you that the **[State/Defendant]**’s claim is more likely true than not true. If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the **[State/Defendant]** making that claim or contention.

....

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof supports every essential part of the **[State/Defendant]**’s claim[s] by a preponderance of the evidence, you should find for the **[State/Defendant]** as to that claim.

If the proof fails to establish any essential part of the **[State/Defendant]**’s claim[s] by a preponderance of the evidence, you should find for the **[Defendant/State]** as to that claim.

[All emphasis above is in the original.]

In the recent case of *Ex Parte Johnson* (--- So.3d ---- Ala., 2023 WL 8658886) (decided after the hearing in the case at Bar today), Justice Mitchell, writing for a unanimous Alabama Supreme Court, stated the law regarding first aggressors and duty to retreat (or the lack of that duty) thusly:

Alabama law generally allows a person to use “deadly physical force” against another to defend himself or a third person when he “reasonably believes” that the other person is “[u]sing or about to use unlawful deadly physical force.” §13A-3-23(a)(1). But there are some important exceptions to that rule. As relevant here, a person is not justified in using physical force to defend himself or a third person if “He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.” §13A-3-23 (c)(2).

At common law, the victim of a violent attack was required to make a reasonable attempt to retreat, if retreat was feasible, before using deadly force against his attacker. Hill v. State, 194 Ala. 11, 26, 69 So. 941, 947 (1915).

But our self-defense statute modifies that common-law rule, giving any victim the right to “stand his or her ground” and refuse to retreat, so long as the victim is otherwise justified in using physical force under §13A-3-23(a), is “not engaged in an unlawful activity,” and is in a “place where he or she ha[s] the right to be.” §13A-3-23 (b).

For the court’s decision today, the relevant and most important part quoted above is this: “our self-defense statute modifies that common-law rule, giving any victim the right to “stand his or her ground” and refuse to retreat, so long as the victim is otherwise justified in using physical

force....” Here, the Defendant was in a place where he had the right to be, the Defendant was there lawfully, and the Defendant was not engaged in an unlawful activity. He, therefore, under our statute and the cases interpreting it, had no duty to retreat—no duty to “just get into his car and leave.”

The court in *Ex Parte Johnson* further states this:

The trial court's conclusion reflects a mistaken understanding of what constitutes “initial aggress[ion]” under §13A-3-23 (c)(2). While a person who starts an argument might be said to have behaved “aggressively” in a loose sense of that word, the term carries a more precise meaning in criminal law. In that context, as the Court of Criminal Appeals has elsewhere explained, the term “initial aggressor” refers to someone who engaged in a “forceful action or procedure,” as in an “unprovoked attack,” against another; it does not encompass someone who simply “created [a] controversy” or verbally confronted someone else. Gaines v. State, 137 So. 3d 357, 361 (Ala. Crim. App. 2013) (citing Merriam-Webster's Collegiate Dictionary 272 (11th ed. 2003) (defining “aggression”)) (emphasis added). We agree with the court in Gaines - - and with the numerous courts in other jurisdictions that have considered this question -- that an individual does not forfeit his right to defend himself and others merely by starting an argument (or, in Johnson's case, providing moral support to the person who allegedly started an argument).

Here, it is unequivocal and uncontroverted that the Defendant was not the initial aggressor, nor did he become an aggressor during the confrontation. Mr. Nix, however, aggressively and brutally attacked the Defendant. The Defendant was never the aggressor in any sense of that word, until he fired a single shot to defend his own life and the lives of his family members. He was fully justified under the law in doing so.

Therefore, for the foregoing reasons, it is, **ORDERED, ADJUDGED and DECREED** that:

1. The Defendant's motion to dismiss the indictment against him pursuant to *Ala. Code* §13A-3-23(d) is due to be, and it is hereby, **GRANTED**.
2. The court finds under *Ala. Code* §13A-3-23(d)(3) that "...the defendant has proven by a preponderance of the evidence that force, including deadly force, was justified...." and, therefore, this court must "...enter an order finding the defendant immune from criminal prosecution and dismissing the criminal charges."
3. The Defendant is entitled to, and he is hereby given, immunity from criminal prosecution.
4. The Defendant is released from his bond obligations, as are his sureties.
5. Costs are remitted.
6. All other relief sought is denied.
7. All future hearings and trials are canceled. This is a final and appealable order for all purposes. There being no reason for delay, the clerk is directed to enter a final judgment.

DONE and ORDERED this 6th day of September, 2024.

A handwritten signature in black ink, appearing to read 'J. H. Graham', written over a horizontal line.

JOHN H. GRAHAM
Circuit Judge