

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

Paul M. Burch, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

WILLIAM ALLEN OWENS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213147

A P P E N D I X

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 MR. MOORE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MOORE:

4 Q Mr. Kinsey, you said that you reviewed the pathology
5 report; is that right?

6 A Yes, sir.

7 Q What did the pathology report indicate as to the type
8 of weapon that was used?

9 A I cannot recall. I would be more than happy to
10 publish it for you if you would provide me a copy of that
11 report.

12 MRS. MORGAN: Judge, the pathologist is going to
13 testify. I am objecting. I don't think it's relevant.

14 THE COURT: Did you use the pathology report to base
15 your opinion on the caliber of the gun?

16 THE WITNESS: No, sir, I did not.

17 THE COURT: Sustained. You can ask the pathologist
18 when she's here.

19 MR. MOORE: If I could look at the photographs again.

20 THE COURT: On the screen?

21 MR. MOORE: On the screen. Yes, sir.

22 THE COURT: Mr. Eddie, how about dim the lights.

23 MRS. MORGAN: I have a copy of them here.

24 THE COURT: While Mr. Moore is doing that, it is my
25 understanding that all of the photographs used in the

1 Power Point are in evidence with still photos?

2 MRS. MORGAN: Probably not every exact every one, but
3 pretty much, Judge, we did, and we're going to put the
4 actual Power Point, I think, in evidence so they'll have
5 it.

6 THE COURT: You got to put one or the other.

7 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
8 identification and received into evidence.)

9 Q If you would look at this photograph, I believe it's
10 been marked as Defendant's number 2.

11 A Yes, sir.

12 Q And I'm not sure which number that was, but let's
13 step down in front of the jury so we can all look at it at
14 the same time.

15 THE WITNESS: May I step down, Your Honor?

16 THE COURT: Yes, sir.

17 Q Just turn around so they can look at it, too. I
18 believe that where -- this would be number two.

19 THE COURT: Hold on, Mr. Moore.

20 MR. MOORE: Yes, sir.

21 THE COURT: They all can't see it. That's the
22 problem. Everybody good?

23 Q Number two, I believe, is where you said the large
24 blood splatter was; is that right?

25 A Yes, sir.

1 Q And over here is the river?

2 A Yes, sir.

3 Q Okay. Six being the hat, five being the jacket.

4 A Yes, sir.

5 Q Now, and then there was some blood splatter I think
6 you identified in this area?

7 A It would have been more in this area.

8 Q More this area over here?

9 A Yes, sir.

10 Q And you had an opinion as to the direction that the
11 shot was fired from?

12 A Yes, sir.

13 Q What --

14 A For orientation purposes, yes, sir.

15 Q What was that opinion?

16 A I said it came from this side of number two which
17 means not from the other side of number two or not from
18 the way of the path. As I said, I could not measure the
19 individual blood drops. So, I can't tell you exactly
20 where the area of origin is at, but I said from this
21 side -- from the bridge side.

22 Q It came from -- the bridge would have been maybe this
23 direction from this picture here?

24 A Yes, sir.

25 Q Out this way?

1 A Yes, sir.

2 Q So, the shot in your opinion came from the bridge?

3 A Not -- I think you might be misinterpreting what I
4 said. Not from the bridge. I can't say --

5 Q Oh, no, I didn't say from the bridge.

6 A Yes, sir.

7 Q I said from the bridge area.

8 A Yes, sir. From that direction --

9 Q This direction towards --

10 A -- towards the woods. Yes, sir.

11 Q In the the same direction the river was coming from.
12 It would be upstream?

13 A Yes, sir. Upstream. Exactly.

14 Q So it would've been upstream.

15 A Exactly.

16 Q Can you tell me then how we had blood splatter over
17 here which would be on the south side and blood splatter
18 over here which would be the north side if the bullet was
19 traveling in an east to west direction?

20 A Yes, sir, I can. As I mentioned he had the hat on
21 which covered and stopped a lot of that protected spatter
22 as with that hat as I mentioned it is a floppy hat. My
23 opinion, whatever is over here would have been projected
24 or ricocheting there off of that hat going in that
25 direction and that would account for the larger quantity

1 here and the smaller quantity here because Mr. McCreary
2 was 6-foot tall or maybe slightly taller. You can look at
3 the distance, 8-foot. I mean, that would fit.

4 Q Do you have an opinion as to where the victim was
5 when he was shot?

6 A The the only thing I can say is he was in a crouched,
7 seated, or kneeling position, and that is from the
8 evidence on his pants. Yea, somewhere in that 8-foot
9 area.

10 Q But you don't know whether it would be over here
11 or --

12 A No, sir.

13 Q -- over here?

14 A The closest I can get you is somewhere in that 8-foot
15 area.

16 Q Now -- have a seat. Thank you.

17 THE COURT: Hold on one second, Mr. Moore.

18 Kenny, how about put that screen down. These people
19 can't see back there. Thank you.

20 Q The other thing I wanted to ask you about,
21 Mr. Kinsey, is you said basically the body had bled out
22 and I believe you said that it had to lay there for a
23 while. Can you tell me how long it would take a body to
24 bleed out?

25 A That would probably be a better question for a

1 pathologist to answer.

2 THE COURT: Then don't give an opinion --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- if you're not an expert in it.

5 THE WITNESS: Yes, sir.

6 Q Tell me about collecting DNA or collecting the
7 evidence for DNA sampling. How do you do that?

8 A What we do is we first identify a location of our
9 source. We'll open a sterile swab. We use a deionized
10 water or sterile saline solution and moisten the swab if
11 the source is dry. If it's wet blood, there is no need to
12 moisten the swab, but if it's dry. At the the scene we
13 had wet blood. When we processed the vehicle everything
14 was dry. So, at the scene we would take a sterile swab.
15 We would dip it. We would put it in a swab dryer, let it
16 dry, and we would place it in an envelope. We would
17 change gloves and we would collect the next sample. That
18 way we don't cross-contaminate.

19 In the instance of the vehicle where the blood was
20 already dry we would have to premoisten the swabs and we
21 would follow the same procedure.

22 Q Can you sample other body fluids other than blood?

23 A Yes, sir. We have chemicals that are protein. They
24 react with protein, and there is protein in other body
25 fluids, and we have no way to differentiate but in this

1 instance we use phenylphaline which is blood sensitive and
2 reacts to the blood.

3 Q What are some of the other body fluids that you can
4 test?

5 A We can also as mentioned with the protein specific
6 reagent we can collect semen. Sometimes it will react
7 with urine and those are the main ones. Synovial fluid or
8 brain fluid or any of those kind of things.

9 Q How about perspiration?

10 A Perspiration? I couldn't tell you that. I collected
11 DNA and touch DNA would definitely be the lipids or body
12 fats. So, I guess that would be considered perspiration.

13 Yes, sir.

14 Q You can --

15 A Touch DNA, yes, sir.

16 Q -- test perspiration?

17 A Now, I don't know if our chemicals were would react
18 with that, but when we're collecting touch DNA, we're
19 collecting from items that we wouldn't readily test anyhow
20 -- steering wheels, the grips on a firearm, something real
21 rough that we know you are going to transfer epithelial
22 cells.

23 Q And, for example, the hat band. If somebody had been
24 sitting at the river fishing and they were sweating, could
25 you test the perspiration on the hat band and see if it

1 was the same hat that the fellow had been wearing?

2 A If I needed to, yes, sir, I would.

3 Q And maybe if he was sitting at the river fishing and
4 sweating and he had a shirt on, could you test that shirt
5 if you didn't have any blood and see if that was the shirt
6 he had been wearing?

7 A In certain circumstances, yes, sir, I could.

8 Q If he had been wearing a watch and he was sweating
9 and sitting at the river fishing and you had the watch but
10 no blood could you test the watch and see if that was the
11 watch he was wearing?

12 A It could be attempted, yes, sir.

13 THE COURT: Now, when you say attempted, can you get
14 a result?

15 THE WITNESS: Well, I'm not a DNA analyst, Your
16 Honor.

17 THE COURT: Well, then don't answer the questions
18 that's not in your field.

19 THE WITNESS: Well, I do collect DNA swabs and they
20 are submitted to DNA, but I don't conduct the test itself.

21 THE COURT: You can't tell us -- you can collect the
22 data --

23 THE WITNESS: Yes, sir.

24 THE COURT: -- but you can't tell us what kind of
25 results you get?

1 THE WITNESS: Yes, sir, exactly.

2 THE COURT: I don't want him to go beyond his field
3 of expertise.

4 THE WITNESS: Yes, sir.

5 MR. MOORE: Yes, sir.

6 Q But you could collect data from any item that a
7 victim was wearing and have it tested?

8 A I could collect swabs, yes, sir, and have them
9 tested. That's correct.

10 Q Were you the the person responsible for the
11 collection of all the data, the evidence in this case?

12 A At that scene and the search warrant, yes, sir. That
13 would have been me.

14 Q Did you have any follow-up investigation or any
15 follow-up role in collecting any data from any item that
16 might have been related to this case?

17 A The items that I mentioned that I processed are the
18 items I'm accountable for, yes, sir.

19 Q Nothing else?

20 A No, sir.

21 Q Okay. Thank you. That's all.

22 THE COURT: Mrs. Morgan?

23 REDIRECT EXAMINATION

24 BY MRS. MORGAN:

25 Q And did you in your collections -- did you collect

1 the various items of clothing that the Defendant had on
2 when the search warrant was conducted?

3 A Yes, ma'am. I mentioned that. I collected them
4 personally.

5 Q So, you not just took his shoes, you took --

6 A Exactly. Exactly. The clothing he was wearing when
7 I was talking with him.

8 Q Okay. And they were sent and there is nothing
9 significant?

10 A No, ma'am, nothing.

11 Q Nothing related to the victim on the Defendant's
12 clothes --

13 A No, ma'am.

14 Q -- that he was wearing.

15 A That he was wearing. He readily voluntarily gave
16 those to me.

17 Q Yes, sir. And you also collected, I think, pursuant
18 to another search warrant you were given or tried to
19 process even a bucket?

20 A Yes, ma'am.

21 Q And a cricket thing?

22 A Yes, ma'am.

23 Q That was taken pursuant to a search warrant?

24 A Yes, ma'am.

25 Q Of the Defendant's house?

1 A Exactly. Yes, ma'am.

2 Q Anything come up latents on that?

3 A No, ma'am. Just latent print evidence is what I
4 processed.

5 Q All right. So, you took -- there was another search
6 warrant. Did you look -- got his clothes. You got the
7 buckets. You got the cricket things. You had --

8 A There was some keys.

9 Q Keys.

10 A Yea, I mean, everything latent-print related is what
11 I processed.

12 Q And when you say you processed it, you processed the
13 truck he had?

14 A Yes, ma'am.

15 Q You spent a lot of hours?

16 A Yes, ma'am.

17 Q Okay. And there was nothing that crossed over?

18 A No, ma'am. I found -- no, ma'am.

19 THE COURT: Thank you. You may step down. Next
20 witness.

21 MRS. MORGAN: Can I have a short break to check on
22 Dr. Ross? I haven't seen her. Can I just have a second
23 with Dr. Ross? She's supposed to be here.

24 THE COURT: You need a quick second or you need a
25 break?

1 MRS. MORGAN: Can we take a quick break? That'd be
2 great. I just want to make it smooth.

3 THE COURT: Just for you.

4 Anthony's order form. Y'all go back and go ahead and
5 do your order form and don't discuss the case and don't
6 deliberate. Leave your notepads. Everybody else remain
7 seated. Leave your notepads in the chair once you finish
8 writing your notes.

9 (Whereupon, the jury exited the courtroom at 10:42.)

10 THE COURT: Mrs. Morgan, anything for the record
11 before we break?

12 MRS. MORGAN: No, sir. I think we do want to move
13 the -- we haven't finished with the Power Point.

14 THE COURT: When you get through, we'll put it all
15 in.

16 MRS. MORGAN: Yes, sir.

17 THE COURT: All right. We're going to take a quick
18 break this time. As we say, we're burning daylight.

19 (Whereupon, a break was taken.)

20 (Whereupon, the jury came into open court at
21 approximately 10:55.)

22 MRS. MORGAN: The State would call Dr. Janice Ross to
23 the stand.

24 DR. JANICE E. ROSS, after being duly sworn,
25 testified as follows:

1 THE CLERK: Please have a seat and state your full
2 name.

3 THE WITNESS: Janice Edwards Ross.

4 THE COURT: Good morning, Dr. Ross. Good to see you
5 again.

6 DIRECT EXAMINATION

7 BY MRS. MORGAN:

8 Q Tell us, Dr. Ross, what kind of doctor are you?

9 A I am a pathologist.

10 Q What does a pathologist doctor do?

11 A Well, we have a degree from college and we have a
12 medical degree, Doctor of medicine. I got mine from
13 Upstate Medical Center in Syracuse, New York, and we do
14 further training in pathology which is the study of
15 disease. We learn how to diagnose tissues, cancers, and
16 diseases by looking at tissue under the microscope and by
17 using the laboratory in the hospital. We also learn how
18 to do autopsies.

19 Further, I studied forensic pathology and am board
20 certified in forensic pathology. The word forensic means
21 legal and we use our medical knowledge to assist us in
22 interpreting legal matters such as homicides, suicides,
23 accidents, rapes, that kind of thing.

24 Q All right. And tell us how long have you been doing
25 forensic autopsies?

1 A Thirty-two years.

2 Q And -- I don't know it was that long. Sorry.

3 THE COURT: How long have you been practicing law?

4 MRS. MORGAN: Hush. That's what I was going to say.

5 I knew you were going there. Thanks for reminding me,

6 Judge.

7 THE WITNESS: We started when we were twelve.

8 Q Thank you. Dr. Ross, and do you -- when you've done

9 those autopsies, have you given your opinion as to the
10 cause and manner of death?

11 A Yes, I have.

12 Q And have you been qualified in the courts of this
13 state and other states and maybe even federal court to
14 give your opinion as to cause and manner of death?

15 A Yes, I have.

16 Q Approximately how many times? I didn't ask you
17 years, but how many times.

18 A Approximately 60 times.

19 MRS. MORGAN: Okay. And the State would move that
20 she be qualified as an expert in forensic pathology.

21 MR. MOORE: She's imminently qualified.

22 THE COURT: She will be allowed to give opinions in
23 pathology, cause of death, those sorts of things. She's
24 appeared in my court a number of times. She has the same
25 last name as my son. We've talked about that.

1 Q Dr. Ross, tell us a little bit just before we go into
2 this case, tell us what you do when you are brought in or
3 how you're brought in to conduct an autopsy.

4 A We do autopsies for various coroners of the state and
5 the county coroner from Barnwell, Lloyd Ward, called me to
6 ask me to authorize an autopsy of this victim the night
7 before. He gave us a scenario of what they found at the
8 scene, and we set up a schedule for the autopsy. The
9 victim is then brought to us at Newberry, and we do an
10 autopsy in the morgue at Newberry County Memorial
11 Hospital.

12 Q And, Dr. Ross, the night that you got the call --
13 well, it was probably early morning on the 7th, did you
14 actually perform it on the 7th of July?

15 A We performed it on the 7th of July at 10 o'clock am.

16 Q That's a Saturday morning?

17 A Yes.

18 Q And why would you do it so --

19 A It's important. Part of the forensic autopsy is
20 collecting evidence and documenting evidence, and it's
21 important to get that as quickly as possible so that the
22 law enforcement can continue their investigation.

23 Q All right. So, you literally got the call the night
24 before and performed it on that Saturday morning?

25 A Yes.

1 Q All right. And tell us what you do initially when
2 you receive a body from the coroner?

3 A We look at the body externally with the clothing on,
4 take pictures, document what is on him -- on the victim.
5 Then we unclothe him and look at the external body, take
6 pictures, and document any injuries that we see.

7 Q Okay. Can you tell us what were your findings on the
8 initial external exam of Philip McCreary?

9 A We found a gunshot wound to the head.

10 Q And anything other significance from the external
11 exam?

12 A Yea. The clothing had a lot of blood and tissue
13 splatter on it on the front -- on the the front of the
14 shirt and front part of the pants.

15 Q And how about in terms of any dentures or teeth,
16 anything like that?

17 A He had one denture and he had no other injuries on
18 his body.

19 Q And were the lower teeth intact?

20 A I don't recall if they were. I have a photograph of
21 one denture.

22 Q I was looking on page 3 of your -- page 2 of your
23 report, Dr. Ross.

24 A The lower teeth were natural. There was an upper
25 denture present.

1 Q And did you -- also when you do conduct the external
2 exam, do you look to see what's in pockets or that type of
3 stuff?

4 A Yes.

5 Q All right. Could you tell us what, if anything, you
6 found in his pockets?

7 A Okay. There was a large -- a fairly large amount of
8 money including over -- just over \$380.

9 Q Okay.

10 A A nail clipper, some peppermint candies, a pack of
11 gum, a handkerchief in the pockets.

12 Q And then money in bills and some change?

13 A Yes.

14 Q And did you find -- can you tell us -- did he have a
15 ring on, also?

16 A Yes, he had a gold metal ring on his finger and he
17 had another gray metal ring.

18 Q That was in the pocket?

19 A Yes.

20 Q All right. How much -- how tall was Reverend
21 McCreary?

22 A We measured him as 68 1/2 inches in height.

23 Q Which would be?

24 A 5 feet 8 1/2 inches.

25 Q All right. And how much did he weigh?

1 A Well, we only -- we estimate it. We don't have
2 scales. We estimate at least 140 pounds.

3 Q Okay, 140 pounds. And did you -- he came clothed?

4 A Yes.

5 Q And you examined the pockets. Did you find a wallet
6 or was there a wallet present with any of his items?

7 A I don't recall a wallet.

8 Q Okay. And so you -- you looked externally. What is
9 the most significant injury you see on him?

10 A The gunshot wound to the head.

11 Q And can you give us an idea what that was like,
12 please, ma'am?

13 A Yes. We had -- there was an entrance gunshot wound
14 in the right back of the head and an exit wound out
15 through the left eye area.

16 Q And was it -- could you describe it a little bit
17 more? I am going to show the slides in a second.

18 A It was -- the entrance wound was small. It had some
19 stippling around it which means there was some powder
20 burns that came from the barrel along with the bullet that
21 struck the skin. Those pieces of powder only go a certain
22 distance. So, with those present we can identify the fact
23 that the barrel of the gun was within a few inches of the
24 skin. It was called an intermediate range shot as opposed
25 to a contact shot or a distance shot.

1 The exit wound was quite large. It really took out
2 the left eye and exploded that part of the skull.

3 Q And other than that injury to him, was there any
4 other noted trauma on him?

5 A No, ma'am.

6 Q All right. If we can now -- Judge, if we can do
7 the... All right. This is a diagram created using some
8 of the pictures interposed on --

9 (Whereupon, a cellphone rings.)

10 THE COURT: Hold on one second. I can't wait to get
11 that SLED phone. Everybody please make sure your phones
12 are off.

13 Q If you could, Dr. Ross, you can even come down and I
14 have a little pointer.

15 A Obviously, this shows the back of the head and the
16 entrance wound here in the back of the head just to the
17 right of mid-line and these little punctate wounds is what
18 we call the stippling, that's from the powder that comes
19 out of the barrel with the bullet.

20 Q And the significance of that, Dr. Ross, is that you
21 indicated to have that you have to be within a certain
22 proximity from the end of that weapon to his head?

23 A Yes. It will depend on the weapon itself and the
24 type of ammunition, but, generally, it's a few inches --
25 maybe three to six.

1 Q Inches?

2 A Inches.

3 Q And the bullet, of course, went from the right back
4 to the left front. So, it's going from back to front and
5 from left to right. It exits as you can see through the
6 left eye area.

7 Q And do you as a part of your autopsy take x-ray to
8 determine anything of significance for you in determining
9 the manner of death and the extent of the injuries of the
10 victim?

11 A Yes. Yes.

12 Q Can you tell us is this a copy of the x-ray?

13 A Yes. This is what we call a side-view of the head.
14 The back of the head is here, front here. You can see all
15 these little particles that light up. Those are pieces of
16 metal. On x-ray they show up like this and it goes
17 straight across. That's called a lead storm. That's what
18 we see in high-powered ammunition.

19 Q So, that's high-powered ammo that causes that kind of
20 lead storm going through the victim's head?

21 A Yes.

22 Q And is that -- and that's consistent with the nature
23 of the injuries also that you saw on him?

24 A Yes. It's, I would say a high powered -- it is a
25 very high speed bullet that fragments and it also causes a

1 large -- a lot of injury to the tissue.

2 Q And those are actually coming off the bullet itself?

3 A Yes.

4 Q So, it loses weight as it's --

5 A Yes.

6 Q All right. Can you tell us --

7 A At the entrance in the right back of the head, exit
8 left front. So, it's going back to front and right to
9 left.

10 Q Again, if you want to explain.

11 A The same looking at it in a different way. The
12 entrance in the right back of the head. Exit in the left
13 front.

14 Q And at that angle and the other angle that depict the
15 actual trajectory of the bullet through the victim's head?

16 A Yes.

17 Q So, it's not going at any angle. It is straight on?

18 A It's straight on, yes. It just shows it is going
19 straight back to front.

20 Q And, again, the significance of that diagram of the
21 little speckles?

22 A Just call it an intermediate range gunshot wound.

23 Q And within 3 to 6 inches max?

24 A Well, approximately.

25 Q Depends on the weapon. Does it change in regards to

1 -- you said this is a higher caliber weapon or ammunition?

2 A Yes.

3 Q Does that change in terms of the measurement -- the
4 diagonal -- or diameter, excuse me -- of the soot around
5 the entrance hole?

6 A Yes. How far these powdered particles go depend on a
7 lot of things like the type of ammunition, the length of
8 the barrel, that kind of thing, and if you have a weapon

9 what you do is you actually go target shoot at different
10 inches away from the target to try to identify more
11 exactly how close that that gun was to the victim.

12 Q And the nature of those injuries -- I'm sorry. The
13 nature of the injuries to Reverend McCreary, do you have
14 an opinion based on your training as to the nature of what
15 would happen once that gunshot went through him? Is he --

16 A Well, as far as the brain goes this bullet went
17 through the base of the brain called the brain stem and
18 the pons. That -- the brain stem is the center that helps
19 your heart -- tells yours heart and your lungs to keep
20 going and with that injury you are pretty much immediately
21 deceased.

22 Q And it literally went through brain and the pons?

23 A The brain stem and the pons.

24 Q Okay. And you indicated that there was some blood
25 and bone spatter on the victim. We did a diagram based on

1 some of the pictures. Can you tell us what you found in
2 regards to that, please, ma'am?

3 A Yes. The depicted areas are where there were spatter
4 of tissue and -- tissue and blood on the part of the shirt
5 and then on the thighs. I think it was on both sides --
6 both thighs, but there was an area right there around the
7 waist and to the pubic area that was completely clean of
8 any tissue or blood splatter.

9 Q And we --

10 A That shows the shirt --

11 Q It is actually from the crime scene.

12 A -- with the tissues on there and then the pants you
13 can see this is the waist up here. This tissue and blood
14 smears start about the level of the crotch and go down in
15 the front of the thighs.

16 Q Okay. Dr. Ross, I've got just a few follow-up
17 questions. Was there any evidence that you saw on the
18 victim, any injury that showed other than the gunshot
19 wound any sign of struggle or defensive or anything that
20 you look for in determining cause and manner of death?

21 A There were none.

22 Q And when you said that there was significance based
23 on the stuff on his shirt and his pants, why is that
24 significant?

25 A Well, it shows that there was an area that wasn't

1 open to the splatter which would put him in a sitting
2 position, for instance.

3 Q All right. For instance. So, would you tell us your
4 opinion to a reasonable degree of forensic pathology the
5 likely position the Defendant -- I mean the victim would
6 have been in when he received that injury to his head?

7 A Yes. He would have been in some sort of sitting
8 position or kneeling position so that only -- so that the
9 part that you saw -- the waist of the pants and the front
10 of the upper pants were not exposed to blood splatter.

11 Q And when he is in that sitting or kneeling position
12 and receives that fatal gunshot wound, is there -- is your
13 opinion that where he is shot is where he would fall, if
14 you will?

15 A Yes.

16 Q And you found this to be -- the cause of death is?

17 A Laceration of the brain due to the gunshot wound to
18 the head.

19 Q And you've clearly listed this in your opinion as a
20 homicide?

21 A Yes.

22 MRS. MORGAN: Thank you, Dr. Ross.

23 THE COURT: Mr. Moore?

24 CROSS-EXAMINATION

25

1 BY MR. MOORE:

2 Q Dr. Ross, in your examination of the victim you
3 measured certain body fluids and other organs of the body?

4 A Yes.

5 Q For weight, volume, and such?

6 A Yes.

7 Q What was the volume of blood in the victim's body
8 when you examined him?

9 A Oh, we don't -- we can't. We don't have any way of
10 measuring that. You can't drain out all that blood.

11 Q There was testimony earlier in the case that the
12 victim had, I think I can quote, bled out at the scene.
13 Do you have an opinion as to how long with a wound of this
14 type it would take a victim to bleed out?

15 A Well, it would be -- he would bleed out to the point
16 where the heart could not function anymore. So, it's not
17 necessarily -- it doesn't necessarily mean that he takes
18 all of his blood comes out of the body. Once you lose
19 about a third to a half of your blood supply in your body,
20 then your heart can't work anymore.

21 With this type of wound there would have been a lot
22 of arteries lacerated and it's difficult to come down to a
23 specifics, but within minutes -- 4 to 6, 7 minutes.

24 Q You talked about the -- I believe you called it the
25 lead storm that would be caused by high-powered

1 ammunition?

2 A Yes. Yes.

3 Q And you talked about it was a high-speed bullet?

4 A Yes.

5 Q In your examination did you have an opinion or do you
6 have an opinion as to the type of weapon that was used in
7 this homicide?

8 A I am not a ballistics expert. I know you can put
9 that kind of caliber into both a handgun or a rifle.

10 Q Let me ask you to refer to your report, then. I
11 believe on the first -- page 2 and there is a paragraph
12 entitled amended 7/20/07 gunshot wound.

13 A Yes.

14 Q Would you read that to the jury, please?

15 A "An entrance gunshot wound in the back of the head,
16 four and a half inches below the top of the head and
17 .5 inches to the right of midline. It continues forward
18 to the left to exit through the left eye area four and a
19 half below the top of the head and 2 inches to the left of
20 midline. The bullet lacerates the pons and brain stem.
21 The x-rays show a lead storm present indicating the
22 pattern left by a high-powered rifle wound. There is a
23 stippling pattern around the entrance wound with a
24 vertical measurement of 4 inches and a horizontal
25 measurement of 2.5 inches. As I say, it could be a rifle.

1 It could be a handgun.

2 Q But at the time you wrote this report it was your
3 opinion that it was a high-powered rifle; is that correct?

4 A That's one weapon that cause it, yes.

5 Q You didn't say anything about pistols in your report?

6 A No, I did not.

7 Q You talked about a high-powered rifle?

8 A Yes.

9 Q Thank you. That's all I have.

10 REDIRECT EXAMINATION

11 BY MRS. MORGAN:

12 Q Dr. Ross, the two issues -- the thing about bleeding
13 out. The nature of this injury -- fatal injury -- it's in
14 the head area. He doesn't lose all of his blood?

15 A Correct.

16 Q In fact, because it's in the head area, it depends on
17 how he's found, where he lays, how he is turned, all of
18 those things; is that correct?

19 A Yes, plus the fact that when I think about it the
20 way, as I say, the injury occurred into the brain stem
21 which would have caused the heart to stop quicker than if
22 it had not been the head. So, there wouldn't have been --
23 would not have been any pumping action.

24 Q And the stippling that was on the back of the head at
25 the entrance wound measured how much?

1 A Four by two and a half inches.

2 Q And that is important because it tells you that that
3 weapon was close to the head?

4 A Yes.

5 Q And you indicated that the presence of the lead storm
6 tells you -- does it tell you about the weapon or does it
7 tell you about the the ammo?

8 A It tells you about the ammunition.

9 Q And do you know -- I don't know that much about it
10 but --

11 MR. MOORE: Your Honor, she's already said she is not
12 a ballistic expert. I don't know if she can testify to
13 anything about weapons.

14 MRS. MORGAN: I was just going to ask --

15 THE COURT: Hold on. See what the question is. What
16 is the question? Before you answer, Dr. Ross, tell me
17 what the question is.

18 Q Could you explain a little more about lead storm
19 which is not -- if you would?

20 THE COURT: Just explain lead storm one more time to
21 for us.

22 THE WITNESS: It just shows a high-powered, a very
23 fast bullet going through that causes a lot of damage and
24 breaks apart as it goes through.

25 Q And is there other matters that indicate based on his

1 injury that -- does the bone -- interfering with the bone
2 also cause break-up of the -- contribute to the lead
3 storm?

4 A That's part of it, but it's just going so fast that
5 it breaks up as it hits tissue.

6 Q And you indicated that once that injury is done
7 because of the pons and the brain stem, he's not moving?

8 A Correct.

9 Q And he would not be able to get up?

10 A Correct.

11 Q And that when he was shot he was either in a seated
12 -- sitting position or kneeling position?

13 A Yes.

14 Q And it is your opinion that whatever weapon was used
15 was within approximately 3 to 6 inches of his head?

16 A Yes.

17 Q And that he did not move once he was shot?

18 A Correct.

19 Q And that he could not have gotten up?

20 MR. MOORE: Your Honor, she's continuing --

21 MRS. MORGAN: I am regrouping. I'm sorry, Judge.

22 MR. MOORE: She is trying to lead the witness through
23 her testimony a second time. All of those questions have
24 been asked and answered.

25 THE COURT: Sustained.

1 Q Dr. Ross, had you had an opportunity to look at an
2 overview of the crime scene photos?

3 A Yes.

4 Q And did you review them in detail?

5 A Pretty much, yes.

6 Q All right. And were you aware of the final placement
7 of the victim's body?

8 A Yes.

9 Q And did you look at the various items that were found
10 along the area where the blood saturation was as to where
11 he was put?

12 A Yes.

13 Q Did you have an opinion as to the consistency of the
14 items found along the matter that was found along the way?

15 MR. MOORE: Your Honor, again, she's not a crime
16 scene expert.

17 THE COURT: Can you form an opinion based on the
18 photographs, Dr. Ross? If you can, I'll let you answer
19 that.

20 THE WITNESS: Yes.

21 Q Okay. Would you tell us what that is?

22 A I am not sure I understand. You mean the blood?

23 Q There was a blood area where --

24 A There was blood in one area where the body ended up
25 after the shooting.

1 MR. MOORE: Your Honor --

2 THE COURT: Hold on. What?

3 MR. MOORE: Your Honor, this is way outside of the
4 scope of the cross examination.

5 THE COURT: It is.

6 MR. MOORE: If she's going to go into different areas
7 then --

8 MRS. MORGAN: That's fine.

9 THE COURT: Sustained.

10 MRS. MORGAN: Thank you, Doctor.

11 THE COURT: You may step down. May she be released
12 from her subpoena?

13 MRS. MORGAN: Yes.

14 THE COURT: Mr. Moore?

15 MR. MOORE: Yes.

16 THE COURT: Dr. Ross, thank you for coming. Have a
17 safe trip back to Newberry. Next witness.

18 RICHARD JOHNSON, after being duly sworn,
19 testified as follows:

20 THE WITNESS: Richard Johnson.

21 DIRECT EXAMINATION

22 BY MRS. MORGAN:

23 Q And, Agent Johnson, you work for whom?

24 A South Carolina Law Enforcement Division, SLED.

25 Q How long have you been working with SLED?

1 A Approximately four years.

2 Q Prior to that, give us some of your experience in law
3 enforcement.

4 A I started out as a correctional officer at Allendale
5 Correction and a tenure at South Carolina State University
6 as a shift sargeant. From there I went back to the
7 Department of Corrections in Internal Affairs Investigator
8 and from there to SLED.

9 Q And tell us what are your -- what were -- back then
10 and now, what are your duties as a SLED agent?

11 A To investigate various crime as they arise.
12 Primarily the only thing I don't get too much involved
13 with is the drug cases.

14 Q All right. And are you located out of a certain
15 region?

16 A Yes, ma'am, out of the low country region which
17 consists of about twelve counties.

18 Q Is one of those counties Barnwell County?

19 A Yes, ma'am.

20 Q All right. And tell me as a field agent, do you
21 assist?

22 A We assist. Sometimes we take the lead. Although,
23 whenever I take the lead if I'm working with someone from
24 local law enforcement I try to work it in conjunction so
25 it's not necessary I'm a lead agent, but we share in ideas

1 and opinion on it.

2 Q All right. And were you called out on July 6 of
3 2007?

4 A Yes, ma'am.

5 Q Can you tell us --

6 A Actually, it was about July 7 approximately 1 or 1:30
7 when I got the call.

8 Q Tell me what you did.

9 A After arriving to Springfield at, I think, the
10 Highway 39 edisto river, the Barnwell Orangeburg County
11 line just kind of scanned over the crime scene. I don't
12 recall if crime scene had arrived yet. So, just kind of
13 stand clear until they got there to take a look at the
14 scene and kind of point us in a direction of where we
15 needed to go in and see if there was any evidence or
16 anything that we can utilize to help us determine who had
17 committed this crime.

18 After the completion of the crime scene, we didn't
19 have any idea who done it. The only thing we knew is that
20 Reverend McCreary was murdered and from what appeared to
21 have been a gunshot wound to the back of the head. We
22 talked with a few of the people on that day and that
23 night, rather, and tried to get some idea of who can we
24 interview to see where we needed to go from it.

25 Nevertheless, we -- Investigator Croft and myself, I

1 think we left after the crime scene had been completed
2 being processed. We left for a few hours, went back home,
3 and we came back and started talking with the family
4 members to determine if they were aware of anyone that
5 possibly had some problem with Reverend McCreary that, you
6 know, we might could start looking in direction because,
7 again, at that point the crime scene was unable to tell us
8 anything as to who done this. We only knew the what and
9 the where, but not the who. So --

10 Q Did you -- were you -- what time were you finished
11 the crime scene that morning?

12 A It was approximately -- I think I got back home at 6,
13 and I live in Bamberg. So, it's only -- the speed
14 limit -- it took me about maybe 20 or 30 minutes to get
15 home, if that. So, I would say about 5 or 5:30, somewhere
16 along that line.

17 Q Okay. You got home, regrouped a little?

18 A Yea. And we came back. I met Investigator Croft
19 back in Springfield. That's where we met with
20 Mrs. McCreary, her daughter, her son, and I think we may
21 have talked with the little nephew that was with them at
22 the time. I am not sure.

23 Q And you get statements. You're trying to figure out
24 what's going on. Do you have any leads at that time?

25 A No leads. We got a statement. We just didn't have

1 anything to work with.

2 Q Tell us what options -- what did you explore at that
3 juncture?

4 A I think -- and I would have to look back at Phillip,
5 Jr.'s statement to be certain. I think we interviewed
6 them individually.

7 Q Yes, sir.

8 A And I think Phillip, Jr., mentioned someone by the
9 name, I think, of forty or something like that. I don't
10 know.

11 Q What is that?

12 A There is someone who I think was dealing drugs or
13 something of that nature. So, we somehow ended up getting
14 a hold of his address where he probably lived at. We
15 explored that angle to see if we can locate him and try to
16 get a feel of what we needed to do or did we need to try
17 to approach this guy at this time or should we try and
18 wait until we get some more information. We certainly --
19 if he was involved, we didn't want to spook him without
20 having anything to work with.

21 So, we just kind of circled around in Springfield.
22 Whoever would talk to us, we just talked, you know. If
23 they could give us anything that we could work with, you
24 know, we accepted that. We didn't turn anyone down
25 because, again, that day after seeing the crime we

1 literally had absolutely nothing. In fact, I just gone
2 home and just prayed that something would just turn up.
3 We just didn't have anything to work with.

4 Q All right. And that continued for how long?

5 A All that day because that was the -- the 7th, I
6 think, was on a Friday.

7 Q Saturday.

8 A Saturday? The 6th was a Friday. The 7th was that

9 Saturday. So, I recall getting home, I think, about
10 5 o'clock. So, we kind of -- Jeff Crawford and I kind of
11 stayed at it until about 5 o'clock, around that timeframe,
12 searching for clues.

13 Q Did you get anything for Saturday, Sunday, Monday?

14 A Nothing on Saturday. Although, we had gotten with --
15 the Sheriff's Office had gotten with, I think, somebody
16 from their dive team or DNR. I am not quite sure which
17 division they were with at the time, and we met back down
18 there, I think, on a Monday.

19 Q Go ahead.

20 A Met back down with the dive team and pretty much
21 stayed down there the majority of the day while they're
22 diving the river to see -- looking for any clues, any
23 evidence, and, again, to no avail. There was nothing
24 there. We know at some point during one of the interviews
25 a red truck came into place. By that time a red truck

1 came into play. So, we were trying to figure out, all
2 right, this red truck, who could this possibly be, you
3 know?

4 And I think it may have been Tuesday. I am not
5 certain -- Tuesday or Wednesday and we ended up running
6 across some fellow in Springfield. I want to say he was
7 the owner of Goodland Barbeque. At some point the guy in
8 the red truck which turned out to be Robert Williams,
9 apparently, made a comment to him that he was down at the
10 fish creek fishing. He had seen Reverend McCreary, and I
11 can't recall if I got a hold of Robert or if Investigator
12 Crawford got a hold of Robert Williams so that we can sit
13 down and meet with him.

14 So, nevertheless, once we made contact with Robert
15 Williams, we ended up getting a statement from him. We
16 asked him if we had got one of our forensic artists to
17 meet with him, you think if he could talk with him and see
18 if we can get a composite sketch of William or the person
19 that was driving the black vehicle which after meeting
20 with Robert Williams that's how we knew a black or
21 dark-colored Chevy Avalanche was down in the area, and the
22 person -- at least the description of the person that was
23 driving that Avalanche.

24 During that time I think the Sheriff's Office ended
25 up getting driver's license photos or something of

1 Williams Owens and confirmed that he did, in fact, have a
2 dark-colored Chevy Avalanche. Nevertheless, while we were
3 -- after getting a date and time scheduled with the
4 forensic artist to meet with Robert Williams in
5 Springfield, either Jeff Croft or Agent Darnell called me
6 and said that Sheriff Carroll had gotten over the weekend
7 or had gotten a call at some point of someone saying they
8 heard something.

9 THE COURT: Whoa, whoa, whoa, whoa.

10 THE WITNESS: I'm sorry.

11 MRS. MORGAN: I was trying to give him hand signals,
12 Judge.

13 THE COURT: Not what somebody said or anything. No
14 hearsay.

15 THE WITNESS: Okay.

16 Q Just tell us what you did with your investigation.

17 A Yea.

18 Q As a result of whatever you did, what you did next.

19 A Okay. After getting the information of William Owens
20 being the person that we needed to look at while in
21 Springfield meeting with forensic artist for him to meet
22 with Robert Williams to get a composite drawing done up we
23 were -- we received additional information that another
24 caller had called in and --

25 THE COURT: Sir, as a result of that call, what did

1 you do?

2 THE WITNESS: We just continued with the sketch
3 drawing, and upon completion of the drawing we examined
4 the drawing and it was almost identical to the d.l.
5 photograph of William Owens and the drawing that Robert
6 Williams had done along with Agent Lynch.

7 Q And were you involved in any of that drawing process?

8 A Not the drawing process. We just met with Lynch,
9 told him it was a murder that we had been working on, and
10 he said if y'all want to stay, that's fine. If not -- we
11 left. We went out in the gazebo because it was nice
12 outside. So, we just went out and hung on the outside
13 while he did what he needed to do.

14 Q All right. Then you did the composite and you turned
15 your focus on to what?

16 A On to William Owens.

17 Q All right. And tell us what you did next in your
18 investigation.

19 A After all of us being together again and looking at
20 what we had and the information that had came in, we
21 started looking for William Owens. While I think Agent
22 Darnell and some of the other deputies and Investigator
23 Croft was heading to Williston to locate William Owens
24 they ran across him and he --

25 MR. MOORE: I don't know --

1 Q You weren't involved?

2 A Okay.

3 MR. MOORE: You weren't with him.

4 THE COURT: Just what you know of your own personal
5 knowledge.

6 THE WITNESS: Okay.

7 Q Let's -- just keep going. If you would, Agent
8 Johnson, we can expedite it along.

9 THE COURT: Please.

10 THE WITNESS: Well, we --

11 THE COURT: Hold on a second. We have been through
12 all of this.

13 MRS. MORGAN: Yes, we --

14 THE COURT: It is cumulative.

15 MRS. MORGAN: I am trying to move him along.

16 THE COURT: Well, just ask him specific questions.

17 Q So, you were interviewing people and were you
18 involved in a search warrant of William Owens' house?

19 A That's correct. Yes, ma'am.

20 Q All right. Tell us about that search warrant.

21 A We obtained a search warrant to search William Owens'
22 house, and we conducted the search. We went through it.

23 What we were looking for was pretty much any evidence that
24 would by, I guess, conducive to the type of incident that
25 we had been working. At the time we were not aware that

1 we were looking for catawba worms or any fishing utensils
2 or anything of that nature.

3 So, during the search and after getting -- going to
4 Maryland where we met with Renee McKinney and after
5 interviewing her, we realized that we looked at the
6 catawba worms sitting on the countertop near the microwave
7 and went back and reviewed the photos and, boom, there
8 they were, but, again, when we initially went in the house
9 we just didn't have a clue that a catawba worms came into
10 play -- that they were significant to this investigation.

11 Q All right. So, you were present when they conducted
12 the initial search warrant and actually saw the bucket and
13 the cricket -- the catawba worms?

14 A We saw the catawba worms in the cricket container. I
15 don't recall -- I mean, there were several five-gallon
16 buckets out there. I can't tell you which one belonged to
17 Reverend McCreary or not.

18 Q But you saw at the search warrant 5-gallon drums and
19 a container of catawba worms?

20 A Yes.

21 Q All right. You did that search warrant. Then you
22 went to Maryland?

23 A I went to Maryland.

24 Q Why did you go to Maryland?

25 A After we received information that William Owens had

1 been at the river and that his girlfriend was with him and
2 that she had gone to Maryland or was taken to Maryland by
3 the sister, we took off to Maryland to see if we can meet
4 with the sister.

5 Q Okay. And did you -- give me one second. And
6 that's -- I apologize. Agent Johnson, prior to going to
7 Maryland did you interview the Defendant William Owens?

8 A Yes, we did.

9 Q What did you do -- tell us -- was he in custody?

10 A At the time he was not in custody, although he was at
11 the Sheriff's Office. He had not been arrested or
12 anything at the time.

13 Q Did you actually read him his miranda rights?

14 A Yes, we did.

15 THE COURT: Y'all look up here a minute.

16 (Whereupon, a bench conference was held.)

17 THE COURT: Move to another area, please, and we'll
18 come back to that.

19 Q All right. You went to Maryland?

20 A Uh-huh.

21 Q And you went to Maryland and were -- your
22 investigation led you to Ms. McKinney?

23 A That's correct.

24 Q And tell us -- tell us when you went -- I think, is
25 it Thursday, Friday?

1 A I think I went on a Friday.

2 Q Okay. And you went to Maryland?

3 A Uh-huh.

4 Q Who went to Maryland?

5 A Myself, Investigator Jeff Croft, and Agent George
6 Darnell.

7 Q Where in Maryland did you go?

8 A Salisbury County, Maryland. I think it's Wicomico
9 County.

10 Q All right. And where --

11 THE COURT: Hold on a second. Ma'am, I don't think
12 anything is funny. Please behave yourself or get out.

13 Q And you went and when did you get there?

14 A I think it was around 1 o'clock on Saturday morning.
15 We left late Friday night. So, I think it was around
16 1 o'clock. It was about a 10-hour drive.

17 Q All right. And you interviewed Ms. McKinney.

18 A Yes, not that morning. Not one in the morning. We
19 interviewed her during the day somewhere around 9 o'clock
20 that Saturday morning.

21 Q And you interviewed her how long?

22 A Oh, it was a period of time.

23 Q And you took an initial statement from her?

24 A That's correct.

25 Q And then -- and you arrested her?

1 A Yes. We ended up arresting her on a murder charge
2 which is also at the point where we realized that we
3 should have been looking for catawba worms as well.
4 That's when she -- we received that information.

5 Q And did you also at that juncture get a warrant for
6 William Owens?

7 A That's correct. Well, I didn't sign the warrant. I
8 was in Maryland at the time.

9 Q All right. But, you were aware --

10 A Yes.

11 Q -- in your investigation they were simultaneously
12 getting a warrant for Mr. Owens?

13 A Uh-huh.

14 Q Then what did you do, Agent Johnson?

15 A We had to wait around or stayed over the weekend in
16 Maryland for an extradition hearing, and Renee voluntarily
17 waived extradition and came back with us. Got back to
18 Carolina. She was booked in at the Barnwell County
19 Detention Center. Yea, Barnwell County Detention Center.
20 She was subsequently, I think, polygraphed.

21 Q After --

22 THE COURT: Ladies and Gentlemen, just disregard
23 that. That's not relevant in the trial of this case.
24 It's not admissible.

25 MRS. MORGAN: No, it's not.

1 Q Agent Johnson, did you interview her children?

2 A Yes, we met with the children and the grandparents
3 and interviewed both boys in the presence of the
4 grandparents.

5 Q And got information about the catawba worms?

6 A Catawba worms. There were -- I think one of the kids
7 mentioned --

8 THE COURT: Sir --

9 THE WITNESS: I'm sorry.

10 THE COURT: -- don't talk about what they said.

11 THE WITNESS: Yes, we got information about the
12 catawba worms.

13 Q All right. And you interviewed them. What else did
14 you do at that time?

15 A After interviewing the kids -- we had already
16 requested phone records of Jeannia Sweat, I think William
17 Owens. At some point after that interview we were able to
18 review the phone records. Again, now, initially we were
19 looking at Renee as a co-Defendant of murder and after
20 looking at the cellphone records, the information provided
21 by the sister which is Jeannia Sweat, information provided
22 by the sons and information initially provided by --

23 Q And you were comparing?

24 A Yea.

25 Q You had had interviews with Sweat and all of the

1 people that have already testified. So, we don't have to
2 go through all of that. You also were trying to
3 corroborate things by cellphone records; is that correct?

4 A Absolutely.

5 MRS. MORGAN: And, Judge, for the record so we can
6 expedite this matter the various cellphone records are
7 being consented to.

8 THE COURT: So we don't have to bring the the phone
9 company and all of that?

10 MRS. MORGAN: No, we do not. No, sir.

11 THE COURT: They're stipulating that these records
12 are from the phone company and are pertinent to this
13 trial; is that correct, Mr. Moore?

14 MR. MOORE: That's correct. Are we doing the whole
15 time period or just the pertinent time period?

16 MRS. MORGAN: I was going to do the pertinent part.

17 THE COURT: Mr. Foreman, Ladies and Gentlemen, the
18 stipulation simply means that both sides agree that that's
19 not a fact that's in issue. They agree that that is the
20 correct phone records.

21 Q And you obtained three different phone records; is
22 that correct?

23 A That's correct.

24 Q One of them being Jeannia Sweat's number?

25 A Uh-huh.

1 Q The other one being Ringo Sweat's number?

2 A Yes, ma'am.

3 Q And also William Owens?

4 A That's correct.

5 Q And why was that relevant? What was causing you
6 concern that you -- causing the investigative concern for
7 you? Why were you looking at them?

8 A Well, the initial information was that William was at
9 the river with his girlfriend. So, we needed to confirm
10 or disconfirm if his girlfriend who we later identified to
11 be Renee was at the river with him.

12 Q All right.

13 A The information that we received suggested that, no,
14 but, again, we needed to confirm that, and we needed more
15 than just hearsay to say that she was or was not there.
16 When we looked at the phone records through one of the
17 interviews it was concluded that there was a call made
18 from Jeannia Sweat's house to William Owens' cellphone,
19 and that was around, I think, 11.

20 Q Did you know initially what time that was? Before
21 looking in the records, did you know what --

22 A No. Not before we --

23 Q What were you trying to identify, Agent Johnson?

24 A We were trying to identify, basically, the call
25 pattern to try to see if any calls was made while at the

1 river, if Harriet Renee was at the river with William or
2 who was calling -- was someone there to meet? Whoever did
3 whatever. Just try to connect the numbers with someone.

4 Q You were trying to make sense of what you gained
5 from --

6 THE COURT: Mrs. Morgan, you're leading. Please.

7 MRS. MORGAN: I know. I'm just trying --

8 MR. MOORE: Your Honor, I am not sure that he can
9 look at those phone records and tell where anybody was.

10 THE COURT: That's exactly right.

11 MR. MOORE: That's triangulation. If he's done that,
12 I'd like to see it.

13 Q Agent Johnson, did you look to see if there was a
14 phonecall to William Owens' cellphone --

15 A Yes.

16 Q -- from the house of Jeannia Sweat?

17 A Yes.

18 Q Why did you do that?

19 A Because the information we received.

20 Q From who?

21 A From Harriet Renee.

22 Q And whom else?

23 A And Jeannia.

24 Q And who else?

25 A I think Jeannia told us that -- yea, I'm sorry again.

1 Yea, Jeannia, Harriet Renee, one of the --

2 Q Who supposedly made the call?

3 A -- boys called. I think it may have been the oldest
4 one. I am not certain.

5 Q So, were you able to look -- review the records of
6 William Owens and determine the call made from Jeannia
7 Sweat's house to William Owens' phone?

8 A That's correct, yes.

9 Q And what time was that?

10 A Approximately 11:05 if memory serves me correct and
11 that was on the 6th -- July 6.

12 Q All right. And that's 11:05?

13 A Uh-huh.

14 THE COURT: Am or pm.?

15 THE WITNESS: Am. I'm sorry -- pm.

16 Q 11:05 there is a call from Jeannia Sweat's house to
17 the cellphone of William Owens. You don't know where
18 anybody is at that time, do you?

19 A No.

20 Q I mean, where William's cellphone is?

21 A No, ma'am.

22 Q Why was that relevant at 11:04 to you in your
23 investigation?

24 A Well, again, now, the initial information was that
25 Harriet was present, okay, and based on the other

1 information that we received from everyone else, no. So,
2 with those phone records, we were able to determine --

3 THE COURT: No, sir.

4 MR. MOORE: Objection, Your Honor. You can't tell
5 who was on the phone.

6 THE COURT: Objection sustained.

7 Q Was it relevant to anything else that your
8 investigation in terms of crime -- reporting of the crime
9 or anything else?

10 A Yes, because we weren't notified until after midnight
11 on June 6 and the call came in from Jeannia Sweat's house
12 to William Owens' cellphone at 11:05. So --

13 THE COURT: Don't make any assumptions.

14 THE WITNESS: Okay.

15 THE COURT: Just report the facts.

16 Q All right. So, the call from the house to the
17 cellphone was 11:05?

18 A 11:05.

19 Q All right. Did you -- were you also trying to
20 determine any timeframe in regards to calls made from
21 Jeannia Sweat's phone to William Owens' phone earlier on
22 July 6?

23 A Yes.

24 Q And what do the phone records reflect as to calls
25 made to -- from Jeannia Sweat's phone to William?

1 A I need to pull back that record again, but --

2 THE COURT: Didn't y'all have a stipulation as to all
3 the phonecalls?

4 MRS. MORGAN: I think we've got it, Judge.

5 MR. MOORE: Yes, sir, we do.

6 THE COURT: Won't that make it a lot clearer? I'm
7 going to let him read the stipulation.

8 MRS. MORGAN: No, we don't have --

9 THE COURT: Either you got a stipulation or you
10 don't.

11 MR. MOORE: We do on the actual records themselves,
12 but I don't on her notes.

13 THE COURT: What are y'all -- can y'all stand right
14 on over there and decide what you're going to stipulate
15 on?

16 MR. MOORE: We could mark if we could get the record
17 probably with a magic marker. I don't know what she wants
18 to do.

19 THE COURT: Very well. Mrs. Morgan, move along. He
20 can't look at your notes.

21 MRS. MORGAN: Judge, this is his notes that he did --

22 THE COURT: I'm sorry.

23 MRS. MORGAN: -- based on his review. That's not my
24 notes. I wouldn't do that, Your Honor.

25 THE COURT: Mr. Moore just said they were your notes.

1 MRS. MORGAN: They're not mine. No, sir. I would
2 not do that.

3 THE COURT: I know that. Listen, don't -- both of
4 these lawyers wouldn't do anything improper. They just
5 said it was her notes and she was handing them up.
6 Mr. Moore was objecting. That's why I said that. Both of
7 them have conducted themselves way up here. No problem.

8 Those are your notes, Mr. Johnson?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. You can review them and
11 refresh your memory.

12 Q Agent Johnson, did you review the records -- the
13 telephone records that you received pursuant to your
14 investigation to look and see relevant phonecalls based on
15 your understanding of cellphone to cellphone and try to
16 make sense of the interviews you conducted with the
17 various people to determine the timeframe of those
18 phonecalls?

19 A Yes, I did.

20 Q All right. And based on your interviews with
21 Mrs. Sweat and Ms. McKinney, did you indicate that there
22 was phonecalls made from Mrs. Sweat's phone to William
23 Owens' phone when they were gathering up stuff at the
24 house?

25 A That's correct.

1 Q All right. And could you look at those records and,
2 please, sir, tell us the relevant calls or the calls that
3 indicate a call from Jeannia Sweat's cellphone to William
4 Owens' cellphone on the afternoon early evening of July 6?

5 A Okay.

6 THE COURT: And just give us the times of the
7 phonecalls and from whom to whom without any deriving any
8 opinions.

9 THE WITNESS: From 7 -- on July 6 of '07, 7:09,
10 received a call from Jeannia Sweat to William Owens'
11 cellphone.

12 Q And it lasted how long?

13 A Okay. I didn't wrote down the time. I didn't look
14 at the duration of the call on it.

15 THE COURT: Just give us the names of the calls.

16 THE WITNESS: The time was at 7:09, but the duration
17 I didn't write down.

18 Q All right. And then there was -- was there another
19 call that evening that the records reflect between Jeannia
20 Sweat's cellphone to William Owens?

21 A That was at 8:11. Jeannia Sweat's to William Owens'
22 cellphone.

23 Q All right. That is a second one that early evening
24 and that was at 8:11 PM --

25 A Uh-huh.

1 Q -- on July 6?

2 A Yes.

3 Q And that duration?

4 A Again, this was 59 seconds. For some reason this one
5 stood out at me.

6 Q All right. Is there any more phonecalls between that
7 you were trying to verify?

8 A Yes. There is one at 8:33 from William Owens'
9 cellphone to Jeannia Sweat's cellphone and 9:19, and,
10 again, this is p.m. from William Owens' cellphone to
11 Jeannia Sweat's house number; at 9:54 from William Owens'
12 cellphone to Jeannia Sweat's home number; and at 11:05
13 from Jeannia Sweat's home to William Owens' home on July
14 6.

15 Q Okay. All right. And did you also review the
16 records to indicate any calls from Ringo to -- Ringo to
17 Jeannia on the Saturday?

18 A Yes. I think that's in my other -- I got a bad habit
19 of just writing on pieces of paper.

20 Q Yes, you do.

21 THE COURT: Well, it might be a good habit.

22 Q Which one might it be? Okay. Tell us the
23 phonecalls --

24 A Okay. On --

25 Q What relevant phonecalls -- meaning phonecalls were

1 you able to determine between those three parties or any
2 other on July 7?

3 A Yes. The call from Ringo Sweat to Jeannia Sweat or
4 Jeannia Sweat to Ringo Sweat, husband and wife.

5 Q At what time?

6 A At 7:14.

7 THE COURT: On what date?

8 THE WITNESS: July 6, 2007.

9 Q And that's 7:14 in the morning?

10 A P.m.. Sorry.

11 Q All right. And on what day?

12 A July 6.

13 Q Okay. That was July 6. And then how about July 7?

14 A July 7 there were multiple calls.

15 Q If you just want to go through July 7 and not tell us
16 necessarily -- can you give us the flow of what happened
17 July 7 -- based on your interviews with all of these
18 people were you looking at confirmation that phonecalls
19 were made?

20 A Yes. Renee was heading back to Maryland. We wanted
21 to see if there was any connection, any communication,
22 whatever, and, so, reviewing the phone records we was
23 hoping would give us some indication.

24 Q And did your phone records corroborate the various
25 calls that we've already heard testified to?

1 A Yes.

2 Q And they corroborated it in terms of Friday and
3 Saturday?

4 A That's correct.

5 Q And the timeframe of the call from -- that Jeannia
6 testified that she called Ringo about the money -- picking
7 up the money on July 6 was at 7 what p.m.?

8 MR. MOORE: Wait a minute. Now, he can't say what it
9 was all about.

10 THE COURT: That's right. He can't.

11 MRS. MORGAN: I got you. Okay.

12 THE COURT: All you can ask him is what's on that --
13 what he found. He can't interpret the phonecalls.

14 MRS. MORGAN: He can corroborate the phonecalls were
15 made.

16 THE COURT: Well, that's for the jury to do.

17 MRS. MORGAN: All right.

18 THE COURT: Like I did Mr. Moore yesterday.

19 Q All right. Agent Johnson, you did research various
20 telephone records; is that correct?

21 A That's correct.

22 Q And you also looked at the phone records. Did you
23 review them for any calls from Renee to William Owens the
24 date of the search warrant?

25 A Yes, that's correct.

1 Q What day would that be?

2 A July 12.

3 MR. MOORE: Your Honor, I don't know that we've
4 established that Renee had a phone or that we had any
5 records from her phone.

6 THE COURT: She testified yesterday. Overruled. She
7 testified yesterday she called him.

8 MR. MOORE: We don't have any records of her phone
9 records and I don't think he does either.

10 THE COURT: Do you have any records?

11 MR. MOORE: We don't know what number she would have
12 been calling from if she called.

13 THE WITNESS: I don't have any records, but I know
14 what number she would have been calling from.

15 THE COURT: If you don't have records, how --

16 THE WITNESS: I don't have her records from where
17 she's calling from, but I have William Owens' record to
18 see the numbers.

19 MR. MOORE: But you don't know the other side of that
20 number.

21 THE COURT: Testify as to what you got.

22 Q Can you tell us -- phone records, William Owens, do
23 you know -- were you able to determine whose numbers came
24 in to William Owens' phone or went out from William Owens'
25 phone the time of the search warrant at his house?

1 THE COURT: On what day?

2 Q On July?

3 A Twelve.

4 Q The 12th.

5 A There were several calls from Maryland which after
6 meeting with the sergeants and the -- Renee's boys, we
7 were able to determine their phone numbers. So, as we are
8 looking at William Owens --

9 MR. MOORE: Objection, Your Honor. That's not in the
10 phone records.

11 THE COURT: Well, he's -- it is part of his
12 investigation. Overruled.

13 MR. MOORE: He said it's from Maryland.

14 THE COURT: Overruled. Overruled.

15 MR. MOORE: Thank you, your honor.

16 THE WITNESS: As we are reviewing William Owens'
17 phone record then there is the Maryland number showing up
18 and, again, which corroborates that while we were
19 communicating and talking with William Owens we know he
20 had been receiving several phonecalls while we were
21 talking to him because the phone kept going off. So, we
22 confirmed that that is who had been calling through the
23 phone records.

24 Q All right. And did -- and you reviewed them among
25 all of the various parties as to try to find out anything

1 else that was relevant in regards to communication?

2 A That's correct.

3 Q And -- all right, Agent Johnson. You corroborated or
4 looked through and reviewed the phone records. You have
5 interviewed people. Did you mention the search warrant
6 and the catawba worms? Were you involved in the other
7 search warrants of the Avalanche or a second search
8 warrant on William Owens' house?

9 A I think the second search warrant we was still in
10 Maryland.

11 Q And were you there when they searched his vehicle?

12 A Yes.

13 THE COURT: Searched the what?

14 MRS. MORGAN: Vehicle.

15 Any other search warrants that you were involved in
16 in the case?

17 THE WITNESS: I think we did an additional search
18 warrant to the vehicle.

19 Q Okay. All right. But other than that, you were
20 finished with those search warrants?

21 A Yes.

22 Q You were focusing on Mr. Owens. You conducted some
23 additional interviews, is that right, with other people?

24 A That's correct.

25 Q All right. And were you involved in -- and did you

1 receive a call back on November 13, 2007 in regards to
2 some jewelry?

3 A Yes. I am not sure if Sheriff Carroll or Sheriff
4 Darnell or either Jeff Croft called me, but I received a
5 call.

6 Q And what were you -- what did you do after you
7 received the call?

8 A Myself, Agent Darnell, Croft, Kent Kirkland, and
9 Sheriff Carroll, we proceeded to Jeannia Sweat's house
10 where we met with them and obtained a pink little bag with
11 some jewelry in it. Agent Darnell flipped the bag over
12 and we examined the jewelry that was in it. We then took
13 a bracelet and a necklace with a cross on it --

14 Q Okay.

15 A -- and met with Mrs. McCreary.

16 Q Okay. Okay. Let me stop you for a second. I'll
17 show you what's introduced as State's 11.

18 A Uh-huh.

19 Q Can you tell us about that?

20 A Yes. This is the bag that we attained from Jeannia
21 Sweat. This bag was -- well, it was submitted to our SLED
22 forensic lab in Columbia for processing to see if we can
23 get any DNA off of it or anything.

24 Q Again, how about 12A and 12/12?

25 A These are the jewelry that was in the bag that was

1 dumped out on the counter.

2 THE COURT: 12/12?

3 MRS. MORGAN: It's 12 and 12A. We separated the
4 jewelry with consent the cross and the -- I mean the
5 necklace.

6 THE WITNESS: These are the jewelry that was located
7 inside of the pink bag.

8 Q And you took actually custody of it?

9 A Yes, we did.

10 Q All right. And did you separate what's in 12 from
11 12A?

12 A Yes, I did.

13 Q Tell us -- you took what is in 12A?

14 A 12A is a matching bracelet and necklace with a cross
15 on it, gold in color.

16 Q And what did you -- what did you do with the cross --
17 can you tell us the shape -- the condition it's in? Are
18 they all --

19 A There was a piece like where, I guess, where you hook
20 it at, hook it on was broken and myself and Agent
21 Darnell -- I think it was Agent Darnell -- met with
22 Mrs. McCreary and her daughter.

23 Q Okay. And you took it for them -- to them?

24 A Yes.

25 Q Okay.

1 Reserving the right to recall him. Subject to my
2 right to recall.

3 THE COURT: Yes, ma'am. We had a conference at the
4 bench and a side bar and there is one issue that I have to
5 decide on before he can testify about one other matter.
6 We're going to do that over lunch so we won't keep y'all
7 waiting. Fair enough?

8 Mr. Moore, let's go ahead and cross him on every
9 issue except for that and then we'll come back when we do
10 the procedural matter outside of the presence of the
11 jury -- the Jackson v. Denno. Then we can do that after
12 lunch.

13 CROSS-EXAMINATION

14 BY MR. MOORE:

15 Q Mr. Johnson --

16 A Yes, sir.

17 Q -- you're pretty much in charge of this
18 investigation?

19 A No, sir.

20 Q Who is?

21 A It was collaborative effort between myself and the
22 Barnwell County Sheriff's Office.

23 Q You're the lead investigator?

24 A As I stated earlier I wouldn't consider myself, I
25 guess, the lead because I like to work in conjunction with

1 individuals that know the area. They're more familiar
2 with Barnwell County than I am.

3 Q As far as deciding which witnesses to talk to, did
4 you make that decision?

5 A That was a joint effort.

6 Q Were you involved in that joint effort?

7 A Yes.

8 Q And would you say -- I believe you said that y'all
9 followed up on all your leads and did a thorough
10 investigation?

11 A We made -- every lead that came in to us, we did
12 something to either to try and show that it was factual or
13 non-factual.

14 Q Okay. And the very first day -- let's forget about
15 the crime scene for the moment, but let's go forward. The
16 first day, who did you start talking to?

17 A Mrs. McCreary.

18 Q And you got some information from her?

19 A Uh-huh.

20 Q And did you get any information that would be useful
21 in pointing to any suspects at that time?

22 A At that point in the investigation any information
23 was -- we considered to be useful. Again, we just didn't
24 have anything at that point. So, whatever came our way,
25 we tried to explore it to see where it would lead us at.

1 Q Who did you talk to next?

2 A I am not sure if it was the Reverend McCreary's
3 daughter or the son, but we talked to them as well.

4 Q And you mentioned the little bit about the son gave
5 you some information. Did the daughter give you anything?

6 A Nothing that was relevant.

7 Q Let's talk about the son a little bit. Tell me what
8 all the son told you.

9 A I would need to look at his statement for everything.

10 MRS. MORGAN: Judge, I am going to object. He can't
11 tell him what he said. That's hearsay.

12 THE COURT: Well, he can look at the statement and
13 refresh his memory as to what leads the son gave.

14 MRS. MORGAN: But he can't --

15 THE COURT: No, he can't.

16 That is statement of the son. Review that and then
17 you can tell us after you refresh your memory any leads
18 that you developed as a result of your conversation with
19 the son.

20 MR. MOORE: Actually, Your Honor, this is not the
21 son's statement. This is Mr. Johnson's memorandum of the
22 interview with the son.

23 THE COURT: That's fine. It refreshes his memory.

24 Q See if you can refresh your memory as to what you
25 learned of that investigation.

1 THE COURT: When you do that, as a result of that
2 interview with the son what leads did you follow up on?

3 THE WITNESS: Okay.

4 Q Are those your notes?

5 A Yes, they are.

6 Q As a result of the interview with the son did you
7 learn whether or not the son was a member of any --

8 THE COURT: No.

9 MRS. MORGAN: Objection. Objection, Your Honor.

10 THE COURT: That is totally irrelevant.

11 MR. MOORE: Your Honor, I can tie it in.

12 THE COURT: We'll do that outside of the presence of
13 the jury.

14 MR. MOORE: I'd like to proffer the evidence.

15 THE COURT: Mr. Foreman, Ladies and Gentlemen, y'all
16 step out just for one second.

17 (Whereupon, the jury exited the courtroom at 12:11.)

18 THE COURT: All right. Mr. Moore, ask your
19 question.

20 IN-CAMERA PROFFER EXAMINATION.

21 BY MR. MOORE:

22 Q As a result of your interview with the son, did you
23 learn whether or not he was a member of an organized
24 group?

25 MRS. MORGAN: I am objecting.

1 THE COURT: Well, he is doing a proffer.

2 MRS. MORGAN: Okay.

3 THE WITNESS: From the son, yes.

4 Q What was the name of that group?

5 A He mentioned folk nation.

6 Q Did he say that he had a position in the folk nation
7 group?

8 A I think it was a high ranking lieutenant or
9 something.

10 Q I believe your report says he was the leader of the
11 group in Springfield?

12 A Yea. Yes, sir.

13 Q And what is the folk nation?

14 A It's a gang organization.

15 Q You're familiar with it?

16 A Somewhat, pretty much.

17 Q Okay. And did you -- during your investigation was
18 there ever any indication that this killing may have been
19 gang related?

20 A At the initial onset theory was just coming up. You
21 know, what possibly could have happened? We noticed under
22 the bridge there looked to be -- there was what looked to
23 have been gang graffiti. I can't recall if it was folk or
24 blood graffiti or not, but we know there was some gang
25 graffiti in that area, but having worked in corrections as

1 an investigator and working a lot of violent crimes in
2 prison which were generally associated with gang
3 involvement, Reverend McCreary's scene didn't quite fit
4 that scenario. My experience in that area has been --

5 THE COURT: No, sir.

6 THE WITNESS: Okay. I'm sorry.

7 THE COURT: Go ahead. You can say your experience --

8 THE WITNESS: Okay.

9 THE COURT: -- but we're so far afield.

10 THE WITNESS: My experience has been gang members was
11 going to try and punish, make a statement. This was --
12 the scene didn't reflect any of that. It was just up
13 under the bridge there was some indications of gang
14 members hanging in that area from time to time.

15 THE COURT: Aside from the scene and from talking to
16 the son, did you have any leads to indicate that it was a
17 gang-related activity?

18 THE WITNESS: No.

19 THE COURT: Did you follow any leads to that effect?

20 THE WITNESS: We followed what the son told us in
21 search of this other person.

22 THE COURT: What did the son tell you?

23 THE WITNESS: That someone by the name of forty-five
24 have made the comment to him -- I think to him -- that if
25 anyone told on him about his drug activity his words was I

1 would kill them or kill them in the head.

2 THE COURT: Was forty-five a gang member?

3 THE WITNESS: I don't know. We never did made
4 contact with him. We just identified his location or his
5 address -- I'm sorry -- and I think we ended up getting
6 the the name of him.

7 THE COURT: Mr. Moore, I didn't mean to interrupt
8 your cross.

9 MR. MOORE: Yes, sir.

10 Q And, so, you had graffiti at the bridge. You had a
11 son who admits he is the leader of the folk nation in
12 Springfield?

13 A Uh-huh.

14 Q And you had information from the son that forty-five
15 -- you identified -- later learned his name, did you not?

16 A Yes.

17 Q What was his name?

18 A What we ended up with was Cedric Thomas.

19 Q Cedric Thomas was the guy known as forty-five?

20 A Uh-huh.

21 Q Did you ever interview Cedric Thomas?

22 A No, sir.

23 Q Did you ever follow up to determine whether Cedric
24 Thomas was a member of the gang or gang related?

25 A No, sir.

1 Q But he was put forth -- what did -- somebody that the
2 son thought might have killed his father?

3 A You said what or who?

4 Q Somebody that the son thought might have killed his
5 father.

6 A Yes, according to the son.

7 Q You never talked to him?

8 A No.

9 THE COURT: I'll let you go into the fact that he had
10 a lead on forty-five. He never talked to him. This thing
11 with the folk nation and the gang, I deem that to be
12 irrelevant -- not relevant to trial in this case.

13 MR. MOORE: I have another witness to call on that
14 issue.

15 THE COURT: Call him.

16 MRS. MORGAN: Judge, can I --

17 MR. MOORE: Sheriff Carroll.

18 THE COURT: Hold on a second. Yes, ma'am?

19 MRS. MORGAN: Judge, I just wanted to ask him on the
20 folk nation issue --

21 THE COURT: I have ruled in your favor.

22 MRS. MORGAN: I know. I just wanted to --

23 THE COURT: Yes, ma'am. Go ahead.

24 IN-CAMERA PROFFER CROSS EXAMINATION.

25 BY MRS. MORGAN:

1 Q When you interviewed the son, did he indicate that he
2 was a present member?

3 A No, he wasn't a present member. He denounced it
4 several months ago.

5 Q And he, in fact, told you when he had last been
6 involved?

7 A It was, oh, several months.

8 Q March?

9 A Yea. Several months back, March 07.

10 MRS. MORGAN: Thank you.

11 THE COURT: All right. Step down just a second.

12 Sheriff Carroll, come around, please. Just have a
13 seat. Sheriff Carroll, you're still under oath.

14 ED CARROLL, after being previously duly sworn,
15 testified as follows:

16 IN-CAMERA PROFFER DIRECT EXAMINATION.

17 BY MR. MOORE:

18 Q Sheriff Carroll, you are the Sheriff of Barnwell
19 County and you --

20 THE COURT: All that's in the record. Ask him about
21 your proffer.

22 Q Did you have information related to any gang
23 involvement in this killing?

24 A Mr. Moore, as I told you I review cases -- so many,
25 but I was briefed on this case a number of times. Yes,

1 sir, I was, of course, briefed that the son said if
2 anybody -- that he didn't know directly, but that he did
3 give a street name or whatever, but I couldn't tell you in
4 the testimony earlier or now whether he had been
5 interviewed or not. I didn't remember.

6 Q Did you not ever tell me at one time that you thought
7 this case was gang related?

8 A Mr. Moore, I wouldn't call you a story-teller. I may
9 have, and it may have been based in the early
10 investigations as to what we saw there.

11 THE COURT: Mr. Moore, do you have any evidence that
12 it is? I mean, this is like a third party --

13 MR. MOORE: Your Honor, there is a case recently of
14 United States Supreme Court that's thrown out the South
15 Carolina line of cases on that that says that we're
16 entitled to present a complete defense and --

17 THE COURT: Well, you just can't start pulling stuff
18 out the air.

19 MR. MOORE: I understand that, Your Honor, and it's
20 not being pulled out of the air. I am just relating --

21 THE COURT: Are you going to testify?

22 MR. MOORE: I can't. I mean, I'll be happy to
23 testify that the Sheriff told me that this was -- he
24 thought initially this was a gang-related killing.

25 THE WITNESS: I won't doubt that I didn't tell you

1 that -- I don't remember -- you know, you and I have
2 talked a good bit, and at the beginning I could not tell
3 you that it was not, you know.

4 THE COURT: Well, as the investigation has
5 progressed, is there any evidence whatsoever in your mind
6 that it's gang related?

7 THE WITNESS: To me?

8 THE COURT: Yea.

9 THE WITNESS: I have no evidence to prove that; no,
10 sir.

11 THE COURT: All right. Anything else on the proffer?

12 MR. MOORE: Nothing further.

13 THE COURT: All right. You may step down.

14 Mr. Moore, my ruling is that you can explore
15 forty-five, but the fact that the son one time in his life
16 was a member of a folk nation, I don't see that to be
17 relevant in this case. I respectfully will not allow you
18 to go into that.

19 MR. MOORE: Thank you, Your Honor.

20 THE COURT: You're protected absolutely on the
21 record.

22 MR. MOORE: Yes, sir.

23 THE COURT: Bring them back in. We're going to go to
24 12:30. We're going to take a break for lunch.

25 Mr. Johnson, come on back up.

1 (Whereupon, the jury came into open court at
2 approximately 12:20.)

3 (Whereupon, a bench conference was held.)

4 THE COURT: Mr. Moore, you may continue.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. MOORE:

7 Q Mr. Johnson, we were talking, I believe, about your
8 interview with Mr. McCreary -- Phillip McCreary, Jr., the
9 son of the victim?

10 A Yes.

11 Q And he gave you the name of somebody. Do you still
12 have your notes with you?

13 A Yes, sir.

14 Q The name of a possible suspect; is that right?

15 A That's correct.

16 Q What was that person's name?

17 A Cedric Thomas.

18 Q And that's also the person known as forty-five?

19 A Yes, sir.

20 Q Did he tell you what -- why he thought Cedric Thomas
21 might be a suspect?

22 MRS. MORGAN: Judge, I still think that's hearsay.

23 MR. MOORE: Part of his investigation.

24 THE COURT: Overruled.

25 Q Did you learn as a result of his interview why you

1 thought Cedric Thomas could be a possible suspect?

2 A At this juncture I didn't really know what to think.
3 We was just as we received information or possible leads,
4 we followed it.

5 Q What information did you receive from the son?

6 A Cedric Thomas.

7 Q What about Cedric Thomas?

8 A Cedric Thomas had been selling drugs. He's made
9 several comments that, basically, if anyone tells on him
10 he could kill them; he would do this or do that.

11 Q Did he say how he would kill them?

12 A In the head.

13 Q That he'd shoot them in the head; right?

14 A No. He said he could kill them in the head.

15 Q Kill them in the head. That's what the son told you
16 that Cedric Thomas had said?

17 A Yes.

18 Q Okay. And did the -- and the reason he brought up
19 Cedric Thomas is because you asked him if he knew of
20 anybody that might kill his father; right?

21 A Well, I think my question to him was do you have any
22 idea who would harm your father? Why would this happen?
23 Is there anything you can tell us?

24 Q And he gave you the name of Cedric Thomas?

25 A Yes.

1 Q And he said that Cedric Thomas said he'd kill them in
2 the head if anybody messed with his drug dealing?

3 A Yea.

4 Q Now tell me when you interviewed Cedric Thomas.

5 A We never did.

6 Q You got a man shot in the head and you got the man's
7 son that tells you he's the one who thinks he did it --

8 THE COURT: No, sir. He didn't say that now.

9 Q Thought he could have done it.

10 THE COURT: No, sir, Mr. Moore. Don't
11 mischaracterize the evidence.

12 What did the son tell you, so we'll get it straight?

13 THE WITNESS: Phillip McCreary said he believed that
14 forty-five might have killed his father because forty-five
15 have stated in the past that if anyone told him about his
16 drug activity he could kill them in the head.

17 MR. MOORE: Based on that...

18 Q Based on that statement you never went out and talked
19 to Cedric Thomas?

20 A We went out, but we never talked to him.

21 Q That was a year and a half ago?

22 A Yea, around the time of this incident, a few days
23 afterwards.

24 Q So, you've had a year and a half to talk to Cedric
25 Thomas?

1 A Uh-huh.

2 Q You hadn't done it?

3 A No. We didn't saw a need to.

4 Q You didn't see a need to?

5 A No.

6 Q You got a poor man shot in the back of the head over
7 here and a suspect who said he might have -- killed
8 somebody in the head if he talked about his drug dealing.

9 and you didn't see a need to go talk to Cedric Thomas?

10 A No, sir. By that time we had already received -- as
11 we were looking for Cedric Thomas, we had already received
12 information that William Owens was the person we needed to
13 start looking at.

14 Q So, you had already made up your mind at that point,
15 hadn't you?

16 A No, sir. We was treating every lead just as any
17 other lead that came in. As we received it, we followed
18 with it. Cedric Thomas lead was not panning out. When we
19 got the information on William Owens, we were shifted in
20 William Owens' direction.

21 Q How can it not pan out when you never talked to man?

22 A We looked to his house. It appeared as if no one was
23 living there. We didn't want to go talk to him at that
24 time because we didn't have enough to really work with.
25 So, we kept canvassing the area looking for more

1 information, looking for more clues.

2 Q And in a year and a half you continued to focus on
3 Cedric Thomas?

4 A No, sir. Within the first, I guess, two weeks we
5 already was on William Owens.

6 Q Y'all can't look at but one suspect at the time?

7 A Information on Cedric Thomas did not made any sense
8 to this crime. It was just nothing. Other than what had
9 been said he's said in the past.

10 Q It didn't make any sense?

11 A No.

12 THE COURT: Let's move along.

13 Q How many times did Mr. Owens' house get searched?

14 A His house was searched once that I participated in.

15 Q But in the course of your investigation and in
16 preparing for this case did you learn how many times it
17 had been searched?

18 A The house just once. His outside property was
19 searched, but not his house.

20 Q House never was was searched?

21 A Only once.

22 Q I thought you said something about -- did you take
23 pictures of it when you searched it?

24 A Yes, I think Kenny Kinsey took picture of it.

25 Q Everything in the house?

1 A Yea. I guess everything. I wasn't working the
2 camera. I don't know.

3 Q You were there, though?

4 A Yea.

5 Q When y'all searched the house, did y'all find this
6 pink bag that's known as exhibit 11?

7 A At the time of searching the house we had no idea
8 that pink bag was significant.

9 Q Did you find it?

10 A No.

11 Q It wasn't there, was it?

12 A I don't know.

13 Q If it had been there, you would have found it; right?

14 A I really can't say. The house was in extreme
15 disarray.

16 Q You took pictures, didn't you?

17 A Yes.

18 THE COURT: Let him finish.

19 MR. MOORE: Excuse me. I'm sorry.

20 THE WITNESS: Once we got word that there were
21 rattlesnakes in the house, I'm sorry but I was trying to
22 get out.

23 THE COURT: Anybody wants to laugh, you can go
24 outside.

25 Q Does this show up in your pictures when you searched

1 the house?

2 A No.

3 Q How many times did you search the yard and the other
4 buildings outside of the house and the vehicle?

5 A I only searched outside -- participated in the search
6 of the outside premises once. That's when we searched the
7 house and --

8 Q Were there other searches that you're aware of?

9 A Yes, of the outside premise.

10 Q Did they take pictures of everything they searched in
11 that time?

12 THE COURT: If you know.

13 THE WITNESS: I'm not certain.

14 Q Have you seen any pictures of the outside?

15 A I think there were some taken by Barnwell County.

16 Q Did you find this pink bag known as State's Exhibit
17 no. 11 in any of the outside searches?

18 A No.

19 Q Did it show up in any of the pictures taken during
20 any of the outside searches?

21 A No.

22 Q Do you have any evidence that this was anywhere at
23 that house?

24 A From witness statement.

25 Q Other than that -- other than what somebody said, do

1 you have any physical evidence that showed that this was
2 anywhere at that house at any time?

3 A Witness statements of Jeannia Sweat and Renee.

4 Q Jeannia didn't say it, did she?

5 A That's where she got it from.

6 Q She got it in a bag that she said came from there.

7 A Well, I'll need to look at the note.

8 Q Okay. All right.

9 A To see exactly what she said.

10 Q But you don't -- this doesn't show up in any of the
11 pictures, does it?

12 A No.

13 Q And you said that you had submitted that to SLED for
14 DNA analysis?

15 A That correct.

16 Q Was there any DNA analysis that showed that it had
17 ever been in the possession of William Owens?

18 A I don't know if that's what they looked for. I just
19 don't know.

20 THE COURT: Do you know of any analysis of your own
21 knowledge?

22 THE WITNESS: The only analysis I know was that there
23 was no DNA found on it that matched Reverend McCreary.

24 Q And that would be the jewelry, too; right?

25 A Well, the jewelry was never submitted to SLED.

1 Q Oh, it wasn't?

2 A No.

3 Q Dog, I would have thought they would have done that.

4 A Huh-uh.

5 Q I mean, man, you know, than you got a fellow out
6 there on the river fishing and it he's sweating and this
7 jewelry is supposed to be on him and this is a key piece
8 of evidence and y'all didn't think you ought to submit
9 that for analysis?

10 A Everyone had touched the jewelry. Hands had been on
11 the jewelry.

12 Q Why would y'all touch the jewelry?

13 A Looking through. It was multiple pieces of
14 jewelry -- going through it to see which pieces is what or
15 to see if any of it resembled what we later learned what
16 which needed to look for.

17 Q Y'all sent five SLED agents and police people out
18 there to get this jewelry. It had to be a crucial piece
19 of evidence; right?

20 A No, it was only two agents.

21 Q And how many deputies?

22 A Sheriff Carroll and Deputy Sheriff Croft.

23 Q So, four police officers go out there on what's
24 supposed to be a real crucial piece of evidence in this
25 case and everybody touches it?

1 A I don't know if everyone touched it. I know myself
2 and Agent Darnell placed our hands on the jewelry pieces.

3 Q And you never yet submitted it for analysis or
4 anything to see if it belonged to anybody, to see if it
5 had anybody's DNA on it?

6 A No, sir.

7 Q A year and a half later?

8 A Huh-uh.

9 Q A year later -- you've had that a year?

10 A Huh-uh.

11 Q Right?

12 A Yes.

13 THE COURT: He said no.

14 THE WITNESS: I mean, we had it since we obtained it
15 from Mrs. Sweat.

16 Q That was in november of last year?

17 A Yea.

18 Q That's a year?

19 A Yes, I guess so.

20 Q So, you've had it for a year and no analysis?

21 A No.

22 Q Why would you send the bag up there for analysis and
23 not send the jewelry?

24 A Well, looking at the scene we, I guess, had a theory
25 that there may have been some DNA on the jewelry -- not on

1 the jewelry, but on the bag. After the jewelry had been
2 touched and handled and we didn't know who all handled the
3 jewelry before we got to it -- we just didn't know -- we
4 figured it is best to take the jewelry and have it
5 identified by the family member.

6 Q Wouldn't a DNA analysis be a whole lot stronger
7 because they make lots of those kind of necklaces, don't
8 they?

9 A I guess. I don't know.

10 Q They didn't make just one of them?

11 A I'm assuming not.

12 Q But wouldn't the DNA analysis have been more helpful
13 to you?

14 A I really can't say. I am not a DNA expert. So, this
15 is kind of pretty much what was before me.

16 Q You're a special agent that's in charge of this
17 investigation?

18 A No, sir.

19 THE COURT: Mr. Moore?

20 (Whereupon, a bench conference was held.)

21 Q Did you -- you said that you initially charged Ms.
22 McKinney with murder; is that right?

23 A That's correct.

24 Q What was the basis for that charge?

25 A The information that we had initially received that

1 William Owens was at the river with his girlfriend and
2 that William Owens had killed Reverend McCreary and his
3 girlfriend was with him.

4 Q And where did you get that information that the
5 girlfriend was with him?

6 A Sheriff -- it came from Sheriff -- we got it from
7 Sheriff Carroll who received information on it.

8 Q All right. And he later decided to drop that
9 charge -- the murder charge?

10 A It was reduced.

11 Q Okay. And in your investigation did you ever
12 determine what time you thought the death occurred?

13 A No, sir.

14 Q Don't know what time the death occurred?

15 A I wouldn't be able to speak intelligently on that.

16 Q Okay. I want to talk to you about your phone
17 records. Do you still have those?

18 A Yes, sir.

19 THE COURT: Mr. Moore, I think we're going to break
20 for lunch. All right. We're going to break for the lunch
21 hour. Hold on one second. Just sit tight.

22 Mr. Moore, have a seat for me.

23 Leave your pads in your chair. Pick those up during
24 the lunch break. Pick them up and put them back there.
25 Don't put them in the jury room. Maintain them. The

1 lunch should be here in just a second. Go ahead and enjoy
2 your lunch. We're going to start back at 2:15. So, if
3 you get through with your lunch and you want to go outside
4 and get some fresh air, stretch your legs, you're
5 certainly welcome to do that.

6 Just don't discuss the case with anybody. Don't
7 start any deliberations and we'll start right back at 2:15
8 to the best of my ability.

9 Everybody else please remain seated.

10 (Whereupon, the jury exited the courtroom at 12:35.)

11 THE COURT: All right. Agent Johnson, you're still
12 in the middle of your testimony. I am going to order you
13 not to discuss it with anyone -- the team, the lawyers,
14 the Sheriff, anyone during your lunch break.

15 Mrs. Morgan, Mr. Moore, is there -- I am just
16 thinking about this Jackson v Denno, the necessity of it.
17 I would ask that y'all talk over the lunch break. There
18 may be something that you can stipulate. I don't know.
19 If it's not in contest --

20 MR. MOORE: Well --

21 THE COURT: Just however you want to handle it,
22 Mr. Moore, to protect you and your client, and let's be
23 back at 2 o'clock. Maybe a quarter -- 2 o'clock. Okay?
24 And we'll take that issue up, Mr. Moore. I'd like to have
25 a copy of that case at lunchtime, please.

1 MR. MOORE: It is Bobby Lee Holmes versus the State
2 of South Carolina.

3 THE COURT: It is a U.S. Supreme Court case?

4 MR. MOORE: It is a U.S. Supreme Court Case. There
5 has not been to my knowledge that I can find a South
6 Carolina case on that issue since that case was decided,
7 although there have been some other cases in South
8 Carolina on -- reported since then, but dealing with
9 trials prior to that decision.

10 THE COURT: All right. I'll look at it.

11 MR. MOORE: There is no South Carolina case
12 interpreting that at -- the pertinent part of that
13 decision.

14 THE COURT: All right. Make a copy for Mrs. --
15 that's the only one you got?

16 MR. MOORE: That's the only one I brought with me.

17 THE COURT: Well, I'm going to go eat. So make a
18 copy and put it in my chambers. Make a copy for
19 Mrs. Morgan.

20 Anything else?

21 Sheriff, you're in charge of vacating the courthouse
22 in your discretion. Let's get the Defendant out first.

23 MR. MOORE: Your Honor, one other thing. There
24 was --

25 THE COURT: Hold on one second.

1 MR. MOORE: -- a mention of a polygraph. I think you
2 squelched it pretty quickly.

3 THE COURT: I did.

4 MR. MOORE: I would ask at some point that curative
5 instruction be given.

6 THE COURT: Well, I gave one at that point in time,
7 but I will give whatever instruction you hand up to me.
8 I'll consider anything else you want me to do.

9 MR. MOORE: And another thing, if there was such a
10 test, we were not furnished any results.

11 THE COURT: You discuss that with Mrs. Morgan during
12 the lunchbreak, and then we'll discuss that when I get
13 back.

14 (Whereupon, a lunch break was taken.)

15 THE COURT: Mrs. Morgan, what did you and Mr. Moore
16 work out, if anything, on the Jackson v Denno? Nothing?

17 MR. MOORE: Your Honor, we need to put on the
18 record --

19 THE COURT: Just do a Jackson v Denno?

20 MR. MOORE: That's correct.

21 THE COURT: All right. Mr. Johnson, come on back.
22 You're still under oath.

23 All right. Let me remind -- some of you have not
24 been here this week. I have put up a with a little bit of
25 laughter this morning. I will not tolerate it this

1 afternoon, nor any facial expressions, frowns, yawns,
2 whatever. If I see it again, the bailiffs are going to
3 escort you out.

4 RICHARD JOHNSON, after being previously duly
5 sworn, testified as follows:

6 IN-CAMERA DIRECT EXAMINATION

7 BY MRS. MORGAN:

8 Q For the purposes of the the Jackson v Denno, you were
9 indicating that you interviewed -- you interviewed the
10 Defendant William Owens?

11 A That's correct.

12 (Whereupon, State's Exhibit No. 13 was marked for
13 identification only.)

14 Q And at that time he was not in custody; is that
15 correct?

16 A Correct.

17 Q He was free to leave?

18 A Yes.

19 Q All right. And he came there voluntarily with you
20 all to the Barnwell County Sheriff's Office?

21 A Yes.

22 Q And it was on July 12?

23 A Yes, uh-huh.

24 Q And tell us the circumstances -- where in the
25 Sheriff's Office and who was with you when you interviewed

1 him?

2 A Myself and Agent Darnell were in the Sheriff's Office
3 interview room one or two. I am not certain which one it
4 was. When we met with William Owens we advised him of his
5 right.

6 Q All right. And he was advised of his rights. Do you
7 document his advisement of rights in any way?

8 A Yes, ma'am. With the miranda rights form that we
9 have him initial, read each line, initial and sign it.

10 Q Okay. And, in fact, Agent Johnson, when you are
11 prior to even starting the miranda notice process with the
12 Defendant you have a videotape going on; is that correct?

13 A That's correct.

14 Q And all of what you did with the Defendant that
15 afternoon or that early evening is on video?

16 A Yes.

17 Q And a copy of the video has been provided to the
18 defense?

19 A Yes.

20 Q Okay. And that is the miranda form, State's 13, that
21 you did with Mr. Owens?

22 A That's correct.

23 Q And did you advise him of each and every one on the
24 form?

25 A Yes, ma'am. In fact, we had -- to make certain that

1 he understood it, he even read each line himself and as he
2 read it he initialed it.

3 Q Okay. So you actually heard him read it?

4 A Yes.

5 Q And he initialed after he read each one?

6 A Yes.

7 Q And did you prior to this threaten him in any way?

8 A No, Sir.

9 Q Make him any promises?

10 A No, ma'am.

11 Q Offer any hope of reward?

12 A No, ma'am.

13 Q Did anybody have any -- did anybody -- who all was in
14 the room, you and Mr. Darnell?

15 A Agent Darnell.

16 Q Your guns shown at him in any way?

17 A No.

18 Q Okay. Any raising of voices at him ever?

19 A No.

20 Q All right. And you went through the miranda form
21 that -- miranda rights form that you used, form P022?

22 A That's correct.

23 Q And you said that you individually let him read it
24 out?

25 A Yes.

1 Q And he initialed each and every one?

2 A Uh-huh.

3 Q And at the end of initialing all of the rights set
4 forth in this form did he read the waiver of rights?

5 A Yes, ma'am.

6 Q All right. And at the end of the waiver of rights,
7 what did you request of the Defendant?

8 A If he understood, agreed, and was willing to talk to
9 us, sign it. We will sign it witnessing and make certain
10 that he got a copy of it.

11 Q All right. And did you, in fact, witness it along
12 with George Darnell?

13 A Yes, we did.

14 Q Did at any time did he appear not to understand?

15 A No, ma'am, no time.

16 Q All right. Did he at any time request to leave?

17 A No, ma'am, not until the end.

18 Q Okay. But at any time did you refuse him any
19 requests?

20 A No, ma'am.

21 MRS. MORGAN: Judge, in lieu of reading each and
22 every one we've provided a copy of the the miranda to
23 Mr. Moore previously. It was attachment with number 10
24 under the original Rule Five given to him.

25 THE COURT: All right. Let's mark it as an exhibit.

1 MRS. MORGAN: It's already marked. I move to
2 introduce it as a Court's right now, but --

3 THE COURT: Did he make a statement?

4 MRS. MORGAN: I am about to just go through that.

5 Then after doing that -- I am switching form -- what
6 did you do with him?

7 THE WITNESS: We just talked to him, you know, in
8 general, various things, and continued until we started

9 talking about the incident at the river. During that
10 interview we learned that he had, in fact, been down at
11 the river around the time that Robert William, the
12 gentleman in the red truck with his son, was down there.

13 Q Did he indicate that he was at the edisto river on
14 July 6?

15 A Yes, ma'am.

16 Q All right. And did he indicate that he actually saw
17 the man in the red truck with his son?

18 A Yes, ma'am. He spoke with them as well.

19 Q And did he indicate anybody was with him?

20 A He was very adamant that no one was with him. His
21 girlfriend was not with him.

22 Q All right. And did he -- what else, if anything, did
23 he say?

24 A That he had gone down there just to check the water
25 out to go fishing. He had been working. He went to

1 pigpen landing or he was going to pigpen landing. I think
2 it is another bridge -- another fishing creek in that area
3 somewhere -- stopped by there, saw the gentleman in the
4 red truck which was Robert William and his kid, talked
5 with him. He -- as he was down there Robert William and
6 his son was loading the boat up on the truck and was
7 getting ready to leave.

8 Q All right. Did he indicate when he left?

9 A Approximately, I think it was 5 to 10 minutes
10 afterwards.

11 THE COURT: Did you take a written statement from
12 him?

13 THE WITNESS: No, ma'am. No, sir.

14 THE COURT: This is all just from memory?

15 THE WITNESS: The recorded interview and then I did a
16 memorandum of the interview.

17 Q And he also -- so, when they left the river he said
18 he left approximately 5 to 10 minutes after that?

19 A Yes, ma'am.

20 Q All right. And did he indicate that he had seen
21 anybody at the river?

22 A No one other than the gentleman in the red truck.

23 Q Did he say he had seen any other vehicle at the
24 landing?

25 A Just the red truck.

1 Q All right. Did he say he had indicated -- did you
2 specifically ask him if he had seen a black man or another
3 vehicle, another truck there?

4 A Yes. We specifically asked him about the murder of
5 Reverend McCreary.

6 Q All right.

7 A He denied it.

8 Q Did he also say -- so, he denied it. Was he
9 specifically asked did he shoot anybody at the river?

10 A Yes, ma'am.

11 Q And what did he say?

12 A He denied it. He said he wasn't allowed to have guns
13 because of some previous charges.

14 Q That's why I was going there. Just for the record
15 and for your direction, Agent Johnson, if asked -- this is
16 another thing -- if he could not own guns why he could not
17 own guns would not be appropriate.

18 THE COURT: Just --

19 MRS. MORGAN: He said he could not own -- he did not
20 own any guns.

21 THE COURT: Just say he didn't have a gun. Don't go
22 into the reason why. That's prejudicial.

23 MRS. MORGAN: Judge, he can say that he did not own
24 any guns, but why as to why he could not.

25 THE COURT: Well, why -- we're off the record.

1 (Whereupon, a discussion was held off the record.)

2 THE COURT: What is your position on what he said in
3 the statement that he wasn't allowed to own guns?

4 MR. MOORE: I assume he didn't say that.

5 MRS. MORGAN: I'm sorry?

6 THE COURT: Just assume he not say that?

7 MR. MOORE: I would object to him saying it.

8 MRS. MORGAN: Well, Judge, I think --

9 MR. MOORE: Unless he's got some basis for it.

10 THE COURT: Well, your client said it allegedly.

11 MRS. MORGAN: Well, Judge, we also -- I mean, I'll
12 just -- I know that he has said that on more than one
13 occasion. He also said it --

14 THE COURT: Well, I am not going to allow it in --

15 MRS. MORGAN: Oh, I know you're not.

16 THE COURT: -- under 403.

17 MRS. MORGAN: No, sir. I understood that. I know
18 that he has mentioned it in another interview that he
19 could not but I wasn't going into it.

20 THE COURT: Mr. Moore, any cross examination on the
21 voluntariness of the statement under the Jackson v Denno
22 standard where I have to find by the preponderance of the
23 evidence that it's voluntary and submit it to the jury for
24 their consideration?

25 MR. MOORE: No, sir. I have reviewed the videotape,

1 and I don't have any good faith argument that I can make
2 that it was not voluntary.

3 THE COURT: All right. I find pursuant to the
4 requirements of Jackson v Denno that the preponderance of
5 the evidence be established that the statement was
6 voluntary. It will be allowed to go to the jury and they
7 will be instructed on statements and the various law
8 concerning it when I charge the jury.

9 Anything else we need to do before I bring the jury
10 in?

11 MR. MOORE: I want to apologize to The Court. I
12 misspoke earlier when I said I didn't have the results of
13 the polygraph. I did have it in the box of files. I
14 apologize.

15 THE COURT: No problem.

16 MRS. MORGAN: Judge, when we left he was crossing
17 him.

18 THE COURT: He was. He was going into the phone
19 records.

20 MRS. MORGAN: All right. So, we'll let -- and then
21 we'll stop and start again?

22 THE COURT: Yes, ma'am. What we'll do is let
23 Mr. Moore finish his cross examination regarding the phone
24 records and whatever else. Then I will tell the jury I've
25 had to have an in-camera proceeding and we'll take that

1 issue up now and we'll be limited just to the Jackson v
2 Denno statement -- just to the statement. You'll ask him
3 about the statement. If Mr. Moore has any cross on that,
4 then he'll be allowed to come back.

5 THE COURT: Fair enough, Mr. Moore?

6 MR. MOORE: Fair enough.

7 THE COURT: All right. See if the jury is ready. I
8 told them 2:15.

9 (Whereupon, the jury came into open court at
10 approximately 2:10.)

11 THE COURT: Mr. Foreman, Ladies and Gentlemen, what I
12 did over the lunchbreak -- there was a procedural matter
13 we had to do before another area of testimony could go
14 into. So, we've done that so we didn't keep y'all
15 waiting. We did that over lunch. So, Mr. Moore is going
16 to conclude his cross examination. Then Mrs. Morgan will
17 go back into that area that we had a little hearing on and
18 we'll finish up that. Mr. Moore will be able to cross
19 examine on that. Then we'll go into the next witness.

20 Mr. Moore, I think you are about at the conclusion of
21 cross. You may finish.

22 MR. MOORE: In fact, we have concluded. We decided
23 we have no further questions for Mr. Johnson.

24 THE COURT: Very well. Thank you very much.

25 Mrs. Morgan, let's go into the interview with the

1 Defendant.

2 REDIRECT EXAMINATION

3 BY MRS. MORGAN:

4 Q Did you have an opportunity on Thursday, July 12,
5 2007 to conduct an interview of the Defendant William
6 Owens?

7 A Yes, ma'am.

8 Q Could you tell us the facts surrounding how that came
9 about, please, sir?

10 A That came about from the initial information that we
11 received concerning William Owens' involvement and after
12 -- William Owens volunteered after we made contact with
13 him. He voluntarily came down to the Sheriff's Office
14 with us --

15 THE COURT: Hold on a second. Is that mic working?

16 THE WITNESS: No, sir.

17 Q He voluntarily came down to the Sheriff's Office?

18 A Yes, ma'am.

19 Q All right. And what did you do with him when he got
20 there?

21 A After he got there we advised him of his miranda
22 rights. He had the right to remain silent, et cetera, et
23 cetera. After signing that he had --

24 Q Let me -- I know -- let me show you State's 13. Can
25 you identify that, please, sir?

1 A This is the miranda rights form that William Owens
2 read each line, put his initial on each line as he
3 understanding each line. He later signed it and waived
4 the rights portion of it that he was willing to talk to us
5 and we just commenced to communicate with him.

6 Q All right. And this was State's 13, and you had him
7 read out loud each and every right that he initialed on
8 that form?

9 A Yes, ma'am. He read it loud.

10 Q And prior to asking him questions, there was no --
11 you hadn't promised him anything, threatened him in any
12 way? In fact, he really wasn't even detained, was he?

13 A No, ma'am. He was free to go at will.

14 Q Okay. And if you would, did he have any -- did he
15 appear to understand everything you asked him?

16 A Yes, ma'am.

17 Q If you would, Agent Johnson, can you tell us after he
18 signed his information -- I mean, his miranda forms, did
19 you question him about being on the edisto river on
20 highway 39 on July 6, 2007?

21 A Yes, ma'am. We questioned him concerning that.

22 Q What did the Defendant William Owens say back on July
23 12 of 2007?

24 A He had been coming from work. He said something
25 about he was working in Columbia and headed to pigpen

1 landing, one of the bridges in the Springfield community.
2 I am not -- I don't know where it's at, but it's in that
3 area from what I was told. He had stopped at -- he called
4 it the three river bridge. We inquired about the name of
5 it. He said the three river bridge.

6 Down at the boat landing when he got there there was
7 a white male -- well, it was a a white male with a kid in
8 a red truck loading up a boat. Through the conversation
9 he commenced to -- he was adamant that he was down there
10 alone; that his girlfriend was not with him. After the
11 gentleman in the red truck which was Robert William left,
12 he left maybe 5 or 10 minutes later. He denied any other
13 vehicle in the area.

14 Q He denied seeing any other vehicle other than the red
15 truck with the man and the child?

16 A That's correct.

17 Q How about seeing any other people down there? Did
18 you specifically ask him about a black male?

19 A Yes. We specifically confronted him concerning the
20 incident with Reverend McCreary and he never saw anyone
21 else.

22 Q And you said he -- he left the river approximately
23 how long after?

24 A Somewhere around 5 to 10 minutes after Robert
25 Williams and his son left.

1 Q Did you specifically ask him if he shot anyone or
2 heard a shot?

3 A Yes. We inquired about because one of the initial --
4 the initial story that we had gotten is that Reverend
5 McCreary approached him. So, we approached William Owens
6 in the direction of, were you defending yourself? And he
7 was very adamant that he didn't shot anyone. There wasn't
8 no need to defend himself. He just denied everything.

9 Q Did he deny seeing anybody else other than the man
10 and his son?

11 A That's it. That's correct.

12 Q And did he -- when he denied saying he shot anyone,
13 did he also say he did not own any guns?

14 A That's correct.

15 (WHEREUPON, State's Exhibit No. 13 was admitted into
16 evidence.)

17 THE COURT: Mr. Moore, any cross as to that
18 statement?

19 MR. MOORE: None, Your Honor.

20 THE COURT: Okay. Mr. Johnson, you may step down.

21 MRS. MORGAN: The state would recall Kenneth Kinsey
22 for a limited purpose, Your Honor.

23 KENNETH KINSEY, after being previously duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MRS. MORGAN:

2 Q Agent Kinsey, two questions: Did you -- you were the
3 one that went down and conducted a search warrant of the
4 house of William Owens?

5 A Yes, ma'am. I assisted with the search warrant.

6 Q And that was back in July 12 to 14?

7 A Yes, ma'am. That's correct.

8 Q And when you were there, do you film -- take a bunch
9 of pictures of the area?

10 A Yes, ma'am. We do.

11 Q Did you take over 200 pictures?

12 A It was several hundred, yes, ma'am.

13 Q Okay. And did you review them over lunch?

14 A I sure did.

15 Q Did you look to see if you saw any catawba worms in
16 the pictures?

17 A There are catawba worms in the pictures and a cricket
18 cage.

19 Q What were the status of the catawba worms and or the
20 crickets?

21 A The crickets were still alive. The catawba worms
22 were dead and dried up.

23 Q And this -- and where were -- and what were they in?

24 A It was a red cricket cage and it was sitting on the
25 stove in the residence.

1 Q And did you -- could you tell the members of the jury
2 the condition kind of the house and what you were looking
3 for pursuant to the search warrant at that time?

4 A At that time we were looking for firearms,
5 ammunition, and serology or blood evidence -- anything
6 that contained that -- and the house was what I would call
7 disarray and we searched every area inside and outside.

8 Q And did you find any handguns or any kind of weapons?

9 A We found no weapons, no, ma'am.

10 Q Did you find any pellet guns or anything like that?

11 A There was a pellet gun. We did not take the pellet
12 gun, and we found some ammunition.

13 Q All right. And ammunition -- is that pellet
14 ammunition?

15 A No, ma'am. We found some firearm ammunition, some
16 bullets.

17 Q And when -- were you looking for a pink bag?

18 A No, ma'am. We were not looking for a pink bag at
19 that time.

20 Q And what -- could you describe the nature of the --
21 did you look in every drawer?

22 A We did look in every drawer, hampers, furniture,
23 corners, everywhere -- everywhere that a firearm or
24 ammunition could be kept.

25 Q And you were not looking for a pink bag?

1 A No, ma'am. We weren't.

2 Q In your review of the pictures did you see any pink
3 bag?

4 A No, ma'am. I did not.

5 Q Could it have been -- nevermind. Thank you.

6 THE COURT: Mr. Moore, any questions?

7 MR. MOORE: Yes. Could you just give me one second?

8 THE COURT: Sure. Absolutely.

9 CROSS-EXAMINATION

10 BY MR. MOORE:

11 Q What time of day was this search conducted?

12 A It was also at night.

13 Q Do you know what time?

14 A I can tell you specifically, if you'll let me refer
15 to my notes. My arrival time is 8:50, but the search
16 warrant had started when -- before I arrived.

17 Q Did they search the outside of the premises as well?

18 A Yes, sir.

19 Q Were you involved with that, too?

20 A I was documenting, yes, sir.

21 Q And did you conduct any other searches of the house
22 or participate in any other searches of the house?

23 A At another time or are we talking about this night?

24 Q Another time.

25 A No, sir. This night was the only time.

1 Q This was the only time?

2 A This was the only time I had been to the house, yes,
3 sir.

4 Q Okay. That's all I have.

5 THE COURT: Thank you. You may step down.

6 MRS. MORGAN: Kenneth Miles.

7 (Whereupon, a bench conference was held.)

8 KENNETH M. MILES, after being duly sworn,
9 testified as follows:

10 THE COURT: Would you please have a seat in the
11 witness stand right here? Pull the microphone up to you,
12 please, sir. If you would give us your full name and
13 spell your last.

14 THE WITNESS: Kenneth Michael Miles; M-I-L-E-S.

15 DIRECT EXAMINATION

16 BY MRS. MORGAN:

17 Q Mr. Miles, where do you live, please, sir?

18 A [REDACTED], Williston, South Carolina.

19 Q How long have you lived there?

20 A Five years.

21 Q And, Mr. Miles, are you related to the Defendant
22 William Owens?

23 A He's my nephew.

24 Q And back in July of 2007 -- back, I think it was,
25 Wednesday, July 11, did you -- prior to July 11 did you

1 know there had been a murder at the river in Springfield?

2 A No. I didn't know until the newspaper come out.

3 Q All right. Had you prior to that or after that, if
4 you know, did you have a conversation with your daughter
5 about what she might have known?

6 A Yea, on Saturday.

7 MR. MOORE: Object, Your Honor.

8 MRS. MORGAN: Okay. All I asked --

9 THE COURT: He hadn't said anything yet.

10 Did you have a conversation with your daughter?

11 THE WITNESS: Yes.

12 Q And based on that conversation -- as a result of that
13 conversation, did you have subsequently you -- did you
14 call and tell -- talk to Sheriff Carroll?

15 A Yes. I called him because I didn't want my nephew--

16 MR. MOORE: Your Honor --

17 THE WITNESS: -- hurt.

18 THE COURT: Whoa, hold on.

19 THE WITNESS: Yes.

20 MRS. MORGAN: He can --

21 THE COURT: Hold on.

22 MR. MOORE: If he is going to in any way relate
23 what -- this is a backdoor way to try to get around
24 hearsay.

25 THE COURT: You can say as a result of a call you

1 called somebody.

2 MR. MOORE: I understand that, but he can't tell them
3 what the person that called him said.

4 THE COURT: Well, no, he can't say that, but he can
5 tell us what he told Sheriff Carroll.

6 As a result of the call, whoever you talked to, what
7 did you tell Sheriff Carroll?

8 THE WITNESS: I called one time and I told Ed that --

9 THE COURT: Don't say what anybody else said.

10 THE WITNESS: -- I wanted to remain anonymous because
11 I didn't believe it was true until I saw the newspaper and
12 then I went to try to go to sleep and I called him back a
13 second time and told him that I didn't care about being
14 anonymous, just please don't hurt my nephew because they
15 were going to question him, but do it in a way, and at
16 that point I told him my name and my nephew's name and
17 asked him that if you're going to question him, do it in a
18 way so nobody gets hurt.

19 Q All right. And you told Sheriff Carroll that the
20 person he needed to look for was William Owens?

21 A That's right.

22 MR. MOORE: Your Honor, that's a leading question.

23 THE COURT: That is.

24 Who was the person you told him --

25 Q Who was the person?

1 A I told the Sheriff Ed Carroll that my name was
2 Kenneth Miles and that my nephew William Owens had made a
3 statement in a round-about way I heard.

4 THE COURT: Whoa, whoa. Did he make a statement to
5 you?

6 THE WITNESS: No.

7 THE COURT: Then don't say what he said.

8 THE WITNESS: Okay.

9 MRS. MORGAN: Judge, it's not for the truth of the
10 matter. He is saying what he told --

11 THE WITNESS: Ed.

12 MRS. MORGAN: -- Sheriff Carroll.

13 THE COURT: Hold on.

14 MR. MOORE: What he started to say was that William
15 Owens had made a statement.

16 THE COURT: That he heard in a round-about way.

17 MR. MOORE: Heard in a round-about way.

18 THE COURT: Sustained. I am not going to allow him
19 to say that.

20 MRS. MORGAN: All right. Thank you, Mr. Miles.

21 THE COURT: Any questions?

22 MR. MOORE: No questions.

23 THE COURT: You may step down.

24 THE WITNESS: Can I go back out the the same way?

25 THE COURT: You certainly may. You can use the

1 elevator.

2 SUSAN M. LUCADO, after being duly sworn,

3 testified as follows:

4 THE CLERK: Have a seat. Please state your name for
5 the record.

6 THE WITNESS: My name is Susan Lucado.

7 DIRECT EXAMINATION

8 BY MRS. MORGAN:

9 Q Susan, is your maiden name Miles?

10 A I am.

11 Q And how old are you?

12 A I'm twenty-six.

13 Q And where do you live?

14 A In Williston.

15 Q And tell me, you're married?

16 A Yes, ma'am.

17 Q And you have how many children?

18 A Two.

19 Q And how old are they?

20 A Seven and three.

21 Q And where do you work?

22 A I work at Piggly Wiggly in Williston and at Tender
23 Loving Care.

24 Q Tender Loving Care is?

25 A A daycare.

1 Q And how -- was the man that just came in, was that
2 your father?

3 A Yes, ma'am.

4 Q And how are you related to the Defendant William
5 Owens?

6 A His mom and my dad are brother and sister. He is my
7 cousin.

8 Q And back on July of 2007 did you have an opportunity
9 to be in the vicinity of William Owens' house and your
10 aunt's house -- Norma Jean?

11 A Yes, ma'am.

12 Q Can you tell us why you were going there, Susan?

13 A I went by there that afternoon so my aunt Norma Jean
14 could watch my daughter Peyton that afternoon.

15 Q And is this on Saturday?

16 A Yes, ma'am.

17 Q All right. And tell us what happened when you got
18 there? Was your aunt there?

19 A No, ma'am. Whenever I got there her van was in the
20 yard and my uncle's -- her husband's car was in the yard,
21 but they weren't home. So, I saw William's truck was at
22 his house. So, I walked across the yard to his house to
23 see if, you know, if Norma Jean was in the house or if he
24 knew where she was.

25 Q And his house and Norma Jean his mama's house at that

1 time how close were they?

2 A A little bit further away than the sides of the
3 courtroom.

4 Q So, you walked over to his house and did you know who
5 was living at that house with William back in July of
6 2007?

7 A Yes, ma'am. Renee and her two sons.

8 Q And when you walked over there that afternoon of
9 Saturday, who was in -- who did you come in contact with?

10 A I talked to William.

11 Q And can you tell us what y'all talked about?

12 A I asked William if his Mom was home, and he said that
13 he didn't know; that he knew his dad had went to his aunt
14 Suzy's house with his uncle Larry which is his Dad's
15 brother and he said he didn't know where his Mom was. He
16 asked could he use my cellphone because him and Renee had
17 gotten into an argument and her and the boys had left and
18 she thought he had her cellphone. I'm sorry. He thought
19 that she had his cellphone.

20 Q And, so, what did you do?

21 A He asked could he borrow my phone so he could try to
22 find it if it was in the house. So, he called his
23 cellphone several times and went all through the house. I
24 listened outside. We couldn't find it.

25 Q Is that what you do -- if it'll rattle or hear it so

1 you can find out where it is?

2 A Yes, ma'am.

3 Q Okay.

4 A It kept going to voicemail. So, I told him that if,
5 you know, if Renee did have it, it may just be turned off
6 or it may be off somewhere in the house and he asked could
7 he, again, use my phone to call Alltel to replace it lost
8 or stolen so that way she couldn't make any charges on the
9 phone.

10 Q Okay. Did you hear him while he was doing that?

11 A Yes, ma'am. I dialed the number for him so he could
12 call them and he talked to them. It was a good little
13 wait as far as trying to get on the phone with them and
14 then shortly after that I believe I had tried to call
15 Norma Jean's phone or my aunt Elaine's phone and
16 eventually I got them and they said that they had went to
17 Aiken and that they were on their way back.

18 Q All right. So, your aunt Norma Jean --- and who was
19 she with?

20 A Her sister Elaine.

21 Q And is that Harriet Elaine?

22 A Yes, ma'am.

23 Q But that's Norma Jean's sister?

24 A Right.

25 Q Because there are a bunch of Harriets, am I right?

1 A Yes, ma'am.

2 Q And she had said they had gone to Aiken?

3 A Yes, ma'am.

4 Q Did you wait for them?

5 A Yes, ma'am, I did. I waited. I went ahead and
6 walked -- me and my little girl went ahead and walked
7 across back to the yard to Norma Jean's house and we sat
8 on the porch and waited until Norma Jean got there which
9 wasn't very long.

10 Q And tell me on the porch -- what was on the porch
11 when you were there?

12 A Whenever we walked up on the porch she has a glide
13 rocker on one end of the porch. The door is here and then
14 there is a little table and chairs and then a little
15 bench.

16 Q And when you walked up to the porch with your little
17 daughter, where was William Owens at the time?

18 A He was at his house.

19 Q Okay. And you said a few minutes later your Aunt
20 Norma Jean arrived?

21 A Right. Norma Jean and Elaine showed up with Darlene
22 which is Elaine's daughter which is my cousin as well.
23 They pulled up and proceeded to come into the house and
24 was talking about what they had done in Aiken.

25 Q And then what's the next thing that happened?

1 A My phone rang and Renee had called and she had asked
2 to talk to William and I told her that I didn't know where
3 William was; that he was at his house; that I wasn't going
4 to walk back over there to give him the phone; that
5 whatever was going on between them was between them and
6 she proceeded to curse me calling me obscene names and I
7 hung up the phone.

8 Q Okay. Did you cuss back?

9 A I don't remember.

10 Q Okay.

11 A After that the phone rang a few minutes later. It
12 rang and it went to voicemail and I didn't answer it.

13 Q What does that mean it went to voicemail?

14 A I didn't answer the phone.

15 Q Did you know it was the same phone number?

16 A It was Renee calling back again. So, I told Norma
17 Jean what had happened as far as --

18 Q What did you tell?

19 A I told her that Renee had called cussing me asking
20 about Williams and that they had gotten into an argument
21 and, so, I went out to the porch -- Norma Jean and I -- so
22 that way Elaine would be in the house to hear the
23 voicemail because if she's calling and cussing me again I
24 wanted her to be there. So, we listened to the voicemail,
25 and she was cursing me and telling me that she wanted to

1 kick my ass and for me to meet her I think by Black's
2 Barbeque or something so she could beat me up and
3 different things. I called the number back, and by that
4 time Elaine had come outside and Darlene.

5 Q So, it's Norma Jean, Elaine, Darlene, and you. Where
6 is William?

7 A He is still at his house.

8 Q Okay.

9 A I called the number back and I got Renee's sister. I
10 don't know her name. I told her that Renee had kept
11 calling me and threatening me and I wasn't involved in
12 their situation and that I didn't want her calling me back
13 anymore because if she did I was going to get her for
14 harassment because I didn't want to be involved.

15 Q Did you know anything -- any problems at that time?

16 A No.

17 Q Didn't know anything other than they were just
18 fussing?

19 A They were fussing which, you know, was between them.

20 Q Okay.

21 A After that, Renee -- the phone had rang again, I do
22 believe, and it was Renee on the phone and I had her on
23 speakerphone where Norma Jean could be a witness and hear
24 if she threatened me again.

25 Q Okay.

1 A And we got on the phone. I'm not exactly sure -- we
2 exchanged words. She cursed, and by that time William had
3 walked from his house to Norma Jean's and was walking up
4 the steps when he took the phone out of my hand and began,
5 you know, a screaming match with her on the phone.

6 Q And where is he? You're up on the porch?

7 A I was up on the porch standing up against the
8 bannister near the glider rocker.

9 Q Where was Norma Jean?

10 A I believe she was on the glider rocker or either the
11 the little bench.

12 Q And how about Elaine and her daughter?

13 A They were out there as well. I believe they were
14 sitting in the chairs. I am not exactly sure of the
15 position.

16 Q When you started the conversation you said you had it
17 on speakerphone?

18 A Yes, ma'am.

19 Q All right. And when William came up and they were
20 going at it, could you hear everything?

21 A It was still on speakerphone for a while, but it was
22 hard to hear because he was a little bit a ways from -- I
23 couldn't touch him, but I could hear him yelling.

24 Q What was he yelling?

25 A He was calling her a narc and calling her a rat and

1 I'm not exactly sure, but I know those and, I mean, there
2 was other cuss words as far as calling her a bitch and
3 different things like that.

4 Q And how about could you hear at times what Renee was
5 saying?

6 A Not really. He was yelling louder than she was
7 talking.

8 Q And you heard him say rat and narc --

9 A Yes, ma'am.

10 Q -- and cussing her using ugly words?

11 A Yes, ma'am.

12 Q And at that time what are you and Norma Jean and the
13 other sister doing?

14 A We're just kind of sitting there watching not really
15 knowing what's going on.

16 Q And then what happens?

17 A After he got off the phone with her, he was very
18 upset. He was walking back up the steps and he said
19 that -- he was saying that Renee -- no, he said that what
20 -- that he had killed a man. I am not exactly sure what
21 he said before that, but I know that he said that he had
22 killed a man -- that he shot him in the back of the head
23 and threw him in the river.

24 Q And how was he acting?

25 A He was acting not in his right mind. He was acting

1 kind of hysterical and angry and he said that he wasn't
2 going back to jail -- that they wasn't taking him alive
3 and he started talking about the devil and that he was the
4 devil and he was going back to hell or something. I can't
5 exactly recall at this moment exactly how he said it.

6 Q And did he indicate what, if any, conversation with
7 this man at the river?

8 A That was while we were on the porch.

9 Q Okay. Then what happened?

10 A That was on the porch.

11 Q Okay. Did you all -- when he says those things, what
12 are you, his mama, his aunt, what are y'all doing?

13 A Sitting there.

14 Q Did anybody say anything?

15 A Nobody is saying anything. He is just talking. What
16 are you -- you know, you can't really say anything.
17 You're just gonna try to figure out what is going on.

18 Q But he is saying he had killed somebody?

19 A Yes, ma'am.

20 Q And he told you how?

21 A Yes, ma'am. And during that process he said that he
22 come up behind him; that the man at the river had come up
23 behind him and told him that he sure was a big white boy
24 and he said that he had pulled the gun and whenever the
25 man turned around he shot him in the back of the head and

1 that he had pulled his wallet and that's when he told us
2 that he was a preacher.

3 Q Did he say that he threw him in the river?

4 A Yes, ma'am.

5 Q All right. That was on the porch?

6 MR. MOORE: I move to strike the last question and
7 response.

8 Q Did he say what he did to him after he shot him?

9 A Yes, ma'am. He did say he threw him in the river.

10 Q Susan, that's on the porch?

11 A Yes, ma'am.

12 Q Does he leave right then?

13 A No, ma'am. We went inside the house.

14 Q When you say we, who is we?

15 A Everybody that was there. We went inside.

16 Q Okay. Including William?

17 A Including William.

18 Q And where were you inside?

19 A Elaine and Darlene which is her daughter were in the
20 living area -- living room -- and there's a small little
21 dining area and then the kitchen. It's all open. We were
22 in the kitchen. He got him something to drink, and I told
23 him that he didn't need to talk like that -- that that
24 just didn't sound right and that if he did do something
25 like that, you know, why is he standing here telling us

1 about it? And that's whenever he said that he had, you
2 know, got his wallet and he had burned his ID and stuff in
3 a frying pan and got rid of that.

4 He said that him and Renee had went back down to the
5 river later on and had actually saw there was tape up and
6 there was vehicles -- emergency vehicles there.

7 Q Did anybody -- when he is saying that about the
8 wallet, about the ID, about the frying pan, anybody --

9 A Me and Norma Jean were in the kitchen.

10 Q Was he saying that to you and Norma Jean?

11 A Yes, ma'am.

12 Q And is anybody saying anything back to him when he is
13 saying that?

14 A No, ma'am.

15 Q Then what happened?

16 A Shortly after that Norma Jean and William -- well, we
17 had got ready to leave. Norma Jean and William were going
18 to go to town to get another cellphone for him so he could
19 have a way to communicate, and I was leaving and at that
20 time his dad and his uncle Larry were walking up and we
21 just kind of went our separate ways.

22 Q What does that mean? They weren't present to hear
23 what you had heard?

24 A No, they weren't.

25 Q Did anybody say anything to them?

1 A No, ma'am.

2 Q Mention what they had heard him say?

3 A No, ma'am.

4 Q And then what happened?

5 A After that Norma Jean and William had went to
6 Barnwell, I guess, and I left. That was pretty much it.
7 The next morning Norma Jean had called me and I went over
8 there and she said, well, let's ride down to --

9 THE COURT: Hold on.

10 Q Did you -- Did you go -- not what she said, but what
11 did you do that day, that morning?

12 A Saturday morning?

13 THE COURT: No, the next morning.

14 THE WITNESS: Sunday. I'm sorry. Sunday morning.

15 Q Did you go to your Aunt Norma Jean's?

16 A Yes, ma'am, I did.

17 Q And what did you and she do?

18 A We went went down to the river.

19 Q All right.

20 A What I thought -- the only river that I knew of was
21 little hell, so to speak, is what they call the Savannah
22 river.

23 Q And you drove with whom to where?

24 A I drove my vehicle with Norma Jean and my little girl
25 Peyton to the savannah river.

1 Q And you -- why did you go there?

2 A Because that's the only place that I knew of that
3 they called a river and that she knew of and we went to
4 see if there was tape and things that he said that was
5 there.

6 Q And you said you went to hell?

7 A Little hell.

8 Q Little hell? I don't know where -- that's on the
9 Savannah river?

10 A Yes, ma'am.

11 Q And did you see anything there?

12 A No, ma'am.

13 Q And did you get out and look or just drive around?

14 A We drove around. It was an open area and there was
15 nothing.

16 Q And that's on Sunday?

17 A Yes, ma'am.

18 Q Do you have anymore contact with William?

19 A No, ma'am.

20 Q Do you have anymore contact with Norma Jean?

21 A Yes, ma'am.

22 Q You had conversations with her, but we can't go into
23 that.

24 A Right. Yes, ma'am.

25 Q Did you -- when you saw that there was no tape and no

1 anything that you had heard about previously when you
2 drove down there on Sunday, what did you think, Susan?

3 A I thought that he was talking out of his head. I
4 thought that he may have been on drugs at that point that
5 he said that, and I really didn't think anything else of
6 it.

7 Q And what happened next that made you think -- change
8 your mind about that?

9 A It was actually until the Barnwell -- the newspaper,
10 the People's Sentinel came out that Wednesday and it had a
11 picture of an officer down at the river and it was stating
12 about a man -- some kind of accident and I picked up the
13 paper in Williston and whenever I was sitting in the
14 car -- I don't know. I think of signs from, you know, God
15 and stuff leading me in the right direction and there
16 was -- it looked like the officer that was on the paper,
17 it looked like that he was in his truck in this parking
18 lot. So, it was like, my God, this is real.

19 Q Do you remember what the article -- did it explain
20 anything, the stuff that you had heard?

21 A It had talked about a black man and that he was a
22 preacher and I don't remember whether it said how he had
23 died, but it was -- it was surreal, I guess you'd say.

24 Q Did you tell anyone about what you had heard with --
25 what the Defendant said on Saturday?

1 A Yes, ma'am. I told my Dad. I called him and had him
2 come so that way I could tell him because I didn't want
3 him to be in the vicinity of William or over there in
4 general at William or Norma Jean's house.

5 Q And what did you do after you told your dad the --

6 A It was shortly after I made a phonecall.

7 Q Who did you make a phonecall to?

8 A I spoke with Ed Carroll.

9 Q And did -- after that -- after speaking to him, did
10 you give a statement to law enforcement?

11 A There was an officer that had come by the house
12 because at the point in time I called I didn't tell them
13 who I was.

14 Q Okay. Why is that, Susan?

15 A I don't know. I was kind of scared. I didn't know.
16 I didn't know what to think.

17 Q Okay. And you called the Sheriff?

18 A (Witness nods head.)

19 Q They came and talked to you. Did you try to remain
20 anonymous for a while?

21 A No. I told Mr. Arbogast, I believe, I told him it
22 was me. I told him that I wasn't going to do any
23 statements or anything. I didn't want to at that time,
24 but if for some reason they needed me that I would. It
25 wasn't until later on that I made a statement.

1 Q All right. So, you gave an interview to Officer
2 Arbogast?

3 A Uh-huh.

4 Q And you told him that you didn't want to give a full
5 statement?

6 A Right.

7 Q But, in fact, Susan, when they needed you later, did
8 you give a statement?

9 A Yes, ma'am.

10 Q And write out in detail what you told us to today?

11 A Yes, ma'am.

12 Q And the person that you heard say on the porch of
13 your aunt's house that he had killed, shot a black man in
14 the back of the head and threw him in the river and was
15 saying all the things that you've testified, is he in the
16 courtroom today?

17 A Yes, ma'am.

18 Q Would you point him out?

19 A Right there.

20 Q Let the record reflect that she pointed to William
21 Owens.

22 THE COURT: Mr. Moore?

23 MR. MOORE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25

1 BY MR. MOORE:

2 Q Mrs. Lucado, how old did you say you were?

3 A I'm 26.

4 Q Twenty-six?

5 A Yes, sir.

6 Q How long have you known William?

7 A As long as I can remember.

8 Q Do y'all talk frequently?

9 A Not really.

10 Q Why not?

11 A Sir?

12 Q You're first cousins; right?

13 A Yes, sir.

14 Q Why didn't y'all ever talk?

15 A Whenever we were children, teenage years we talked a
16 lot.

17 THE COURT: Hold on a second. You may continue with
18 your answer.

19 THE WITNESS: Okay. When we were teenagers he used
20 to live in Kline where I grew up and we were kind of close
21 then, and as we got older -- he is several years older
22 than me and he lived in Williston. I lived in Barnwell.
23 He was married with a child. I was a teenager. That
24 usually doesn't go very well, and whenever I did move to
25 Williston I saw him occasionally, but the majority of the

1 time he was out of town working or something of that
2 nature.

3 Q Okay. Did William ever have a tendency to spout off
4 at the mouth or say things that were unusual?

5 A Not that I can recall.

6 Q You thought he was doing that in this case though,
7 didn't you?

8 A I knew -- I thought he was on -- I thought he was on
9 drugs. I knew what kind of situation as far as him and
10 Renee's relationship -- that it didn't seem right for him
11 to behave that way.

12 Q Other than the two phonecalls that you talked about
13 with Renee when she was calling you during this 20 or
14 30-minute interval, had you talked to her at any time in
15 the two or three days prior to this?

16 A No.

17 Q No?

18 A No, sir.

19 Q Did you talk to her anymore since then?

20 A No, sir.

21 Q Okay. That's the only time that you've ever talked
22 to Renee since this --

23 A Since --

24 Q Uh-huh

25 A -- this has begun? Yes, sir.

1 Q And these conversations -- I believe you said this
2 was on like a Saturday maybe?

3 A Yes, sir.

4 Q Did you say what time they were?

5 A No, sir, I didn't.

6 Q Do you know what time it was?

7 A I'm not exactly sure of a time. I know it was still
8 daylight outside.

9 Q You said today you heard some kind of conversation
10 with William on the porch; right?

11 A Yes, sir.

12 Q And then another conversation inside?

13 A Yes, sir.

14 Q Okay. When you talked to Sheriff Carroll and
15 Mr. Arbogast, did you tell them about both of those
16 conversations?

17 A I think it was all in one because it kind of happened
18 as you may be walking into another room, but you're still
19 talking at the same time.

20 Q So, that was just one conversation or two
21 conversations?

22 A It would depend on how you looked at it, sir.

23 Q How --

24 A I took it as it was the same conversation, but there
25 was two different locations that the conversation occurred

1 during because we were on the porch and then we did go in.
2 the house.

3 Q Did you believe him?

4 A I am not sure. I don't know if I believed him
5 whenever he said that or not. I didn't really -- I was in
6 shock. I didn't really know what to think.

7 Q So, you got somebody telling you that they've
8 committed a serious crime. Did you call anybody at that
9 time?

10 A No.

11 Q Y'all just sat around and kept on talking?

12 A We -- it wasn't very much more talking we did before
13 we went our separate ways.

14 Q You just didn't do anything? Did you call the
15 police?

16 A No, sir.

17 Q Did you turn on the radio to see if anything was
18 going to be on the radio about it?

19 A I looked at the news. I don't know if I looked at
20 the news that night or not, sir.

21 Q Did you see anything about it at that point?

22 A Not until that Wednesday.

23 MR. MOORE: That's all.

24 THE COURT: You may step down.

25 Next witness please.

1 MRS. MORGAN: Annie McCreary.

2 ANNIE MCCREARY, after being previously duly
3 sworn, testified as follows:

4 THE COURT: Mrs. McCreary, you're still under oath
5 from yesterday. Okay?

6 THE WITNESS: Okay. From --

7 THE COURT: Monday.

8 THE WITNESS: -- Monday.

9 THE COURT: I apologize.

10 THE WITNESS: That's okay.

11 DIRECT EXAMINATION

12 BY MRS. MORGAN:

13 Q Annie, back in November of last year do you remember
14 Agent Johnson and maybe Agent Darnell coming to your
15 house?

16 A I think it was just Agent Johnson.

17 Q Okay. And did he show you what's marked State's 12A?

18 THE COURT: You can take it out of the bag, if you'd
19 like.

20 Q Do you need to take it out to identify it, Annie?

21 A That was from my husband. Yes.

22 Q Can you identify both pieces of jewelry, Annie?

23 MR. MOORE: I'm sorry. I can't hear.

24 THE COURT: Can she identify both pieces of jewelry.

25 THE WITNESS: This would be the jewelry that I

1 identified to Agent Johnson.

2 Q As being what?

3 A My husband's jewelry.

4 Q Okay. That's the necklace with the cross and the
5 bracelet?

6 A Yes, ma'am.

7 Q And did he wear that all the time?

8 A He would wear it, yes, ma'am.

9 MRS. MORGAN: All right. Thank you.

10 I think it's now into evidence.

11 THE COURT: Any objection? She's introducing it.

12 It's been ID until now.

13 MR. MOORE: No.

14 (Whereupon, State's Exhibit No. 12-A was admitted
15 into evidence.)

16 THE COURT: Cross, if any.

17 CROSS-EXAMINATION

18 BY MR. MOORE:

19 Q Do you know where your husband got that jewelry?

20 A No, I don't.

21 Q Do you know -- did he have any other jewelry?

22 A Yes, he does.

23 Q Did he wear other jewelry from time to time?

24 A Yes, he did.

25 Q What kind of jewelry?

1 A He would wear necklaces.

2 Q A lot of different kind?

3 A Watches, yes. Not too many.

4 Q Did he wear more than one at the time?

5 A No. Well, he could have wore a necklace that his
6 sister gave him that had a little round platinum-looking
7 charm on it. He could have worn that when he wore the
8 cross.

9 Q But at different times he wore different necklaces
10 and so forth?

11 A He could have.

12 Q I mean, you would know?

13 A He wore different things.

14 Q Pardon?

15 A He would wear different things.

16 Q Thank you. That's all.

17 THE COURT: Ma'am, you may step down.

18 MRS. MORGAN: Judge, for the record these are the
19 three different records of the telephone that we discussed
20 and they're being introduced without objection.

21 THE COURT: Correct, Mr. Moore?

22 MR. MOORE: That's correct.

23 (Whereupon, State's Exhibit No. 14 was marked for
24 identification and received into evidence.)

25 MRS. MORGAN: Your Honor, I think the only other

1 stipulation we had were some times on the --

2 THE COURT: Why don't one of you read them into the
3 record?

4 MR. MOORE: Publish them for the record.

5 MRS. MORGAN: I'll be glad to do it.

6 THE COURT: All right. Ladies and Gentlemen, this is
7 another stipulation between Mrs. Morgan and Mr. Moore. A
8 stipulation, once again, is facts that are not in
9 controversy. Both sides agree that these are
10 uncontroverted facts.

11 MRS. MORGAN: That Donald Fenlayson's call to 9-1-1
12 was 11:41, his first call. His second call was at 11:47
13 on July 6, 2007.

14 THE COURT: Y'all will have that with you. You'll
15 have that in the jury room.

16 MRS. MORGAN: That the Orangeburg deputy got to the
17 bridge at 12:23 a.m. on July 7. EMS got to the scene
18 literally that same minute 12:23 a.m., July 7. Official
19 sunset is 8:39 and end of twilight is 9:07.

20 THE COURT: Let them take that. There is nothing
21 else on it.

22 THE COURT REPORTER: You want me to mark it?

23 THE COURT: Mark that as a Court's exhibit since it's
24 a stipulation.

25

1 (Whereupon, Court's Exhibit No. 1 was marked for
2 identification only.)

3 MRS. MORGAN: The State would rest, Your Honor.

4 THE COURT: Thank you, ma'am.

5 Mr. Foreman, Ladies and Gentlemen of the jury, that
6 concludes the evidence on behalf of the State. I need
7 about 15 to 20 minutes with the lawyers to know what's
8 next. So, if y'all will allow me to have another 20
9 minutes. Leave your pads out here.

10 Mr. Foreman, don't discuss. Don't deliberate. I'll
11 be with you just as quick as I can.

12 (Whereupon, the jury exited the courtroom at 3:01.)

13 THE COURT: Mrs. Morgan, anything for the record at
14 the conclusion of the State's case?

15 MRS. MORGAN: No, sir.

16 THE COURT: Mr. Moore?

17 MR. MOORE: Your Honor, the Defendant would move at
18 this time for a directed verdict of not guilty in this
19 case. The uncontroverted evidence in this case is that --
20 and is established by the phone records and the testimony
21 that Mr. Owens was at the bridge. He was there with
22 Mr. Williams -- that he was at home according to the
23 testimony of Jeannia Sweat and Renee McKinney no later
24 than 8 o'clock. Both of them placed him at home at or
25 before 8 o'clock p.m. The phone record does indicate a

1 phonecall at 8:11 p.m. which Renee testified that
2 Mr. Owens was pulling into the driveway. Although she
3 said on the witness stand he was home before 8 and she
4 knew that, the phone record indicates she said she got a
5 call from him -- she called him. Excuse me. She called
6 him when he was pulling in the driveway and the phone
7 records indicate that call took place at 11 minutes after
8 8.

9 The testimony of Troy Jamison was that the shot --
10 who was in close proximity -- that the shot was fired
11 between 8:30 and 8:45 p.m. at dusk-dark which is in
12 compliance with the sunset at 7:39 and the end of twilight
13 at 9:07 p.m.. Therefore, it would be impossible for
14 Mr. Owens to have been at the river between 8:30 and 8:45
15 when the shot was fired because he was at home in the
16 company of Renee and Jeannia.

17 It just doesn't -- there is just no way he could have
18 been there. The State -- those are the State's witnesses,
19 the witnesses they put up and the testimony they have says
20 that he was at home at that particular time. The other
21 evidence that the State -- there's been a lot of, you
22 know, fluff and talking about things that don't really
23 matter, but what really matters is --

24 THE COURT: You think Ms. Mile's testimony was fluff?

25 MR. MOORE: No, sir. I understand what Ms. Miles

1 said, but regardless of what she said, she wasn't there
2 that day. These two eye witnesses who were there says he
3 was at home at 8 o'clock and Mr. Jamison, a very credible
4 witness, says that the shot was fired at dusk-dark between
5 8:30 and 8:45, and there is no evidence in the record that
6 Mr. Owens was not in the presence of Sweat and McKinney
7 because Ringo Sweat, another very credible witness, says
8 that they got to his house just a little before dark which
9 would have been somewhere in the 9 o'clock or just before
10 9 o'clock range, and, so, all of the testimony says that
11 he, Renee, and Jeannia Sweat, were together from
12 approximately 8 to 8:11 until somewhere just before
13 9 o'clock when they got to Ringo's house.

14 So, he couldn't have been there and there is just
15 absolutely no credible evidence that he was there or that
16 he did this. Both of the people who said that he said he
17 did it said they didn't believe him. They saw some news
18 report later on, but they both said they didn't believe
19 him when he -- when he made those statements they said
20 they didn't believe him, but the crux of the matter is he
21 wasn't there. By the State's witnesses, he wasn't there.
22 He couldn't have killed the man if he wasn't there.

23 There's other evidence that the State failed to
24 explore, and there was two witnesses who identified a red
25 pickup truck at the third bridge. The State never looked

1 at that. The DNA on the jewelry was never tested. It was
2 no DNA evidence linking Mr. Owens to the scene. They did
3 two searches of his house and two or more of his yard and
4 truck. They found absolutely nothing there. The pink bag
5 that was supposedly there was not -- does not show up in
6 any of the photographs. SLED searched the house and I've
7 seen they did an extensive search. It just wasn't there.

8 There is just not enough evidence in this case to
9 even send it to a jury, much less convict someone beyond a
10 reasonable doubt. The State's own evidence -- they failed
11 to investigate Mr. Cedric Thomas. They failed to
12 investigate the second red truck that was parked
13 identified by Robert Williams and by Joe Allen James.
14 Both of those witnesses told the police that there was
15 another truck in the vicinity at the time that they were
16 leaving the bridges.

17 Mr. Joe Allen James said he left at 7:15. Mr. Robert
18 Williams said he left no later than 7:45, and, so, of
19 course, Mr. Owens was there according to that testimony at
20 that time, but he was also reported to be home around
21 8 o'clock and certainly no later by the phone records than
22 8:11 p.m. that night.

23 All the testimony ties in that he just couldn't have
24 been there. We don't know who was in the third red truck.
25 We don't know about Mr. Cedric Thomas. We don't know

1 about any of these other things, but, certainly, the State
2 has not presented enough evidence to convict Mr. Owens of
3 murder. Thank you.

4 THE COURT: Well, Mr. Moore, I respectfully disagree
5 with you. Obviously, at this stage of the game I view the
6 evidence in the light most favorable to the adverse party,
7 the State here. As to the times, there's been all kind of
8 times testified by a lot of the witnesses. Timing, to me,

9 is a question of fact and that's why we have a jury to
10 determine who they believe and what times they believe.
11 We have testimony of the ex-girlfriend. We have testimony
12 of the first cousin about alleged statements that your
13 client has made, and if the jury believes that, it would
14 be a factual for them to make -- whether or not the
15 investigation was complete enough.

16 Those are all issues for the jury to determine.
17 There is just ample evidence in my opinion to send it to
18 the finders of fact to determine what the true facts are
19 in the case. That's why we have a jury system. I cannot
20 as a matter of law direct a verdict of not guilty at this
21 stage.

22 MR. MOORE: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. MOORE: Not at this time, Your Honor.

25 THE COURT: Well, we need to discuss whether or not

1 Mr. Owens is going to testify.

2 MR. MOORE: Yes, sir. I would like to recess for a
3 few minutes to discuss that matter with him.

4 THE COURT: All right. Let me see both of y'all up
5 here.

6 (Whereupon, a bench conference was held.)

7 THE COURT: We're going to take a short break.
8 Everybody remain seated.

9 Sheriff, have the Defendant go to the little room
10 we've been allowing him to use.

11 Mr. Moore, you and your team are welcome to go.

12 Officers, Gentlemen, I'm am going to allow y'all go
13 back in there because I am going to allow his mother to go
14 back in there. There is to be no interaction between the
15 mom and the Defendant. Y'all make sure that happens.
16 You're not to testify about anything you hear back there
17 or say to anybody anything about it. You understand?

18 Mrs. Owens, you want to go back with your son?

19 Everybody else remain seated please. We'll stand at
20 ease just for a few minutes.

21 (Whereupon, a break was taken.)

22 THE COURT: Mr. Moore, have you had an opportunity to
23 meet with your client, his mom, and the defense team to
24 discuss his right to testify?

25 MR. MOORE: Yes, we have.

1 THE COURT: What is his decision?

2 MR. MOORE: Your Honor, his decision is that the
3 defense would rest -- not present evidence at this time.

4 THE COURT: Mr. Owens, would you please stand for me
5 and raise your right hand?

6 WILLIAM OWENS, after being duly sworn, testified
7 as follows:

8 THE COURT: Mr. Owens, we've reached the stage of the
9 trial where you can obviously present your defense.
10 That's where you have the right to call witnesses and
11 introduce relevant exhibits. You also have the right to
12 testify in your own defense.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Does he have any record that's subject to
15 impeachment?

16 MRS. MORGAN: Just the failure to stop. I don't
17 think --

18 THE COURT: No.

19 MRS. MORGAN: We did have some issues of prior bad
20 acts if he took the stand that we discussed, Your Honor.

21 THE COURT: Well, if you were to testify, you would
22 be subject to the same rules that all other witnesses are
23 subject to. You'd be cross examined and there is no prior
24 records. So, there is nothing really to impeach you on
25 prior record. There may be some alleged prior bad acts,

1 but I don't think I'd let those in. So, there wouldn't be
2 any real impeachable evidence that can be used against
3 you, but you could still be subject to cross examination.

4 The constitution of the United States provides that
5 no one can be made to testify against themselves or to
6 testify in a trial. You have the right to remain silent.
7 Nobody could be -- you can't be compelled to testify.
8 Nobody can make you testify, but, obviously, you have the
9 right to testify. That's your right. Nobody can make
10 that decision except you.

11 I have given you an opportunity to meet privately
12 with your lawyer and your defense team, and your lawyer
13 tells me now that you do not want to testify. I will tell
14 you this. If you choose not to testify, I will instruct
15 the jury a number of times through my instructions and I
16 will tell them that the fact that you did not testify they
17 cannot hold that against you in any manner whatsoever. I
18 will tell them that they can't even discuss the fact that
19 you did not testify when they deliberate your guilt or
20 innocence. I will tell the foreperson of the jury that is
21 one of his main functions. If anybody says anything at
22 all about you not testifying that he is to stop it right
23 there.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: There is to be no inferences drawn by

1 reason of the fact that you didn't testify. You'll be --
2 the jury will instructed on all of your rights not to
3 testify and what it means and they can't hold it against
4 you. They can't talk about it. They can't discuss it.

5 So, I'm asking you now do you understand your rights
6 to testify?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand that your rights that
9 you have under the fifth amendment to the constitution and
10 you understand your rights if you don't testify what I'll
11 the tell the jury -- that they can't discuss it and can't
12 hold it against you and can't make any inferences from it?

13 THE DEFENDANT: Yes, I do, Your Honor.

14 THE COURT: All right, sir. You understood all of my
15 questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And, Mr. Owens, do you have anything you
18 want to ask me about your right to testify?

19 THE DEFENDANT: Say a prayer for me.

20 THE COURT: All right, sir. So, having been advised
21 by me, your lawyers, and having an opportunity to discuss
22 it with your mom, it's your decision not to testify; is
23 that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right, sir. Thank you. You may be

1 seated.

2 Mr. Moore, I understand that y'all will not present
3 any testimony?

4 MR. MOORE: That's correct.

5 THE COURT: And we went back over the exhibits at the
6 break and as I understand the only possible exhibit that
7 Mr. Moore may have put in was a picture that was part of
8 the Power Point presentation which was already in evidence
9 and he just needed to use it for cross examination of a
10 witness and I think he just marked it so we would know
11 which picture he was talking about.

12 MRS. MORGAN: That's correct.

13 THE COURT: Madam Solicitor, I am not going to deem
14 that as him putting in evidence and I will allow him to
15 have the last argument.

16 MRS. MORGAN: Yea, you shouldn't. I wouldn't have
17 insisted on it, Judge.

18 THE COURT: So, is there anything from the State
19 before we bring the jury back in?

20 MRS. MORGAN: No, sir.

21 THE COURT: Mr. Moore?

22 MR. MOORE: No, sir.

23 THE COURT: I am cognizant of your request in
24 chambers with Mrs. Morgan that you would like to argue and
25 charge in the morning.

1 MR. MOORE: Yes, sir.

2 THE COURT: Thank you.

3 MRS. MORGAN: My only request is that we don't split
4 it. You won't split arguments and charge. Some people
5 have done it before. If we go, we're to stay. That's
6 what I want to make sure.

7 THE COURT: No. They won't get it until 5:30 or so.

8 MRS. MORGAN: Right, but then you won't send them
9 home. That's what I wanted to make sure.

10 (Whereupon, the jury came into open court at
11 approximately 3:45.)

12 THE COURT: Mr. Foreman, Ladies and Gentlemen of the
13 jury, the state has completed their presentation, all of
14 the testimony and the witnesses, et cetera. At this stage
15 of the trial the Defendant has the right to present his
16 defense. I have been informed that they do not intend to
17 call any witnesses. So, that concludes the testimony in
18 the case.

19 What we have left is the final arguments by the
20 lawyers. Under our rules since the Defendant did not put
21 up any evidence, he has the right to go last. So,
22 Mrs. Morgan will make the final argument on behalf of the
23 State followed by Mr. Moore. That will conclude the final
24 arguments. Once we finish that, then I have to charge or
25 instruct you on the law.

1 It is a quarter 'til 4. By the time we argue and
2 charge it could well be -- I know it'll be past 5. It
3 will be in the 5:30 range, and then, obviously, you would
4 start your deliberations, and that's going to put us way
5 into the evening. I would suggest, unless y'all have some
6 strong opposition, that we come back in the morning and
7 everybody is fresh, and the arguments will take -- I am
8 not going to say how long it'll take because as soon as I
9 say it, they'll take longer, but we should have it to you
10 by good mid-morning or before lunch -- I'll just say
11 that -- and then you'd have all afternoon if you need to
12 or however much time you need. You don't have to have to
13 go late into the night like we would have to do it if we
14 do it tonight.

15 I will have you some refreshments in the morning. If
16 we see that the deliberations are going to go through
17 lunch, I will order you lunch in.

18 If that's okay, Mr. Foreman? Do you think does that
19 satisfies everybody?

20 THE FOREPERSON: Yes, Your Honor.

21 THE COURT: So, having said that, what is your
22 pleasure on breakfast snacks?

23 THE JUROR: I am bringing breakfast tomorrow.

24 THE COURT: Okay. What kind of cook are you?

25 All right. We'll count on that. I'll have you some

1 fruits and things as well as coffee. Okay? I'll take
2 care of your lunch tomorrow if we go that long.

3 We have the newspaper here again today. I don't see
4 the t.v. cameras today. I am going to ask you please
5 don't read anything about it in the newspaper tomorrow
6 morning. Please don't discuss the case with anyone. Do
7 not let anyone discuss it with you, and do not deliberate.

8 I am going to give you a choice here. Would 9 or 9:30
9 suit you?

10 THE JUROR: 9:30.

11 THE COURT: That's right. You got to cook. 9:30,
12 Mr. Cave?

13 THE FOREPERSON: Yes, sir. That's fine.

14 THE COURT: I want to commend each and every one of
15 you. I've been watching you. You paid very, very close
16 attention. I appreciate it. That's all any of us can ask
17 is for a jury to pay close attention and do your job, and
18 I thank you for what y'all have done to date, and, so,
19 we'll start up at 9:30 sharp in the morning and get right
20 into the final arguments, and my charge is not real, real
21 long. It ain't like a sermon. It is probably 12 to 15
22 minutes. So, we'll go from there.

23 So, everybody else remain seated.

24 Y'all have a very pleasant evening. Leave your
25 notepads in your chairs and I'll collect those. Have a

1 wonderful evening.

2 (Whereupon, the jury exited the courtroom at 3:50.)

3 THE COURT: We will stand at ease until 9:30 in the
4 morning. I am going to start sharp.

5 (Whereupon, the proceedings were concluded for the
6 day and were reconvened on December 4, 2008 as
7 follows:)

8 THE COURT: All right. I'm informed by the
9 Solicitor's office that even though we talked about the
10 Power Point yesterday and intended to introduce it into
11 evidence, I am going to open the evidence back up just to
12 allow the introduction on the disk itself on the Power
13 Point presentation.

14 Any objection, Mr. Moore? That will be number 15.
15 Madam Solicitor, is there anything else for the
16 record?

17 MRS. MORGAN: No, Your Honor.

18 (Whereupon, State's Exhibit No. 15 was marked for
19 identification and received into evidence.)

20 (Whereupon, the jury came into open court at
21 approximately 9:31.)

22 THE COURT: I heard it was quiet a spread. That was
23 mighty nice of you. I'll get with you when we get
24 through. If we go tomorrow Mrs. Hiers has agreed to cook
25 in the morning.

1 Okay, Mr. Foreman, Ladies and Gentlemen, as I said
2 yesterday and this morning we'll start with the final
3 arguments by the State followed by the Defendant and then
4 I will charge or instruct you on the law. Please bear in
5 mind once again that the final arguments like the opening
6 statements, that is not evidence in the case.

7 These lawyers are adversaries for their particular
8 side and they will be arguing the evidence as they see it
9 to be, but, once again, the twelve of you collectively
10 acting as one you are the true finders of the facts. So,
11 that is your ultimate job and ultimate decision. So, what
12 the lawyers say is not evidence. It's what they intend
13 the evidence shows. Please bear that in mind.

14 Mrs. Morgan?

15 CLOSING STATEMENT

16 MRS. MORGAN: Ladies and Gentlemen of the jury, first
17 of all, I'd like to thank you for everyone in the
18 courtroom for the job that you've already done. It hasn't
19 been the easiest and it's about to be where the system
20 begins to work. You haven't begun your deliberations.
21 You've been ordered and specifically instructed not to,
22 and that's the way it's supposed to be because as the
23 Judge told you from the very beginning you're going to
24 hear different things, and now we've put you together and
25 you say what happened July 6, 2007 and who murdered

1 Reverend Phillip McCreary at the county line of Barnwell
2 and Orangeburg County.

3 THE COURT: Bamberg County.

4 MRS. MORGAN: Barnwell. I've done that once before.
5 Thank you, Judge.

6 THE COURT: We don't want any jurisdictional
7 questions.

8 MRS. MORGAN: So, let's go back. What did we hear?
9 We have Lawrence Blackwood and what did he say? He is
10 clearly a police officer. He was pretty observant, wasn't
11 he? He could tell you who was there when he got there.
12 Nobody. That he went up the fishing bank, went around the
13 pool. He had never really been there before and he was
14 trying to fish, and he knew that he was up there and no
15 one was there. He heard a truck and a trailer or truck
16 come and he heard -- he saw a man and a boy and they were
17 fishing, and he even knew that they had motor problems.
18 He gave a description of what they were like and he said
19 he was there. They went up. They went back. They went
20 and fixed the motor and they went up again and they went
21 up, way up around the corner, shut the motor off, and he
22 said they were fishing up past him.

23 He said he went walking back down, and who did he
24 see? A black gentleman sitting on a bucket, two corks,
25 two fishing poles in the line, and he was there and he

1 walked past him. When he walked past him, how is it
2 going? Going. He is fine. He said he was smoking a
3 cigarette, had a floppy hat on, and was fishing two poles
4 in the water.

5 What does he tell you? He walks past him, and he
6 goes at that landing -- at the landing he goes my car --
7 my truck was there. The green truck was in front of me
8 close to the water. That green truck wasn't there before,
9 and he goes and then there was the other truck and trailer
10 right that they were behind me, and he said, when I left
11 that's who was there. No one else, and he goes, I don't
12 really know exactly what time I got -- left the landing,
13 but I can tell you this: 7:40 is when I got home. How
14 long does it take me to get from that river at the county
15 line to my house? 10 to 15 minutes. I am not the fastest
16 driver. So, he knows. He was back at home at 7:40. So,
17 he left the river about 7:30 or so.

18 Why is that important? Because we know that the
19 Avalanche wasn't there, was it? Nope. So, 7:25 he's
20 left -- the 15 minutes. That's right. 7:40 when he got
21 home. 15 minutes back. So, 7:25, Avalanche isn't there.
22 Red truck, not white truck anymore and Mr. McCreary --
23 Reverend McCreary's truck.

24 We got there James who said, I drove by, I know --
25 because there are people that really know their time and

1 then there are people that go, dusk-daylight sometime, I
2 don't have my watch on, I ain't looking. We got two watch
3 people that night, don't we? We have two people that can
4 tell you they are certain what time. Lawrence Blackwell
5 said, I got home at 7:40, and you've got Mr. James who
6 says, I've been driving that road how many years? Twenty
7 something. And I'm -- he goes it's kind of like
8 clockwork, and I look at my clock. He sat up there and he
9 said, I remember that day. I remember it because I always
10 get into Williston about 7 and I am crossing that bridge
11 making that home county line about 7:15, and he goes, I
12 knew it was 7:15. He goes, I looked down. I looked at my
13 watch -- not dusk-dark time, not, you know, I am not sure.
14 I know. I looked back down there, and what did see? I
15 saw the Reverend's truck and thought, dog, he gets to fish
16 again. He's been doing this twelve hours, and he said,
17 Reverend McCreary is fishing. Isn't that something?

18 And he saw -- what else did he see? He saw a white
19 pickup chromey, old-timey, whatever fancy is what I say.
20 I don't know my trucks that well either. I don't know if
21 I could tell the difference between the Chevy and Ford,
22 but he saw a white truck with chrome. It is 7:15. Who is
23 down there? Lawrence Blackwood, Reverend McCreary, and he
24 said, there is a maroon. Now, I apologize. Maroon, red,
25 it's -- whose truck is it? Mr. Williams'. And his boat

1 and his kid -- because we have at 7:15, they're all down
2 there. At 7:15 three are down there. 7:25 only one -- I
3 mean, one is gone. The white is gone.

4 Then what do we have? We have Mr. Williams.

5 Mr. Williams probably tried to remember all he said and I
6 don't know if I can get it all, but, you know, I realize
7 all three of those people did something that is the most
8 powerful thing that this country is about and what we want

9 people to do. They came forward, didn't they? They came
10 forward. Not right then. They came forward when they
11 heard at the the stock yard. They came forward when they
12 knew something was wrong and maybe, maybe they could help
13 do something. They came forward.

14 And Mr. Williams says, I don't really know my times.
15 You know, I was going fishing with my son. I was a little
16 frustrated with that motor. I had to fix it. I was going
17 fishing with my son to enjoy it. I don't know my times,
18 but I do know what I saw. When I was down there -- he saw
19 the guy fishing off the bank. He knew that guy had seen
20 him because he had fished back, and he knew when they had
21 been up that creek around that pond and had been fishing
22 and they did a pretty good day of fishing, right, and when
23 they came back down -- when they came back down, who was
24 there that had never been there before? Reverend McCreary
25 sitting on -- he said he did -- Mr. Williams said, it's

1 the code of the river, isn't it? If you see the corks in
2 the line, what did he do? He moved over so he wouldn't
3 disrupt it when he went by with the boat.

4 He was there and he saw Reverend McCreary -- hat,
5 cigarette, two fishing poles doing what is something that
6 everyone wants to be able to do is enjoy the outdoors and
7 fish and be at peace, and he saw Reverend McCreary and he
8 went in and he had to load the boat and he had to do all
9 this stuff and get -- put the trailer around and he had to
10 unhook his son. Son's got his line cut where he had to
11 cut it in the trees. He fished the bank further down and
12 then what did he do? He has the the boat out, the life
13 jackets and stuff. Everything is loaded up. Where is the
14 Reverend? He is still fishing. His truck is there. I'm
15 about to pull out, and what does he see? He sees an
16 Avalanche, dark in color, black, gray, charcoal, navy
17 comes up and he goes, it doesn't park like he is going
18 fishing. No. No.

19 Remember? He parks over what? He parks over where
20 no one could see him. You can't see him. He is not out
21 and about in the landing. That's where he put the mark.
22 The Avalanche pulls in close to the bridge abutments where
23 no one can see him, and he pulls in, and Mr. Williams
24 goes, you know -- he pulls in, he didn't have any fishing
25 gear. He didn't see anything in his hands -- no gun at

1 that time.

2 But what had Mr. Williams done that is probably one
3 of the most powerful things before that man drove up? He
4 not only had been courteous as the cork went floating by.
5 He did something that is what people do to people that are
6 fishing on the river no matter who they are and what they
7 look like. He said, I had good catawba worms, and I went
8 over and I took that thing of catawba worms to the

9 Reverend -- to man who was sitting and I dumped those
10 catawba worms. We dumped them into his cricket basket.
11 And he had his 5-gallon bucket -- don't really remember a
12 whole lot, but I know I gave him catawba worms on that
13 evening. I gave him the catawba worms and I'm back and
14 then this man in an Avalanche comes up, and he comes up
15 and I don't see a fishing pole. I don't see him get out
16 fishing gear. He is not parking like he is going into --
17 but he goes and dips his hand in the water, asks how the
18 fishing is and what is Mr. Williams -- you could see him
19 on the sitting on the stand.

20 You see, this is your job as the finders of fact.
21 You get to judge what you thought about those people, what
22 you sense about those people. Were they scared? Were
23 they concerned? What was it about them that you believe
24 them and what does he say? He says, I kind of was a
25 little uneasy. He said, the guy came up and he goes, you

1 know, look the live well if you want to, and we kind of
2 made eye contact and I left, and you could tell he wasn't
3 real keen on him.

4 But what did he do? He came forward. He came
5 forward the next day on the stock yard when he heard it.
6 He came forward. He let somebody know because they said
7 there is some red truck, and I know I got a red truck
8 truck. You might call it maroon, burgandy. It is a red
9 truck and it was down there, not up at some third bridge
10 red herring let's throw it somewhere else. Down there
11 with Reverend McCreary. And he said, I don't know -- I
12 don't know the times real well, but I can tell you I gave
13 Reverend McCreary catawba worms. I gave this man -- look
14 in my live well if he wanted to and I got out of here and
15 I wasn't feeling real good. I didn't see no fishing line.
16 They're fishing or they might be doing something else.

17 What did he come forward and do? He goes, look, I
18 don't know, but I eyeballed him. I did that eyeball, and,
19 so, I'm willing if you're -- I'll come. I came to
20 Springfield, and I sat down with the agent and I gave the
21 best description of who I could imagine that person was in
22 the Avalanche. I didn't have anything to go by but my
23 eyeballing that person.

24 What did I do? I sat with them for a couple of
25 hours, signed my name, and I did a sketch of the person

1 because I thought coming forward was the right thing do.
2 Because, you see, when he came forward on that Tuesday or
3 Wednesday, they didn't know anything, did they? It's
4 almost a week afterwards and nobody knows anything. They
5 don't have a lead. This is really like the first glimmer
6 that they might know what happened down on the river --
7 that law enforcement would know.

8 Now, some other people knew some stuff, right? But
9 Tuesday or Wednesday when he is coming forward drawing
10 this -- or Wednesday or Thursday of the week after -- this
11 is the first that they go, we might -- we hadn't seen
12 anybody. Nobody driving by saw an Avalanche, but a man
13 who came forward is willing to sit down and do a drawing
14 and he did, and he gave it and then they match it and they
15 said the drawing was going on and what had happened? Who
16 got a call? Sheriff Carroll. He got a call from somebody
17 that said William Owens.

18 You saw that man yesterday. He wasn't real happy.
19 He was scared a little bit -- the fellow with the cane.
20 He came up here. He said, I called because my daughter
21 had told me something. My daughter had told me something
22 that upset me. And what did he do? To the best of his
23 ability under tough circumstances came forward -- maybe
24 not in the way where he is writing an official police
25 report at that time, but he knew right was right and wrong

1 was wrong and murder was murder and he came forward, and
2 he gave Sheriff Carroll the name of William Owens --
3 William Owens who happened to have an Avalanche, William
4 Owens who happens to be pretty much right on.

5 So, they went and they said, oh, my. You kind of
6 know that they didn't have anything. They didn't have
7 anything. Did they have -- what had they had for four or
8 five days? What had law enforcement known? They knew
9 that the community of Springfield right across that river
10 had been devastated. There was a man that loved fishing
11 and was the fisher of men who loved to go drive that mile
12 down to the river, have his hat and his poles, take his
13 truck with all the God on it, and he loved to go down
14 there and he would go down there and fish because he --
15 did you catch what kind of man he was? He knew his wife
16 loved fishing and she loved fish, and she knew that's what
17 he would do every day.

18 But what law enforcement knew those first couple of
19 days -- not what was happening in some other part of
20 Barnwell County -- is they knew they had a horrible
21 murder. You heard from Annie, and you heard from Don
22 Fenlayson. You know what they went through. He said, I
23 had to look, and I looked over the river and I was
24 scared -- and I'd be scared at dark. He said, that frog
25 jump out, and he said, I ain't going to go any further;

1 right? Isn't that what he said?

2 He goes, I didn't know -- there was the Reverend's
3 truck. Stuff was in it. I didn't know, but I knew when I
4 walked back up here. When I walked back up here and
5 shined my light down, what did I see? I saw Reverend
6 McCreary's hat and I saw him, and I knew that I had to
7 compose myself to get on the 9-1-1 call at 11 -- he made
8 two. There is a missing person. When I am down there
9 with the truck and when I see him I know I got to get
10 myself together -- not just for me, because I've just seen
11 something that nobody wants to see. This is my friend, my
12 neighbor, a good person that does things for people the
13 right way and this is something -- this is going to be
14 bad. And he can't tell Annie.

15 That's what law enforcement knew that day. They
16 knew. Everyone knew. Even the EMS driver said, well, I
17 knew when I got down there that was Reverend McCreary's
18 truck because he had been fishing there for all my life.
19 That's what law enforcement had for the first three or
20 four days, and they were looking and looking, but they
21 didn't know anything other and until that drawing -- that
22 thing because people came forward.

23 And people came forward. Kenneth Miles came forward
24 and told you. What did he say? I heard something from my
25 daughter. I just don't -- just don't hurt him. Take him

1 if you can. Just do right by him. Go look for William
2 Owens. That happens on like Wednesday night.

3 Then you have the young woman who comes forward who
4 came forward under really difficult circumstances: Susan
5 Miles. She came forward. She came forward and spoke her
6 truth -- her truth when somebody was trying to say, well,
7 why didn't you go to the police, she did. She did go to
8 the police, didn't she? She came forward. She came
9 forward on that Thursday and gave her -- she said, I
10 didn't want to come forward, but I knew -- what did I
11 know? Let's say what we know.

12 She knew on the Saturday afternoon -- Saturday
13 afternoon when nobody knew nothing -- there hadn't been
14 anything out. They're still -- I don't know if they
15 finished the autopsy. Saturday afternoon, what does she
16 say? She said, I am going to my aunt's house to take my
17 girl. I'm going to my aunt's house to take my girl -- not
18 Tiffany. I can't remember her name. I apologize.

19 I was taking my baby -- not baby, but young girl
20 there and I am in the yard and I'm waiting on my Aunt
21 Norma Jean. She's with somebody, and nobody is there, and
22 William Owens who is my cousin -- I'm at -- he comes out
23 of his house, and he's fussing and he's saying something
24 about somebody stole his phone or took his phone and she
25 don't want to get in any drama, does she? No. She

1 doesn't want any drama.

2 So, what does she do? She says, yea, use my phone.

3 Well, if somebody stold your phone, here is how you call.

4 She even -- she's talking to her cousin. She is saying,

5 well, if she stold your phone, let me give it to you.

6 Here is my cell. Try to call her. Well, if it's going to

7 voicemail, called Alltel. I even called it for him. I

8 even called Alltel for him.

9 She goes -- she's sitting there. She's waiting. He

10 goes back into the house, and what happens? She -- her

11 aunt comes up her -- I may able to get this right. Her

12 Aunt Norma Jean and another sister or aunt comes up,

13 Elaine, and Elaine's daughter. They're much older than

14 she is. They come up, and they're sitting on the porch.

15 Remember, she said they're sitting on the porch. There is

16 a glider and a bench, and they're all at Norma Jean's

17 porch which is twice the distance of this courtroom to

18 William's house.

19 What's happening? William comes up because she is

20 saying -- no, I apologize. She sits there and she goes, I

21 keep getting phonecalls and I get cussed out with Renee

22 and Renee's sister because they're calling the number and

23 somebody wants to talk to William, and there is stuff

24 going on. She said, don't cuss me. What does she do?

25 She is still going, look, I don't want people cussing me.

1 I am going to put it on speakerphone. I am going to put
2 it on speakerphone so that if somebody is cussing me I'll
3 know what to do. That's what she says. She says, I am
4 going to put it on speakerphone, and I am going to -- I'm
5 gonna -- if they're cussing me, we're at the porch, I am
6 going to do something.

7 So, they're calling, and she starts cussing but but
8 then who comes back up? Saturday afternoon. Not even 24
9 hours after this occurred. What happens? She's on the
10 porch. He comes up. She starts fussing. William gets
11 the phone and grabs the phone and goes down what does she
12 hear? She hears that man yelling, rat, narc, bitch. He's
13 upset, and he's doing this within earshot of everybody --
14 the porch down here.

15 And those four people on -- four people on that
16 porch. She's there. What does he come up and say? He
17 says on the porch, I killed a black man, shot him in the
18 head, and threw it -- him in the river. I'm the devil. I
19 am not going back to jail. He says that on the porch
20 Saturday. This man. In front of those people. And the
21 only one that came forward is Cousin Susan.

22 Did she come forward right away? No. You heard her.
23 You saw her. She said, no, I didn't, but when we went
24 inside -- we went inside, she said he did more. She said,
25 William, don't say that. William, don't be saying that

1 kind of stuff. She is still not going. She is still not.
2 What does he say? He goes, the black man I shot was a
3 preacher. I knew it because I had his wallet, and I
4 burned his ID in the frying pan, and he and Renee had gone
5 back and seen the emergency vehicles Saturday afternoon,
6 July 7.

7 That man admitted to his mama, his aunt, and his
8 young cousin that he had shot a black man in the head,
9 threw him in the river, knew he was a preacher, knew that
10 he was the devil. He knew he was the devil, and he knew
11 he wasn't going to go back to jail without doing
12 something, and he knew he was a preacher, and he burned
13 his ID in the frying pan Saturday, July 7, 2007.

14 And you know what else happened that that young girl,
15 24 years old, told you yesterday? She said, I was upset,
16 but I didn't -- you know, I just kind of was going -- I
17 didn't really think anything of it. But what happened the
18 next day on Sunday? Has anybody gone to the law
19 enforcement? No. But Norma Jean, the Defendant's mama,
20 and her go to see at some river. They go on Sunday to
21 see. She said the only one I knew I think it's hell hole.
22 Something. Some landing on the Savannah river. She takes
23 them to it, doesn't she? She takes the mother of the
24 Defendant to that landing, and they didn't see anything
25 and they left.

1 But I can tell you she did do something on Wednesday.
2 She came forward. She came forward. She came forward.
3 Y'all, as I told you in the opening, you're going to see
4 people that came forward and did stuff, not because it's
5 easy and not because it's like t.v. and not because it's
6 something easy to do. She came forward because it was
7 difficult, but she came forward because it was the right
8 thing to do. She came forward because she knew when she
9 saw that paper that said there was a black man shot at the
10 river and she didn't know how, what did she do? She came
11 forward, and she told the Sheriff and she was scared at
12 first. She didn't want to be involved. She didn't know
13 if she could. She goes only if you need me. Only if you
14 need me. She came forward.

15 She told her dad. She told her dad in person, didn't
16 she? And then she called the Sheriff the next day, and
17 she said, please keep me anonymous if you can, but she
18 came forward yesterday and spoke her truth and the only
19 thing the defense said is why didn't you go to law
20 enforcement earlier? There is nothing to refute what she
21 said. She came forward because she knew he admitted to
22 killing a black man, shooting him in the head, throwing
23 him in in the river, knew he was a preacher, burned his ID
24 and wallet in a frying pan Saturday, July 7, 2007.

25 Law enforcement doesn't know that, do they? They

1 don't know any of that. See, that's the difficulty.

2 They're looking at any leads and until they got the

3 picture and until they got that name, then they started

4 focusing on William Owens. Now, how long after this

5 murder did it occur? They didn't get to William Owens

6 until the 12th. I think it's the 12th when he made his

7 statement.

8 They didn't really know. They knew that they could

9 read him his rights, and, you know, I think he told them,

10 yea, I was at the river and I left. He didn't tell them

11 he had told his mama and his cousin he burned his wallet.

12 I don't have any guns. Don't have any guns. No. Don't

13 do any of that. I just -- you know, the only one that was

14 there was the Reverend. There was no Reverend's truck

15 there. There was no white truck. There was only this man

16 and his son.

17 Why did he have to say that? Because he knew he had

18 had an eyeball and he hoped that no one would come

19 forward. No one would come forward; right? Don't come

20 forward. Don't. Because that's the other theme, isn't

21 it? Who else did he know that he had control over and he

22 could say, don't come forward? Get my back. Have my

23 back. Renee and her sister and even kind of Ringo.

24 Because, you see, what happened -- we go back to that

25 night. You see, we know 7:25 Lawrence Blackwell left.

1 We're trying to figure out when if Mr. William was right
2 behind him and we know what? Through that that there
3 was -- the telephone call as he was driving up at the
4 house in Williston 15 minutes away was at 8:11. That's
5 what we know. So, we got 7:30 to 8 o'clock for him to do
6 something, don't we? Yep. 7:30 to 8 o'clock. 7:30 to
7 8 o'clock. Lawrence left. He left 7:25 if you figure he
8 is 15 minutes. So, 7:25 he is gone. Mr. Williams comes
9 down. He takes a minute or two. He gives Mr. Reverend
10 McCreary the catawba worms, leaves him there. He drives
11 up. He leaves and you got time. You got time.

12 And you know what he did, and I think you really know
13 how he did it. I don't know what was said. I don't care
14 what was said. I don't think it was anything. You kind
15 of know the man that was fishing who abided by the
16 etiquette and was tickled to get his catawba worms and was
17 going to fish that last couple of bits before the sun
18 completely went down in the swamp. You knew it -- about a
19 mile from his house.

20 What do we know? You saw it on the screen. You saw
21 it on the screen. You saw it on the screen that it was
22 clear he was sitting on his bucket, two poles in the river
23 fishing. Fishing. And what do we know that was on that
24 screen yesterday? We know he wasn't sitting really on
25 that bucket because that jacket and that blood spatter is

1 a whole lot of distance away from it. That blood spatter
2 where he was sitting is a good distance away. That's
3 where that head fell. That's where the blood let out that
4 takes four or five minutes. Four or five minutes.

5 What do you do in four or five minutes? You get the
6 catawba worms, snatch off some jewelry, get his wallet,
7 missed the \$300 in his pocket, grabbed the wallet, and
8 hope that the current of the edisto river takes him down
9 and away. Take the fish, take his bucket, and leave. And
10 leave.

11 But how did he kill Reverend McCreary? How did he
12 kill Reverend McCreary? He didn't kill him in the water.
13 He took a high-powered weapon, a rifle, a gun. I think he
14 had more than one. It is clear from Renee he had more
15 than one. He always kept that big old pistol thing in his
16 truck. She saw it that night. She also saw another thing
17 that did something else because he had hit her with it.
18 He had guns.

19 Now, on Thursday he didn't have to tell them he had
20 guns because he had done got rid of everything, hadn't he?
21 He even told Renee on the phone when they were searching
22 his house, don't worry. I got rid of everything. Put it
23 in the dump. I'm fine. You got my back? You got my
24 back? Because he's the same man that when he came up
25 after executing Reverend McCreary -- this is not just --

1 this is not a fight. This is not an oops. No, no, no.

2 You see, Reverend McCreary is trying to tell you look
3 at me. Look at me and listen to what they can tell you
4 how I died. Look at me and let me tell you how I died
5 because this is the forensic side. That's why we put it
6 in the screen. We don't show the upclose and personal,
7 but we can show you the diagrams and tell you what those
8 doctors saw. We can show you the forensics and say let me
9 tell you what I know as an expert how Reverend McCreary
10 was murdered.

11 ~~I dare say he was executed.~~ Why? Because the
12 distance between the weapon and his head was 3 to
13 6 inches, and it was straight through his head, and it was
14 with a high velocity weapon that took out his brain stem
15 and brain pons and half the front of his face. That is
16 execution. And what is he trying to tell you? He trying
17 to tell you, I am not sitting on the fishing bucket.
18 That's too far, but I could have been on my knees. I was
19 bent where it didn't get in my lap. I was bent, and I
20 fell right there.

21 ~~I dare say that Defendant executed Reverend McCreary.~~
22 ~~He was on his knees and I dare say Reverend McCreary was~~
23 ~~praying.~~ He was executed, and, you know, what does he do?
24 Somehow he has a rabbit. He could have got it right down
25 there at the river because he collects that kind of stuff.

1 I mean, I think he comes up and what is the first thing he
2 says to the woman that he knows he can say anything to
3 because he has got her scared to death? What does he say
4 to her? What does he say to her?

5 He is home. He drives up about 8:11. Now, she don't
6 know what time. I'm telling you I don't think anybody
7 knows time. I don't know time. I don't wear a watch all
8 the time. I don't want to wear a watch, but people do.

9 Telephones do and that's why Officer Agent Johnson said
10 that call was 8:11 at William Owens' phone to Jeannia
11 Sweat's phone because they're in the yard putting their
12 stuff packing the van and they are are wondering where he
13 is, and the second time he calls -- because they called
14 earlier in the afternoon before any of this stuff could
15 have happened -- she calls and she goes, I'll calling him.
16 It is 8:11. I am calling from Jeannia's phone to his.

17 And what did he say to her when he first comes up?
18 First she describes what he has in his hand: 5-gallon
19 bucket with some fish, catawba worms in a little red
20 thing, and a skint rabbit and he's got some little blood
21 spatter on him. I don't know which side, but something
22 that's speckles, and, you know, we know where that can
23 come from -- not from skinning a rabbit, but from taking a
24 high velocity bullet within six inches of the man's head
25 and having it come back at you because some of it hits the

1 hat but some of it doesn't, and what does he also -- we
2 know he has? He's got blood on his boots -- the boots
3 that she recognizes, and he had to pick up that man and
4 throw him in the water, and what does he know? That some
5 of that's going to go because we know he threw him in the
6 water. 140 pounds. He picked him up and threw him in the
7 water. Let him lose his glasses, his hat, and his
8 dentures as he's going in.

9 He's got stuff on his boots, and he's smart. Oh,
10 yea. He said, he wants -- he is telling everybody about
11 catawba worms. Did ^{Adam M.} or Jacob know about catawba
12 worms? Nope. I think they learned the word today and
13 thank God they did. Catawba worms come to the rescue
14 because they knew it was green kind of caterpillars in the
15 cricket box and there was some crickets and there were
16 catawba worms. I didn't know what they were. I didn't
17 know what they were either. I didn't know what they were,
18 says ^{Adam M.} and Jake.

19 Renee says, I don't know what they were. He told me
20 what they were. Catawba worms. That this is what you
21 fish with and here are these green things and there were
22 some cricket, too. You know, that's kind of what
23 Mr. Williams said, too. I had catawba worms and he had
24 some crickets and I dumped them in.

25 What does he say to Renee -- gallon bucket, bucket of

1 catawba worms all in one hand and a rabbit? I just found
2 out what kind of man I was. I blew off a black man's head
3 and threw him in the water. It was on his boots. You saw
4 it. And she didn't think it was then either, did she?

5 You're right. She was interested in -- she was
6 interested in cocaine. She was. There is no doubt she
7 was. Cocaine don't make you forget this kind of stuff.
8 She was in pursuit of cocaine with her sister. Ain't no
9 question. He didn't change clothes. She was -- she
10 wanted to score some dope for her sister. Cocaine. They
11 did. They left, dropped the boys off at Jeannia's. She
12 and William went to go get some dope. Did it once. I
13 think they went back and did it some more.

14 And when did Renee tell you -- when did she tell you
15 when it got really bad? Not the first trip they went out.
16 She wasn't thinking that much about it. It was the second
17 trip or third trip. Why? Sometime he came in and he
18 changed his clothes, didn't he? He took off those boots,
19 those timberlake-looking boots with the blood on them,
20 jeans. He had on tennis shoes when he was there when they
21 searched his house. The boots be gone.

22 The boots, the jeans, the t-shirt are twisted up in
23 that garbage bag, and he comes out with her pink bag, and
24 she's not sure where he is going to take her belongings,
25 and he shows her and she knew it wasn't her jewelry. No,

1 it wasn't her jewelry. I don't even think she really knew
2 then. Then he goes and he goes and she said she could see
3 him, remember? She says he's driving around with the
4 four-wheeler and he goes out and around and he stays at
5 his car or his truck for a while and there is the gun.
6 She sees that kind of the gun, too, and the gun is always
7 is in the truck. The big one. The big gun. The big gun
8 always in the truck.

9 It wasn't there when they searched on Thursday.
10 There weren't any guns in the house when they searched.
11 See. He had all kind of guns; right? Yea. It wasn't
12 there on Thursday, but he has the gun. He changes his
13 clothes. He -- he also at some time during the night they
14 came and he's got a dog and he's got rattlesnakes and they
15 came home one time about 11:05, but they have -- he has
16 come out sometime afterwards and burns -- comes back with
17 a burning smell.

18 Remember what she said? She says, I smelled the
19 burning smell. She goes, what have you done? He goes, I
20 just burned that man's wallet. He gets rid of the gun.
21 He takes the pink bag and says it's out by the blue truck.
22 He tells her. He wants her to be a part of it. Let's
23 scare Renee. She won't come forward. She's more
24 interested in cocaine. Let's scare Renee.

25 And what do I do to make her even more scared? What

1 do I do to say, I've done all the stuff I do to her.
2 We're going to do some more drugs, but what are we going
3 to do? When is she going to know, holy moly, what has he
4 really done? He takes her back down, and we know it was
5 after they called. We know because she describes it to
6 you. Remember her saying there are these three bridges
7 and we drove by and I got up because he made me usually
8 keep my head down all the time because we did the dope
9 earlier and sometimes he makes me get out of the car and
10 he tells me not to get up. She's telling you. She sat
11 there and she said, yea, and I had a case and I'm doing my
12 cocaine. She is telling you.

13 She spoke her truth to you all, but she says, I will
14 never forget what I saw. That frying pan that burned the
15 wallet, that jewelry that he showed me with the pink bag,
16 that crickets and catawba worms. I got a feeling now I
17 know really what happened. He did kill somebody down on
18 the river -- blow their head off and drop them in the
19 river. Why? Because he was just arrogant enough, just
20 strong enough to take her back down there and show her.
21 Show her. See?

22 And she popped up and she saw somebody with his hands
23 on his head going, oh, my, because nobody wanted -- there
24 is an oh, my. They didn't want to see that. That's what
25 he did. He goes back down there with her. See? Don't

1 narc me. Don't rat me. But you saw her. If that ain't a
2 victim of abuse, there ain't nobody. Did you see her? I
3 mean, I think the part that rings to me about what Renee
4 said is she was scared. She ain't coming forward at that
5 time. Oh, no.

6 What did she tell you? She said they came to
7 Maryland. They kept me that whole day. I wasn't telling.
8 Why weren't you telling, Renee? Because he knew where my
9 parents lived and he had told me -- he had told me, if you
10 -- I know where your parents are. I'll meet you there.
11 He knows she don't know how to get there. She had to take
12 her sister.

13 She is so scared she gets ^{Adam M.} and Jake -- one to go
14 out the back window. The back window to go. And what did
15 she say she did? She got the keys. He had taken a shower
16 and she picked up the keys so it wouldn't make any noise.
17 Let's pick up the keys and let's not tell him. Uncle
18 Larry came. She had never seen Uncle Larry and he had
19 been doing weird stuff, hadn't he? Hadn't he been doing
20 weird stuff? He had like stabbed himself. The boys --
21 remember? That's why they found his blood. He stabbed
22 himself. He stabbed himself.

23 You know, I realize that's probably the stab mark
24 that Ringo saw. I did. You remember he said he stabbed
25 himself and there was blood? Well, Ringo probably saw

(1 that. He said, don't let the boys come in there. I am
2 going to stab me. Remember? He stabbed himself. That's
3 when that -- because she's about to leave. She's about to
4 book it. She grabs those keys. She tells one boy to get
5 her makeup bag and go out the back window. She tells the
6 other one, come on, and what do we do? We run to our
7 sister's hoping the van first will start, praying it will
8 start, get her there, hide her there at the very back of
9 the house. Hide me so he won't see me because not only
10 has he said, I blew a man's head off at the river -- a
11 black man's head, threw him in the river -- I've now got
12 you where you've gone by, and I've got you, and I like to
13 terrorize you, and, so, I'm going to go follow you.

(14 What did she say? She said she knew he was going to
15 follow me. I grabbed the keys. I said I was just going
16 to go to a walk and get the boys and haul, and she said
17 she knew he was coming after. What did Jeannia and Ringo
18 say?. She's hysterical. That's not cocaine, folks.
19 That's murder. And knowing that you're scared to death.
20 You're scared.

(21 I know she's not winning any mama of the year awards,
22 but she knows she was scared and she knew her children
23 were in danger and she was, too, and she knew he had guns
24 and he liked to hit her. Come on. So, she pulls in
25 behind her sister's house, and she is scared to death.

1 And Ringo is fed up. He should be. God bless him. He
2 was. You remember him? What in the world? No, you're
3 not going to Maryland. Jeannia, I'm tired of all this
4 drama, and she was saying stuff about, please don't tell
5 William I'm here because she knew William was driving
6 right up. Right up there.

7 So, what does Ringo do? He is kind of one of those
8 guys you just love to listen to. You could be one of
9 those comedians almost because he is naturally that kind
10 of way, isn't he? He said, I said, okay, blue. He knew
11 -- he was smart enough to know that this was different.
12 He didn't know what had happened. He didn't know, but
13 what did he know? Even though his wife and his sister
14 might have drama and they might have drugs, he didn't know
15 about all that threatening to hurt them before. Because,
16 you see, the week before what did they say? The week
17 before she was going to leave, but he got her to come
18 back, and he just -- but he knew she had pulled behind
19 that house, hidden her van, and that he's not going -- he
20 is not going -- she's gone to Maryland. Go. He didn't
21 really want his wife to go, but she did. And when he went
22 to shake his hand he said he saw something on it.
23 Remember he said, I don't like to touch nothing?
24 Remember? He had something on his hand just like.
25 And Renee didn't come forward. She held -- got my

1 back? They're searching. They're searching my house,
2 Renee. On Thursday. They're searching. They're not
3 going to find anything. They're not going to find
4 anything. Took it to the dump.

5 And they really -- they didn't find anything.
6 They're not going to find Reverend McCreary's blood. Got
7 rid of the clothes. Got rid of the boots. Not going to
8 find the ID. I burned the wallet. He did everything he
9 could do. The catawba worms didn't really make a whole
10 lot of sense at first, did it? If Mr. William hadn't
11 given the catawba worms we might not be here. If the boys
12 weren't fascinated with green caterpillars, we may not be
13 here.

14 Except for some people that came forward. Renee
15 didn't want to want to come forward. She wasn't. She
16 held it. She held it. She didn't want to come forward
17 because she was afraid everybody was jeopardized. But she
18 came and she spoke her truth to you all. She came
19 forward. She told it. Stuff that I don't think she's
20 necessarily proud of, but she told it. She told it. And
21 she told it.

22 And the man that has rattlesnakes and he picks up pit
23 bulls and the the one that she was with -- the one he had
24 told her everything, and he even said, they're not going
25 to find anything, but she told it. She told it later that

1 week when they came and saw her. She didn't tell the
2 truth completely at first. Don't blame her. Can't blame
3 her. Not the life she had been living. Nope.

4 But you get to see her. You get the the to see her
5 sons. You get to see what was consistent about what they
6 said and about who came up at 8:11 on July 7, 2007. I
7 mean July 6, 2007. He's the one. There is no other one.
8 There is no other mystery man. There is no mystery man
9 whatsoever that killed and executed Reverend Phillip
10 McCreary in Barnwell County on July 6, 2007. There is no
11 mystery man.

12 And it's because people came forward. Not under good
13 circumstances. People came forward and said, this in our
14 community is not right, and they came forward perhaps --
15 when we argue about the sunset, we always like to know
16 that there is a sunrise, don't we? And we knew there was
17 going to be something that somebody forgot. It is kind of
18 amazing to me that it happens to be a crucifix and a
19 bracelet snatched off a man named Reverend McCreary.
20 Snatched off of him. It is broken. You look at it. It's
21 not broken, but it's strong.

22 And when -- the one thing they didn't clean. The one
23 thing. You know, because it was junk jewelry, some other
24 things. The one thing that still is speaking that comes
25 through that says this Defendant -- this Defendant

1 snatched Reverend McCreary's cross and chain and his
2 wallet which his burned and the gun that's gone and the
3 clothes that are burned up, somebody didn't know to pick
4 up the pink bag, did they? But this pink bag holding this
5 man's cross and this man's jewelry came forward in the
6 sunrise and it came forward because somebody was
7 hysterical and went, oh my God, that's the man's jewelry,
8 and they came forward to say Robert -- William Owens is
9 the one that killed Phillip McCreary. They came forward,
10 and it's saying he did it. He snatched it off of me. He
11 came forward. They came forward, and there is a lot to be
12 thankful for in this case.

13 So, Ladies and Gentlemen of the jury, as the sun is
14 shining in Barnwell County I ask that you all bring
15 forward a verdict that speaks the truth -- speaks the
16 truth in this case and come forward with a verdict of
17 guilty on both counts. Thank you.

18 THE COURT: Mrs. Morgan, is that your easel or is
19 that Mr. Moore's?

20 MRS. MORGAN: I don't know if he is going to use it.

21 THE COURT: Agent, how about move that?

22 Mr. Foreman, Ladies and Gentlemen, everybody okay?

23 Thank you.

24 MR. MOORE: If it please the court. Good morning.

25 THE COURT: Hold on one second. Thank you.

CLOSING STATEMENT

1
2 MR. MOORE: Like Solicitor Morgan, I want to thank
3 you for your service. This has been a very trying week
4 for everybody. It's a week that everybody has had to
5 probably sit through and see and hear things that you have
6 never seen before maybe or that you don't want to see
7 again -- a very tragic event down on the river. And as we
8 told you in the opening argument that there are,
9 obviously, two sides to every story. If you look at your
10 hand this way you see one thing. If you look at it this
11 way, you see another. You look at it this way, you see a
12 little bit of both, and that's kind of where we are in
13 this particular case.

14 In the case that the Solicitor has talked about a lot
15 of times that things happened and whatnot, and a lot of
16 those things are not really in dispute. For example,
17 there's no dispute that Mr. Blackwood got to the river and
18 began fishing, and there is no dispute that he was from
19 all we know that day at that location the first one to get
20 there. And we know that sometime after that Mr. Robert
21 Williams and his son got to the river and there is no
22 dispute as to that. We heard from both of those
23 gentlemen. There was a little bit of discrepancy as to
24 who got there at what time, but we know that Mr. Blackwood
25 was there first and we know that Mr. Williams and his son

1 got there second.

2 The next thing that we know is that about 6:15 or
3 6:20 Mr. McCreary got to the river, and we know that
4 because his wife said he left home at 6 o'clock and that
5 he went by to deliver or pick up some things from somebody
6 who he was working on and he took about 10 minutes to get
7 to the river from his house. So, we know that he got
8 there sometime approximately 6:20. He gets to the river
9 and they are all fishing. Those are things we know.

10 Now, from the phone records in evidence we know some
11 other things that happened during that same timeframe
12 which are unrelated to the river. We know that at 7:09
13 there was a call from Renee to William Owens. We know
14 from the phone records that at 7:14 there was a call from
15 Jeannia Sweat to Ringo. Those facts are undisputed.

16 Now, at 7:15 we know that Mr. Joe James passes the
17 bridge and he talks about the trucks and we heard the
18 discussion of the trucks that he saw, and he says he saw a
19 1960's Chevrolet trimmed up at the bridge. He also said
20 he saw a red, a maroon truck, and he also said he saw the
21 green truck. We know he was passing the bridge, and I
22 don't think there is any great dispute. The Solicitor has
23 already told you that -- that that's when he was passing
24 by because he knew what time he passed by because he
25 passed by there everyday. It was his habit, his routine,

1 and he knew that.

2 Now, the testimony of Jeannia and Ringo was at about
3 7:20 Jeannia left home. Now, it could have been 7:14 when
4 this phonecall was made, but to make sure we cover
5 everything it was somewhere in that timeframe because they
6 both talked about it. She said it took her six minutes to
7 get to Renee's house. Well, at some point in this
8 timeframe according to the testimony of Mr. Williams
9 Mr. Blackwood has left the river. We don't know exactly
10 what time he left, but it was sometime in this frame
11 because Mr. Blackwood says he got home around 7:40. So,
12 Mr. Blackwood is now getting back to the river and we also
13 know that at sometime in this timeframe according to the
14 testimony of the witnesses Mr. Owens arrives at the river.

15 The next thing that we know that happened is that
16 Mr. Robert Williams leaves, and he said sitting right here
17 on the witness stand that he left at no later than 7:45
18 because he got home before 8 o'clock, and it took him 15
19 minutes to get home. So, at 7:45 Robert Williams leaves.

20 Now, what does Joe James say when he passes the
21 bridge? What you didn't hear from the Solicitor was that
22 in addition to the three trucks there was a red truck at
23 the third bridge. What you also hear from Robert Williams
24 was that there was a red truck at the third bridge. So,
25 now we have according to the testimony that we've heard

1 Mr. McCreary at the river, Mr. Owens at the river, and
2 whoever is driving this red truck. This red truck is not
3 the same red truck that Mr. Robert Williams had with the
4 boat trailer. This is the truck that Mr. James and
5 Mr. Williams testified was parked at the next bridge or
6 the second bridge up from this one. So, we don't know who
7 is in this red truck. Somebody is in it. Somebody is
8 there fishing or wherever. We know that that is going on
9 at that time.

10 Now, the next thing we know happens is that William
11 Owens gets home. Now, the reason we know that happened
12 then is because both Jeannia Sweat and Renee said he got
13 home at or before 8 o'clock. In fact, Renee sitting right
14 over there in the green shirt says he got home before
15 8 o'clock, and I know he did. Now, she also said that he
16 called -- she called him as he was coming in the driveway
17 and we know that by the phone records to be 8:11p.m..
18 There is a phonecall. William in driveway at home. That
19 evidence is undisputed. That phonecall was made at 8:11.
20 It is in the phone records. You'll have them in evidence
21 to look at. At 8:11 he was at home, and it is verified by
22 Renee and Jeannia that he is there.

23 Now, what's the next thing that we know happens? You
24 didn't hear this in Mrs. Morgan's argument because it
25 doesn't fit her story. Remember she said she was going to

1 have a roadmap to get you from A to B at the beginning of
2 the case and you remember I told you there was were going
3 to be some bumps in the road and going to be some detours
4 and there might even be a deadend somewhere down that
5 road? Because here despite all the emotional rhetoric,
6 despite all the execution talk and all the stuff to get
7 you aroused, here is a deadend in the Solicitor's case and
8 the State's case: Troy Jamison.

9 Troy Jamison is at his hay field 200 yards from the
10 scene. He's not on the tractor with a lot of noise going
11 on cutting hay or baling hay or raking hay. He is sitting
12 up on top of a truck while the workers are throwing hay
13 bales up to him. He's been there all day because he had
14 to cut the hay first and he had to let it dry. Then he
15 had to rake it, get it in the windrows. Then he had to
16 bale it, and now he's got to load it.

17 Did Mr. Jamison have anything in the world to do with
18 this case? I don't think he knew Mr. Owens. I don't
19 think he knew Mr. McCreary. He is just out there doing
20 his job on his farm doing what he's supposed to do to try
21 to make a living. What does Mr. Jamison say? Mr. Jamison
22 throws a road block in this little story that we've been
23 hearing. Mr. Jamison says that he hears a gunshot over at
24 the river and when does Mr. Jamison hear that gunshot?
25 Dusk-dark. Dusk-dark. Somewhere between 8:30, according

1 to him, and 8:45 p.m.

2 Now, where is William Owens at that time? William is
3 home. He is home with Renee. He is home with Jeannia and
4 he is home with those two boys. That's where William
5 Owens is at this time. But 8:30 to 8:45 Mr. Jamison hears
6 the gunshot. How does he know that? Because it's
7 dusk-dark and he said he left the field at 9 o'clock. Why
8 is that important? Because also undisputed evidence in
9 the record that you will have says that sunset on that day
10 by the national naval observatory is 8:39 p.m. sunset, and
11 the end of twilight or dark, as you would call it, is 9:07
12 p.m. We know those things to be true, and the State has
13 agreed and stipulated that those facts are accurate as far
14 the sunset and the dark time.

15 We know that 9 o'clock Troy Jamison left the field
16 because why? In seven minutes it was going to be dark.
17 We know that dusk-dark he hears the shot from between 8:30
18 and 8:45. We know that, and we know that William Owens
19 wasn't there, and the reason we know that is because Renee
20 and Jeannia both said he wasn't there.

21 Who else says he wasn't there? One of the most
22 reliable folks that -- Ringo Sweat. What does Ringo say?
23 Ringo says that they got to his house a little before
24 nine. William, Renee, Jeannia Sweat and the boys get to
25 Ringo's a little before 9 pm. Jeannia said she was over

1 at Renee's house for 30 or 40 minutes. She left to go
2 home and during that time William got home. The boys said
3 he helped -- showed them how to skin a rabbit. They did
4 some things. They loaded some stuff in his truck and went
5 over to Ringo's and got there a little before 9. And how
6 do we know that? Because Ringo was cutting grass. It was
7 just about dark, and he remembers because he cut the
8 lights on his lawnmower and kept on cutting after it got
9 dark. We know what Ringo said and Ringo don't have a dog
10 in this fight. He -- you know, Ringo is a man of the
11 truth as I observed him.

12 Then the story goes on. We know that William and
13 Renee according to Renee's testimony left and went and got
14 some cocaine to bring back to Jeannia Sweat. We know that
15 there was a phonecall made from the kids. In fact, there
16 are three calls and you have the phone records to look at
17 them. There are three telephone calls that were made
18 between William's cellphone and Ringo's home during that
19 time period. One was at 9:19. One was at 9:54. One was
20 at 11:05.

21 Now, you heard Renee talking about being at the
22 bridge and seeing blue lights flashing while she's on the
23 phone with her sons and all that sort of stuff. She
24 wasn't telling the truth then. Why? Because the only and
25 the last phonecall between any of those phone numbers was

1 at 11:05p.m. and the first blue light to get there was 23
2 minutes after midnight. It couldn't have happened. It is
3 fabrication. She fabricated this story. Why? Because
4 she was already planning to go to Maryland, and she may
5 have been scared of William. I don't know what their
6 relationship was, but she wanted something to hold him in
7 South Carolina, and she came up with a story. She came up
8 with a story.

9 There were a lot of policemen on the scene that
10 night. There was a lot of chatter on the police scanners.
11 There were a lot of people who knew what had happened well
12 before it came out in the newspaper four or five days
13 later. That's just the way it happens around here.
14 Everybody knows everybody else's business.

15 But we know that they went back over to Ringo's and
16 we know Ringo says that Jeannia came back to the house --
17 excuse me. Renee came back to his house at about 10
18 minutes after 11 because he talked about the blemish on
19 her face -- the big whatever he called it -- and he knows
20 it because he was sitting on the porch at 11:05 when she
21 came in. I mean 11:10 when she came in which would have
22 been right after the 11:05 phonecall that they talked
23 about, you know, getting some more cocaine, and, so, Renee
24 came back over with some more cocaine at 11:10 after the
25 the 11:05 phonecall. That's why that call is important

1 because there wasn't any blue lights flashing at the
2 bridge, and there are no other phonecalls on those records
3 from any of those phones anytime that there would have
4 been any blue lights flashing at the bridge. That is a
5 completely fabricated story.

6 We do know that 11:41 Mr. Fenlayson calls 9-1-1 and
7 reports a missing person. We know that because that's in
8 the records, and the state has agreed, and we've all
9 agreed that that is in the records, and it's there, and
10 you'll have that. We know that at 11:47 Mr. Fenlayson
11 called the 9-1-1 again, the second call he made, and we
12 know that to be and everybody agrees that that was at
13 11:47 and everybody agrees that at 12:23 AM -- 23 minutes
14 after midnight -- the Orangeburg deputies arrived and the
15 EMS arrived at 23 minutes after midnight. Not at
16 11 o'clock. Not at any time prior to that, but at 23
17 minutes after midnight they arrived.

18 So, the timeframes are very important because as I
19 said if you follow the undisputed evidence you run into
20 this road block right here when you come to Troy Jamison.
21 That's just where it doesn't add up. That's when the shot
22 was fired.

23 Now, you heard the State and the Sheriff, the SLED
24 agent talk about the complete and thorough investigation
25 that was made. You heard them talk about following up all

1 leads and checking out everything and making sure that
2 everything was up on the up and up. Now, the Solicitor
3 would have you believe that the only time the police found
4 out anything was when some people came forward.

5 Well, that's not really so because SLED was out
6 talking to people the very next day. The very next day.

7 And one of the people that you always talk to in a case
8 like this is you talk to the people closest to the victim
9 because they know the most about the victim, and you want
10 to find out who the associates are and the acquaintances
11 and who the enemies are and who the friends are, and
12 that's just general police procedure in any kind of
13 investigation.

14 And one of the people they talked to that day was
15 Phillip McCreary, Jr., and you heard Agent Johnson talk
16 about the fact that Phil, Jr., gave them some important
17 information. He gave them some important information. He
18 gave them the name of Cedric Thomas. Why is that
19 important? Because Phil, Jr., when asked who might kill
20 his Daddy said a guy named forty-five. I don't know why
21 they call him forty-five unless it's after a high-powered
22 pistol. Who is Cedric Thomas? A known drug dealer in the
23 Springfield area. And what does Cedric Thomas -- what did
24 Phillip, Jr., tell Mr. McCreary (sic)? That Cedric had
25 said if anybody talked about his drug business he would

1 kill them in the head.

2 But what did the investigators do with this lead?

3 Oh, they checked around Springfield to see if anybody knew
4 forty-five. They might have even rode by his house one
5 day. But did they ever talk to the man? Did they ever
6 talk to him? Did they ever try to find out where he was
7 on July 6? Did they ever find out whether he drove a red
8 pickup truck or not? Did they ever find out anything
9 about Cedric Thomas? No, because they had tunnel vision.
10 Somebody called and said you ought to look at somebody
11 else, and they just zeroed in on William Owens and they
12 completely forgot about the man he said was going to kill
13 somebody in the head.

14 The Solicitor says this was an execution-style
15 killing. Who executes people around here? Who executes
16 people around here? Drug dealers. Mr. McCreary was a
17 preacher. He was a man of the cloth. He was a man who
18 was trying to save the youth of this community. He was
19 doing everything he could to get the young people away
20 from the drug dealers and the drug traffic, and he paid
21 for it. He paid a price for it for doing the right thing.
22 He was trying to do right. I applaud him for it. I
23 applaud him for it. He is a good man. A great man.

24 But William Owens wasn't at the river. We already
25 know that. We know the red truck was there. We don't

1 know where this man here was because nobody ever asked
2 him. Nobody ever took the time to check it out.
3 Mr. Johnson says he's got four years field experience as a
4 SLED agent, and he told you on the stand that he has very,
5 very little experience dealing with drug cases or drug
6 investigations. That's what he said sitting right there,
7 and that's the kind of case this was. That's what this
8 case is about.

9 It's not about somebody stealing catawba worms or
10 jewelry or anything like that. That's what this case is
11 about. But even still let's look at what else we don't
12 have. Let's focus on the evidence or the lack of
13 evidence. The jewelry in the pink bag. That pink bag
14 showed up four months after this event. Four months
15 later. The jewelry -- the cross and the bracelet -- I
16 believe it's in this bag number 12A. This is a nice chain
17 and a nice bracelet, but I dare say that it's the only one
18 that was ever made that looks just like this. You can go
19 down the Mr. Baxter's pawn shop and probably find a dozen
20 that look just like this. There is no engraving or
21 initials or any descriptive -- there is no markings of any
22 kind that you can identify it from.

23 In fact, Mrs. McCreary said that Mr. McCreary had
24 lots of jewelry and he wore several different kinds of
25 necklaces at different times. There is nothing on here

1 that you can identify as being specific or unique in any
2 way. But you know how the state could have proved that if
3 they really wanted to move it? They could have tested it.
4 You remember I was asking the DNA agent Mr. Kinsey about
5 what they collected and I asked him about the clothing and
6 I asked him about shoes and socks and undershirts and
7 sweatbands and a hat and watches because somebody -- and
8 he said, yea, you can get the DNA off of all of that. He
9 said it doesn't have to be blood. It can be any kind of
10 bodily fluid. I asked him about perspiration or sweat.
11 He said, yea, you can do that. I said somebody sitting on
12 the river in July in South Carolina late in the afternoon,
13 they're going to be sweating. Even if they're in the
14 shade, they're going to be sweating.

15 And they checked the DNA in the hat and it was
16 Mr. McCreary's, and they checked the DNA in Mr. McCreary's
17 clothes and it was Mr. McCreary's, and they checked
18 everything else, but they didn't check the jewelry. They
19 didn't check the jewelry. They had that jewelry now for
20 over a year. They got it last November, and they have yet
21 to check it. Of course, it's contaminated by now, I'm
22 sure, but had they wanted to check it when they first
23 found it, they could have done so and they didn't do so.
24 Why? Because it might not have fit in. It might have
25 been another roadblock just like Troy Jamison. It might

1 have been another roadblock. So, why take the chance?
2 Why take the chance on finding something that doesn't fit
3 the plan? Let's just don't test it. Let's just don't
4 test it. But another roadblock. It's just not there.

5 There was talk about burning a wallet in the frying
6 pan. Well, where is the frying pan? Where is the frying
7 pan? It never showed up. Nobody found it. They didn't
8 even look for it, I don't guess. They did several
9 searches of the house and several searches of the yard,
10 and in those searches Mr. Kinsey sitting right on the
11 stand told you they didn't find this pink bag. In fact,
12 he even got back on the stand because he looked at all of
13 the pictures again in between the two times he testified
14 to make sure -- to make sure that this pink bag wasn't in
15 any of those pictures. He said we looked in every drawer.
16 We looked all over that. We were looking for weapons and
17 ammunition and we looked all over the house. We looked
18 for everything.

19 Well, where might you keep some ammunition? He said
20 he looked everywhere, every drawer. This didn't show up.
21 It wasn't there. But it showed up four months later with
22 some jewelry in it that's like the jewelry that
23 Mr. McCreary might have had on that day. Might have, but
24 they didn't test it to find out for sure. They did test
25 the bag. They didn't find anything with Mr. McCreary's

1 DNA on it in the bag. I submit to you if it had been a
2 sweaty bracelet, it would have leaked on the inside of
3 that bag, too, or rubbed off.

4 Red truck. Not only did they not check to see
5 whether it belonged to Cedric Thomas, they didn't check to
6 see who it belonged to. They didn't go back out and sit
7 by the bridge the next Saturday or the next weekend to see
8 if that same person came back fishing or not. They just
9 completely ignored it. Mr. James talked about a beige and
10 with white truck. He may have been confused. He may have
11 saw Mr. Blackwood's truck and thought it was a Chevrolet
12 and thought it was beige. He was passing down the road.
13 They didn't check that story out either. They didn't go
14 see to make sure that he saw a white truck or a beige and
15 white truck. He's adamant. He says he knows his trucks.
16 He was adamant about a beige and white 1960's model
17 Chevrolet. I am not to say that if Mr. Blackwood hadn't
18 left and somebody else had come up during that timeframe.
19 We know Mr. Blackwood was gone. We don't know what time
20 he left because he didn't remember what time he left. It
21 could have been another beige and white truck. It could
22 have been that Mr. James was mistaken. We don't know.
23 But what we do know is that the state didn't investigate
24 to try to find out. They didn't go looking for a beige
25 and white truck. They didn't think about that.

1 We know in these thorough searches that the State did
2 at Mr. Owens' house of his vehicle and all of his property
3 that they did not find one single item that linked
4 Mr. Owens to Mr. McCreary. They made a big deal about
5 catawba worms. Well, there are lots of catawba worms
6 around. Lots of folks got the trees in their yard,
7 especially people that go fishing. They did find in
8 Mr. Owens' fishing gear, some green corks, ones just
9 like the ones Mr. McCreary had, but they weren't
10 Mr. McCreary's because Mr. McCreary's were still in the
11 river. You saw that in the picture. They found some
12 fishing stuff at William's house and they found some
13 catawba worms. Just about everybody who fishes the river
14 around here tries to get catawba worms. The fact he had
15 some, so what? The SLED agent said he liked catawba
16 worms, too. That's what he used to fish with.

17 They checked the bucket, though, to see if it had any
18 of Mr. McCreary's DNA on it. Guess what? Nope. They
19 checked it for fingerprints to see if it had
20 Mr. McCreary's fingerprints on it. Nope. They checked
21 the inside of William's truck because if he had all of
22 this blood all over him that Renee described and he got in
23 that truck very likely some of it would have rubbed off on
24 the seat covers. Did they find any of Mr. McCreary's DNA
25 in the truck? Nope. They found some blood, but it was

1 animal blood consistent with the rabbit or whatever that
2 he brought home.

3 They didn't find a thing -- not one single thing did
4 they find that could link Mr. Owens to Mr. McCreary. They
5 did all the tests in the world that you could do except
6 the one they should have done and didn't do on that
7 bracelet. The one thing. And that's why they were scared
8 about that bracelet and that necklace because they had
9 already done all of this other testing and they couldn't
10 find anything to link it up. So, why not just not test
11 it? That way we don't have to explain it if it doesn't
12 match. That's why we don't have to explain it. They
13 tested everything except for the main thing, and they
14 said, naw, let's just don't do that. They didn't. They
15 didn't do that.

16 We've talked a lot of things about different folks.
17 We have heard -- you heard from Susan. You heard from
18 Renee. You heard them both say that they didn't believe
19 William; that William was a big talker; that William was
20 trying to threaten Renee; and he was an intimidator type
21 of person. I don't know anything about their personal
22 relationship. I know she was on a lot of dope. She says
23 he was using dope. Her sister was using dope. They were
24 using it on a regular basis.

25 We know that she endangered her lives of her children

1 by hauling them up to Maryland and drove all over the road
2 and has to get her sister and her brother-in-law
3 concerned. They call the police and they try to, you
4 know, stop it. She was already planning -- Jeannia says
5 she was already planning to go back to Maryland. You
6 know, why -- they knew William was a big talker. Now,
7 Susan's testimony -- she was pretty sure about what she
8 thought she heard at least, but she also said she didn't
9 believe William. But you know what? There were three
10 other people there that supposedly heard that
11 conversation. How many of them did you see get on the
12 witness stand? How many of those did the State call to
13 verify what Susan said she heard? Three other adults.
14 Did they put them up to verify?

15 You know, if you're going to really established the
16 truth of something beyond a reasonable doubt, you're not
17 going to put somebody up who might have overheard a
18 conversation. You're going to put all of the witnesses
19 up. Everybody who was there. Because, you know, if you
20 got four people saying it, you know, you can say that
21 might have happened. But if you got one person saying and
22 they don't get the other three up there -- they don't get
23 the other three because that might have been another
24 roadblock. It just might not have fit in with the theme
25 and story. You know, when you have a trial you try to

1 tell a story. That's kind of what lawyers do, but you got
2 to make your story fit, and there is always going to be
3 some things that don't fit, and that's what we don't know.

4 We know William was a big talker. We know he was a
5 macho man. We know he is one of them kind of outdoor
6 guys. He is a hunter. He's a fisherman and all of that
7 kind of stuff. You know, but you got to wonder, why would
8 a fellow go to the trouble to steal a necklace and some
9 catawba worms and not steal \$380? It doesn't make any
10 sense. It don't make any sense at all. It doesn't make
11 any sense. If this was a robbery, he would have gotten
12 the \$380. If it is an execution by a drug dealer, he
13 probably didn't need the \$380.

14 So, let's talk about what we know and what we don't
15 know. We know pretty much everything on this board is
16 undisputed fact. We know by two witnesses that William
17 Owens was at home between 8 and 8:11. The phone records
18 say 8:11 and I'll go with that. 8:11. We know that the
19 shot was fired between 8:30 and 8:45. We know that during
20 that time period William was in the company of Renee,
21 Jeannia, and almost to Ringo's house with the kids. We
22 know that. It doesn't take a real rocket scientist to
23 figure out that he couldn't have fired this shot at the
24 river when he is on Halford street in Williston. He
25 couldn't have done it. Could not have done it.

1 Now, the Judge is going to talk to you about the law
2 in the case. That's one of the roles that the Judge has.
3 He's already told you that. One of the things he is going
4 to tell you is that each of you have to make up your mind
5 individually as to the guilt or innocence or whether the
6 state has failed to prove the case. Mr. Owens doesn't
7 have to prove his case. He doesn't have to prove a thing.

8 The Judge will tell you that. He doesn't have to prove
9 his innocence. The burden is 100 percent on the State to
10 prove to you beyond a reasonable doubt -- beyond a
11 reasonable doubt that Mr. Owens killed Mr. McCreary.

12 Now, what is a reasonable doubt? A lot of different,
13 you know, things to talk about, there but somebody said
14 one time a reasonable doubt is a doubt you can give a
15 reason for. If you have a doubt about something and you
16 have a reason for that doubt, that's a reasonable doubt.
17 If you have a reasonable doubt, then the Judge is going to
18 tell you, each and every one of you, that your duty is to
19 acquit Mr. Owens.

20 Now, this -- when you go back in the jury room this
21 is not going to be like an election like county council or
22 clerk of court or city counsel where the majority wins.
23 You know, 6 to 5 or 7 to 5 or 10 to 2 or whatever. It's
24 not a majority vote. It twelve individual votes, and each
25 vote counts as much as anybody else's vote. Each vote

1 counts. Each vote counts. It's not a majority. It's not
2 a go-along-with-the-crowd kind of thing. Each of you will
3 have to look deep into your souls, deep into your heart,
4 deep into your mind and determine whether the State has
5 proved to you -- each one of you -- beyond a reasonable
6 doubt that Mr. Owens is guilty of murder.

7 That is your moral obligation and your legal
8 obligation. Prove to you, each one of you -- not as a
9 group, but to each one of you that they've proved beyond a
10 reasonable doubt that he is guilty of murder. I would
11 submit to you that there are a number of reasons to doubt
12 the State's case -- a number of reasons -- and I would
13 submit to you that there is a huge roadblock right here in
14 the name of Troy Jamison who they didn't talk about in
15 their closing argument because it didn't fit. It didn't
16 fit.

17 Ladies and Gentlemen, we ask for justice. We ask for
18 the truth. Thank you.

19 THE COURT: Mr. Moore, take that poster down, please.

20 Mr. Foreman, Ladies and Gentlemen, my charges is, I
21 don't know, 15, 18 minutes, 12 minutes. It's not that
22 long. Y'all need a break before I do it? A bathroom
23 break?

24 THE JUROR: Yes.

25 THE COURT: That's certainly fair. About 10 minutes?

1 Would that be fine and then we'll come right back out?
2 Don't start deliberating. Don't discuss. Leave your pads
3 in your chair, and when we come back out, I'll go through
4 the charge.

5 Everybody else remain seated and quiet.

6 (Whereupon, the jury exited the courtroom at 11:08.)

7 THE COURT: We'll stand at ease for about 10 minutes.

8 Thank you.

9 (Whereupon, a break was taken.)

10 THE COURT: Mr. Foreman, Ladies and Gentlemen, I had
11 the bailiff to turn the air conditioner down a tad. If
12 anybody gets cold, we'll turn it off. It got a little
13 stuffy this morning.

14 JURY CHARGE

15 THE COURT: We've now come to the stage in the trial
16 where I what we call charge you the law. That simply
17 means I instruct you on the law. The first part of my
18 charge or instructions -- I try cases all over the state.
19 In criminal matters we have a general charge for all
20 criminal cases. I'll go through with you on that first
21 and then when we finish that I'll go through with you the
22 specific charges in this case. So, the first portion of
23 the charge deals with general criminal law.

24 Let me -- as I told you when we began the case and we
25 drew the jury, in this particular case the indictment

1 charges Mr. William~A.~Owens with murder and possession of
2 a weapon during a violent crime. I remind you, once
3 again, the fact that the Defendant was arrested, charged,
4 and indicted in the case is not evidence in this case and
5 cannot be considered by you as evidence or guilt in this
6 case, nor does it create any presumption or inference of
7 guilt. The indictment is simply the formal written
8 document or instrument which contains the charges made
9 against the Defendant. It's the formal document by which
10 this case is brought into this court.

11 In this case Mr. William A. Owens has pled not guilty
12 to both indictments, and that plea puts the burden on the
13 State of South Carolina to prove the Defendant guilty. A
14 person charged with committing a criminal offense in south
15 carolina is never, never required to prove himself
16 innocent. I charge and instruct you that it is an
17 important constitutional rule of law that a defendant in a
18 criminal trial no matter how serious the charges may be
19 will always be presumed to be innocent of the crime for
20 which the indictments were issued unless guilt has been
21 proven by evidence satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence does not end when you
24 begin your deliberations, but it stays with the defendant
25 throughout the trial until you reach a verdict of guilt

1 based on evidence satisfying you of that guilt beyond a
2 reasonable doubt. The presumption of innocence is not a
3 mere legal theory. It's not just a legal phrase. It is a
4 substantial constitutional right to which every defendant
5 is entitled unless you, the jury, are satisfied from the
6 evidence of the defendant's guilt beyond a reasonable
7 doubt.

8 A reasonable doubt has been defined by our State
9 Supreme Court very simply as this: A reasonable doubt is
10 the kind of doubt that would cause a reasonable person to
11 hesitate to act. A reasonable doubt is the kind of doubt
12 that would cause a reasonable person to hesitate to act.
13 Very simple.

14 I remind you, once again, Ladies and gentlemen, that
15 you and I have had certain duties to perform over the
16 trial of the case. It's been my duty to preside over the
17 trial and rule on the admissibility of the evidence.
18 Also, I have the duty to charge and instruct you the
19 applicable law in the case. As the presiding Judge I am
20 the Judge of the law in this case and it is your duty as
21 jurors to accept that law, and I -- and apply the law as I
22 now state it to you. As I told you earlier, if you have
23 some idea about what the law is or should be and it does
24 not agree with what I tell you, you must set aside that
25 preconceived idea because you're sworn to accept the law

1 and apply the law exactly as I State it to you.

2 On the other hand, you, the jury, are the sole and
3 exclusive judges of the facts in the case. As the trial
4 Judge I cannot by law have any opinion about the facts in
5 the case. So, please, if I have said anything during the
6 trial of the case, yawned, stretched, my back hurt,
7 whatever, don't infer anything from any facial expressions
8 I had or anything because I cannot have any opinion about
9 the facts in the case. That is your duty and your duty
10 only. It is solely for you, the jury, to determine as
11 jurors what the true facts are in the case and determine
12 the effect, the value, the weight, and the truth of the
13 evidence presented during the trial. You are the fact
14 finders. You determine what the truth is. To determine
15 what the truth is and in all cases wherever they are tried
16 you're going to have factual disputes. That's why we have
17 juries to resolve those factual disputes. In this case
18 there have been many factual disputes -- time, things of
19 that nature.

20 So, you necessarily in determining what the truth is
21 in the case you must determine what we call the
22 credibility of the witnesses who have testified in the
23 case. Credibility simply means believability. It becomes
24 your duty as jurors to analyze and to evaluate the
25 evidence and determine which evidence convinces you of its

1 truth. In determining the believability or credibility of
2 witnesses who have testified in this case you may believe
3 one witness over several witnesses or several witnesses
4 over one witness. You may believe part of the testimony
5 of a witness and reject the remaining part of that same
6 witness. You may believe everything a witness says or
7 nothing that a witness says. You may consider whether any
8 witness has exhibited to you any interest, bias,
9 prejudice, or other motive in the case. You may also
10 consider the appearance and manner of a witness while on
11 the witness stand. Use your own common sense that you use
12 everyday when dealing with people in determining what the
13 true facts are after listening to everything in this case
14 because you determine what the true facts are.

15 We had Dr. Ross and several other witnesses. I think
16 one other witness testified as an expert. Normally, our
17 rules of evidence do not permit witnesses to testify to
18 opinions or conclusions. An exception involves expert
19 witnesses. A witness who by education, experience, and
20 training has become an expert in some science, art, or
21 profession may state an opinion as to relevant and
22 material matters in which he is an expert in that
23 particular area. You should consider any expert opinion
24 received in this case and like any other evidence give it
25 the weight you think it deserves. If you decide that the

1 opinion of an expert witness is not based on sufficient
2 education and experience or if you conclude that the
3 reasons given in support of the opinion are not sound or
4 that the opinion is outweighed by other evidence, you may
5 disregard the opinion entirely. An expert witness'
6 testimony is to be given no greater weight than that of
7 any other witness simply because he is an expert.

8 We had in this case children who testified. Where a
9 witness is a child you must determine as with any other
10 witness whether that testimony is believable or credible.
11 In deciding credibility or believability you may consider
12 not only matters that I have already discussed with you,
13 but you may also consider the age of the child, the
14 child's ability to observe and remember facts, the child's
15 ability to understand and answer questions. Because young
16 children may not fully understand what is happening here
17 it is up to you to decide side the child or children
18 understood the seriousness of appearing as a witness in a
19 criminal trial -- whether the child understood the
20 questions, whether the child has a good memory, and
21 whether the child understands the difference between
22 telling the truth and lying. It is up to you to decide
23 whether a child understood the questions and whether or
24 not his answers were credible.

25 I instruct and charge you and emphasize that in our

1 criminal system the fact that a witness -- strike that.
2 The fact that the Defendant in this case,
3 Mr. William A. Owens, did not testify is not a factor to
4 be considered by you in any way whatsoever in your
5 deliberation and in your consideration on the question of
6 guilt or innocence of the Defendant. It must not be
7 considered by you in any manner whatsoever. The Defendant
8 has a constitutional right to remain silent, and the
9 assertion of this right must not be considered by you in
10 your deliberations. I repeat. Under your oath you're to
11 draw no conclusion whatsoever from the fact that the
12 Defendant in this case did not testify. The fact that he
13 did not testify should not be discussed in your jury room
14 and in the deliberations. The burden of proof is on the
15 State. The Defendant is not required to prove his
16 innocence. The burden of proof remains on the State to
17 prove guilt beyond a reasonable doubt.

18 One of the duties of the foreperson is if anybody
19 talks about the Defendant not testifying, put a halt to it
20 immediately. That is not to be considered in any manner
21 whatsoever in deciding the guilt or innocence of
22 Mr. Owens.

23 Now, as I said, Mr. Foreman and Ladies and Gentlemen
24 of the jury, that is sort of general basic law that
25 applies to all criminal cases that I try throughout the

1 state. At this juncture of the charge or the instruction
2 I will now tell you what the law in South Carolina dealing
3 with the two indictments. We'll talk about the first
4 indictment being murder.

5 The Defendant is charged with murder. The State must
6 prove beyond a reasonable doubt that the Defendant killed
7 another person with malice aforethought. Malice is
8 defined by our courts as hatred, ill will, or hostility
9 towards another person. It is the intentional doing of a
10 wrongful act without just cause or excuse and with an
11 intent to inflict an injury or under circumstances that
12 the law would infer an evil intent. Malice aforethought
13 does not require that malice exist for any particular time
14 before the act is committed, but malice must be in the
15 mind of the Defendant just before and at the time of the
16 act is committed. Therefore, there must be a combination
17 of the previous evil intent and the act.

18 Malice aforethought may be expressed or inferred.
19 These terms expressed and inferred do not mean different
20 kinds of malice but merely the manner in which malice may
21 be shown to exist. That is either by direct evidence or
22 by inference from the facts and circumstances which are
23 proved. Express malice is shown when a person speaks
24 words which express hatred or ill will for another or when
25 a person prepared beforehand to do the act which was later

1 accomplished. For example, lying in wait for a person or
2 any other acts of preparation going to show that the
3 deed was within the Defendant's mind would be express
4 malice.

5 Malice may be inferred from conduct showing a total
6 disregard for human life. ~~Inferred malice may also arise~~
7 ~~when the deed is done with a deadly weapon.~~ A deadly
8 weapon is defined by our law as any instrument which is
9 likely to cause death or great bodily harm, and the law
10 says deadly weapons include a pistol, a shotgun, a rifle,
11 so forth.

12 So, the law on murder is, basically, very simple.
13 The State must prove beyond a reasonable doubt that the
14 Defendant killed another person with malice aforethought.
15 ~~Malice can be expressed or inferred. It can be inferred~~
16 ~~with the use of a deadly weapon.~~ Aforethought means that
17 it doesn't have to exist for any particular time before
18 the act is committed, but malice must exist in the mind of
19 the Defendant just before and at the time the act is
20 committed.

21 Mr. Foreman, Ladies and Gentlemen, if you find the
22 Defendant not guilty of murder, then, obviously, you would
23 not consider the second indictment which is possession of
24 a weapon during the commission of a violent crime because
25 you would have found him not guilty of the violent crime.

1 However, if you find that the State has proven beyond a
2 reasonable doubt all elements of murder and find him
3 guilty of murder, then you would consider the second
4 indictment which is possession of a weapon during the
5 commission of a violent crime. The State must prove
6 beyond a reasonable doubt that the Defendant was in
7 possession of a firearm during the commission of a violent
8 crime. A firearm means any type of gun, rifle, revolver,
9 pistol, or other weapon which is designed to or may be
10 readily converted to expel a projectile.

11 In order for you to find the Defendant guilty of
12 possession of a weapon during the commission of a violent
13 crime, obviously, you must find him guilty of the first
14 offense of murder before you consider that, and murder is
15 defined by our State Legislature as a violent crime.

16 Mr. Foreman, when you start your deliberations in
17 just a few minutes you'll have two verdict forms. The
18 first one is for the murder charge. After you deliberate
19 if you unanimously agree that the State has failed to
20 prove the elements of murder beyond a reasonable doubt,
21 then you would find him to be not guilty and that would be
22 the end of it. However, if you find that the State has
23 proven all elements of murder beyond a reasonable doubt,
24 you would find, check guilty if it's a unanimous decision
25 and then you would consider whether or not he was in

1 possession of a weapon during the the commission of that
2 violent crime.

3 So, if you find him not guilty of murder, you would
4 not go to the second. If you find him guilty of murder,
5 then you would consider the second indictment. Your
6 decision must be unanimous. All twelve of you must agree.
7 Your decision is to be based solely on the evidence that
8 you heard in this jury - in the courtroom this week. You
9 determine what the true facts are on that evidence. You
10 apply the law as I just gave it to you. You'll be in a
11 position to render a true and just verdict. It cannot be
12 based on anything other than the facts and the law. It
13 cannot be based on passion. You don't have any friends to
14 reward, enemies to punish. It has to be based on a
15 deliberated examination of the facts, the evidence, and
16 find what the true facts are, apply it to the law as I
17 gave it to you, and then you'll be in a position to render
18 the verdict.

19 At this time, Mr. Foreman, I am going to ask y'all to
20 take your pads. Go to the jury room. Do not start
21 discussing the case or deliberating or comparing notes or
22 doing anything. I have to ask the lawyers if I have left
23 anything out or if we need to add anything to the charge.
24 That will take just a few minutes. I also have to make
25 sure I have all the evidence because the evidence will be

1 sent to the jury room for you to examine. When we
2 complete that task, I'll send all the evidence back with
3 the verdict form. Once you have reached -- when you have
4 reached a conclusion or decision, knock on the door,
5 announce it to the bailiff, and we'll receive you back
6 into the courtroom to receive the verdict.

7 If at any time during your deliberations you have any
8 questions that you need to ask me, please write it out on
9 a piece of paper, knock on the door, and the bailiff will
10 bring it to me. Sometimes I can answer the question.
11 Sometimes I can't, depending on what the question is, but
12 I will -- when the question is sent back out here, I'll
13 confer with the lawyers, and if it is something that I can
14 respond to, I'll do so. If it is something I can't, I
15 will tell you I can't.

16 It is 20 minutes until 12. What are we going to do
17 for lunch?

18 (Whereupon, the Judge confers with the Clerk.).

19 THE COURT: Let's see how we're running. We can
20 order pizza in -- a pizza in. We'll just do that if we
21 see that we're going to go. It just on how -- you just
22 let us know. If you feel like you need to order lunch.
23 If you want to go ahead and order it now, you can.
24 Whatever you want to do. You're in charge.

25 Now, I am going to let you go back to your jury room.

1 Don't start deliberating. Don't discuss the case. You
2 can talk about lunch if you want to. Then I'll send
3 everything back with Mr. Eddie. Then you can begin your
4 deliberations. Take your notepads with you.

5 Mr. Eddie, put the alternates in a separate room.

6 THE BAILIFF: Yes, sir.

7 THE COURT: If my alternates would stand right here
8 for me, please.

9 (Whereupon, the jury exited the courtroom at 11:40.)

10 THE COURT: Now y'all can follow Mr. Hiers.

11 Mrs. Morgan, is there any additional requests to
12 charge or any objection to the charge --

13 MRS. MORGAN: None whatsoever.

14 THE COURT: Anything on behalf of the State?

15 MRS. MORGAN: Nothing further.

16 THE COURT: Mr. Moore?

17 MR. MOORE: Nothing further.

18 THE COURT: All right. Would you two please come up
19 and review the evidence? Make sure all evidence was
20 introduced into the trial of the case.

21 (Whereupon, Mrs. Morgan and Mr. Moore reviewed the
22 exhibits.)

23 MR. MOORE: What about the stipulation?

24 THE COURT REPORTER: That's marked as a Court
25 Exhibit.

1 MRS. MORGAN: Court Exhibit.

2 MR. MOORE: Okay. You're not going to send that in?

3 MRS. MORGAN: He said it was a Court Exhibit.

4 THE COURT REPORTER: If it's marked as Court, I
5 don't, but, I mean, y'all can talk to him and do whatever
6 you need to do.

7 THE COURT: Ma'am?

8 MRS. MORGAN: We stipulated as a Court Exhibit.

9 MR. MOORE: The Court Exhibit on the times in
10 evidence?

11 THE COURT: That's correct.

12 THE COURT REPORTER: So it goes back?

13 MRS. MORGAN: It says Court's

14 THE COURT: It's a Court Exhibit, but if y'all agree,
15 we can send it back.

16 MR. MOORE: I think we need to send it back.

17 MRS. MORGAN: I thought we published it.

18 THE COURT: I don't know that you did or not.

19 MRS. MORGAN: I did.

20 THE COURT: I'll send it back. It's a stipulation.

21 THE COURT REPORTER: Okay. So, Court Exhibit 2 goes
22 back.

23 THE COURT: All right.

24 Mrs. Morgan, on the record have you reviewed all of
25 the exhibits and are in agreement that that is all of them

1 and you're satisfied?

2 MRS. MORGAN: Yes, sir, except the one that you put
3 in any way, the Court's Exhibit.

4 THE COURT: Well, the Court Exhibit is simply the
5 stipulation that y'all did on the --

6 MRS. MORGAN: Yes, sir.

7 THE COURT: -- on the times?

8 MR. MOORE: Yes, sir.

9 THE COURT: Telephone times or some kind of time.

10 MR. MOORE: It was the time of the EMS calls and
11 sunset.

12 THE COURT: Very well. I don't see where that's
13 prejudicial to anybody to send that back.

14 Mr. Moore, have you looked at all of the exhibits?

15 MR. MOORE: I have.

16 THE COURT: Are you in agreement?

17 MR. MOORE: Yes, sir.

18 THE COURT: All right. The two of you please look at
19 the verdict form and see if you have any problem with
20 that.

21 Neither side expressed any opposition to the verdict
22 form.

23 Mr. Bailiff, take the exhibits. Listen to me very
24 carefully. Take the exhibits and the verdict form back
25 into the jury room. Some of the jurors have gone to take

1 a smoke break. Tell the Foreperson do not -- do not start
2 to deliberate until the smokers return to the room.

3 THE BAILIFF: Yes, sir.

4 THE COURT: And once they return to the room, they'll
5 be ready to go.

6 THE BAILIFF: All right.

7 THE COURT: Do you understand that? All right.
8 We'll take a five-minute break.

9 (Whereupon, the Jury began to deliberate at 11:50.)

10 (Whereupon, a break was taken.)

11 THE COURT: Mrs. Morgan and Mr. Moore.

12 (Whereupon, a bench conference was held.)

13 THE COURT: We'll just make this Court exhibit 3.

14 (Whereupon, Court's Exhibit No. 3 was marked for
15 identification only.)

16 (Whereupon, a break was taken.)

17 THE COURT: We have received a second request or
18 clarification on Court Exhibit 3 which I have responded on
19 the back reviewed by both the State and the Defendant with
20 no objection.

21 (Whereupon, a break was taken.)

22 THE COURT: Is the State ready to receive the
23 verdict?

24 MRS. MORGAN: Yes, Your Honor.

25 THE COURT: Defense?

1 MR. MOORE: Yes, Your Honor.

2 THE COURT: All right. Let me remind all of those in
3 the courthouse, I know this is a very emotional situation
4 for both sides. I have no idea what the verdict is. It
5 is either going to be one of two things. I will tolerate
6 absolutely no outbursts, no emotion. If you cannot comply
7 with my request, I am going to ask you very politely to
8 leave now. If there is any misbehavior I've got deputies,
9 law enforcement, SLED agents standing all around, and you
10 will be brought before me for contempt of court and I
11 promise you you will be incarcerated.

12 So, fair warning. If you cannot control your
13 behavior, very respectfully please leave now.

14 Mr. Eddie, would you bring my Jury in, please?

15 THE COURT: Let the record reflect that the
16 alternates were separated from the twelve jurors the
17 entire time of the deliberation.

18 (Whereupon, the jury came into open court at
19 approximately 12:57.)

20 THE COURT: Sir, have y'all reached a verdict?

21 THE FOREPERSON: Yes, Your Honor.

22 THE COURT: If you would please pass it to the
23 Bailiff.

24 Mr. Moore, have your client stand, please.

25 THE CLERK: Your Honor, this is case number

1 2008-GS-06-130 and 131, the State of South Carolina versus
2 William-A.-Owens. As to the offense of murder we, the
3 Jury, find the Defendant guilty. We unanimously agree.
4 This is signed by Foreperson Benjamin F. Cave on
5 December 4, 2008.

6 Also, on possession of a weapon during the commission
7 of a violent crime, we, the Jury, find the Defendant
8 guilty. We unanimously agree, December 4, 2008, signed by
9 Benjamin F. Cook.

10 THE COURT: Cave.

11 THE CLERK: Cave. I'm sorry. Ladies and Gentlemen
12 of the jury, is this your verdict? If so, signify by
13 raising your right hand.

14 THE COURT: Thank you.

15 Mr. Moore, anything for the jury before I dismiss
16 them?

17 MR. MOORE: We'd request that the Jury be polled,
18 Your Honor.

19 THE COURT: Thank you. Hand me the jury list.

20 Ladies and Gentlemen of the Jury, I am going to call
21 your name. I am going to simply ask one question. I'll
22 simply ask you is this your verdict and is it still your
23 verdict, and if it is, please say yes. If it is not,
24 please say no. Very simple.

25 Mrs. Pamela Rush, would you please stand? Is this

1 your verdict and is it still your verdict?

2 THE JUROR: Yes, Your Honor.

3 THE COURT: Thank you, ma'am.

4 Ms. Felecia Garvin? Ms. Garvin, is this your verdict
5 and is it still your verdict?

6 THE JUROR: Yes, Your Honor.

7 THE COURT: Thank you, Ms. Garvin.

8 Mr. Harold Owens?

9 THE JUROR: Yes, Your Honor.

10 THE COURT: Is this your verdict and is it still your
11 verdict?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you.

14 Mr. Snider? George A. Snider, III, is this your
15 verdict and is it still your verdict?

16 THE JUROR: Yes, Your Honor.

17 THE COURT: Thank you, Mr. Snider.

18 Ms. Connie Hiers, is this your verdict and is it
19 still your verdict?

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you.

22 Ms. Mackey, is this your verdict and is it still your
23 verdict?

24 THE JUROR: Yes, Your Honor.

25 THE COURT: Thank you, Ms. Mackey.

1 Mr. Stephen Ritchie, Jr., is this your verdict and is
2 it still your verdict?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you.

5 Mr. Derrick Saxon, is this verdict and is it still
6 your verdict?

7 THE JUROR: Yes, Your Honor.

8 THE COURT: Thank you, Mr. Saxon.

9 Ms. Lisa Price, is this your verdict and is it still
10 your verdict?

11 THE JUROR: Yes.

12 THE COURT: Thank you.

13 Ms. Cynthia Coleman, is this your verdict and is it
14 still your verdict?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: Thank you, Ms. Coleman.

17 Foreman Cave, is this your verdict and is it still
18 your verdict?

19 THE FOREMAN: Yes, Your Honor.

20 THE COURT: Thank you, Mr. Cave.

21 Ms. Laura S. Jones, is this your verdict and is it
22 still your verdict?

23 THE JUROR: Yes, Your Honor.

24 THE COURT: Thank you. The Jury has been polled.
25 They've all answered in the affirmative. Anything else,

1 Mr. Moore, for the jury?

2 MR. MOORE: Nothing further, Your Honor.

3 THE COURT: Thank you.

4 Mr. Foreman, Ladies and Gentlemen, the only thing
5 left is the sentencing. I am getting ready to do that in
6 just a few minutes. Y'all are welcome to stay for that or
7 you're welcome to leave. What is your pleasure?

8 THE JUROR: Stay.

9 THE COURT: All right. Mr. Moore?

10 Mr. Cave, before you leave I need you to sign one
11 other thing. We'll do it in just a few minutes.

12 MRS. MORGAN: You request that the Defendant sign it?

13 THE COURT: If he wants to..

14 All right. Mr. Moore, come forward, please, with
15 your client.

16 MRS. MORGAN: If it please the court, Your Honor, I
17 know at this time you would hear from the victims, but I
18 would on behalf of the State I think the jury has spoken.

19 THE COURT: I know they've spoken.

20 MRS. MORGAN: Yes, sir. And I think due to the facts
21 of this case that the State's position is that the
22 appropriate sentence would be life, but I would like for
23 you to hear from the victim's family when you deem it
24 appropriate.

25 THE COURT: All right. I am simply signing my name,

1 Mr. Owens. I am not doing anything.

2 Mr. Moore?

3 MR. MOORE: Your Honor, Mr. Owens is 32 years of age.
4 He is a relatively young man. He has no significant prior
5 criminal history. Great respect and deference to the
6 jury's decision. Certainly, there were arguable facts in
7 this case and pointed in several different directions. We
8 understand the minimum sentence that the Court has to
9 impose, and I understand what the maximum sentence is.

10 THE COURT: Well, does your client know I have a
11 range of 30 years to life in prison without parole?

12 MR. MOORE: Yes, sir. He does, and we've discussed
13 that on numerous occasions. We would ask the Court to do
14 what the Court has to do in terms of significant sentence
15 and in a case like this, but we would also request that
16 the Court give less than the maximum sentence so that
17 Mr. Owens at a later part of his life could come out and
18 perhaps be a contributing member of society and salvage so
19 some part of his life. He is to young man. He is 32
20 years of age. He could have some time left at the end of
21 the day. We would ask the Court to consider that in the
22 sentence of this case.

23 THE COURT: Thank you. Do you have anybody else that
24 wants to speak?

25 Mr. Owens, anything you want to tell me?

1 you doing? I love you, Baby. My husband loved me and he
2 would tell anybody that.

3 He didn't want anybody messing with his family. He
4 didn't want anybody doing anything to us, and we didn't
5 want anybody to do anything to him and that night it was
6 so unthinkable. My life has been shattered. I'm
7 devastated. It's only by the grace of God that I am able
8 to go on. God just kept on sustaining me. He just kept
9 on sustaining me, and I knew that day, William, if you had
10 talked to my husband he would have saved you. He would
11 have gave you the word of God because that's all he wanted
12 to do was know where people was in their life with the
13 Lord, and he would have gave it it to you if you had just
14 taken a little bit more time and not just killed him, but
15 talked to him.

16 Oh my God. Oh my God. He loved fishing. He went
17 down there because he said it brought him peace just to
18 look in the water and to fish. It just gave him some time
19 to be alone with the Lord and hear the voice of the Lord
20 talk to him.

21 I miss my husband. I want my husband so bad. I
22 can't believe my husband is not here. I can't believe it.
23 I just want my husband so bad. My children need their
24 Daddy. My grandchild needs his Papa. We knew he always
25 wanted a grandchild. Ahmere came home on Monday. My

1 husband was killed on Friday. He didn't get to hold him.

2 But his spirit is in our home. I thank God for that.

3 He loved to fix on his go-carts, his mini bikes. As a

4 matter to fact, he was so humorous. My husband was

5 childlike, but he was not childish. He loved to have fun.

6 My mind goes back, Judge, one day he was riding his

7 mini-bike during the frog jump and the highway patrolman

8 stopped him and said he couldn't ride his mini-bike on the

9 road, but he loved his go-carts and we would ride in the

10 go-carts up and down the road. But my man, my baby, my

11 baby is -- I can't believe it.

12 Oh God, I suffer so hard. I need my husband. I

13 can't believe he took him. Oh God, I beg all of the

14 agents, all of the SLED, all of the policemen, all of your

15 untimely hours that you spent working on my husband's case

16 just to prove -- Barbara, you don't know. I appreciate

17 you so much. I love you.

18 Susan, thank you for everything.

19 Sheriff Carroll, Investigator Croft, Agent Johnson,

20 Agent Darnell, all of you here this week. Lord God, I got

21 a lot to go through yet because I am still without my

22 husband. I am still without my husband. I need my

23 husband. Lord God, my husband is not here, Judge, and he

24 won't be back. I finally realized that just today after

25 17 months my husband is not coming back.

1 Oh God, I love my husband. There is just no way --
2 there is no way. There is no way this man can go and walk
3 this earth again, God. He took my husband. He just took
4 him. I love my husband. I need my husband. I thank all
5 of my family. God, this hurts so bad. Y'all will never
6 know how bad I hurt. I can't believe Phil is not coming
7 back.

8 THE COURT: Thank you, ma'am.

9 Mrs. Morgan, anyone else on behalf of the family?

10 MRS. MORGAN: I don't believe. I know that this is
11 emotional for them all, and I've discussed it. Annie has
12 asked me on different times the possibility of the
13 sentence, and I have told her that life in this case means
14 natural life, and in our discussions I think that's what
15 she has asked and the family and the church family have
16 asked that justice be served and that the justice in this
17 case would be life imprisonment.

18 THE COURT: Mr. Moore, anything else?

19 MR. MOORE: Your Honor, we would just ask for the
20 mercy on the court. Mr. Owens has a very large family,
21 very supportive family. They are here. They have
22 supported him all week.

23 THE COURT: I have noticed that.

24 MR. MOORE: We've discussed this case earlier, and,
25 you know, the possibility, you know, of a plea, and

1 Mr. Owens was adamant that he would not plead guilty to
2 something he didn't do.

3 THE COURT: Mr. Owens, I've practiced law for 30
4 years here in Bamberg, Barnwell and Aiken. I represented
5 six people who were accused of murder and they sought the
6 death penalty against those six, and I represented
7 uncounted number of other people who just had murder cases
8 like yours that weren't death penalty case. I served five
9 years as a Judge in this State, and I have never ever seen
10 a more senseless killing than this.

11 It was heartless. It was cowardly, inhumane, devoid
12 of any human dignity, emotion. You showed this man
13 absolutely no mercy whatsoever.

14 THE DEFENDANT: Can I say something?

15 THE COURT: No, sir. You stepped up behind him in
16 close range and blew his life away for no apparent reason
17 whatsoever. You didn't even steal the money out of his
18 pocket. I can't think of anything else other than pure
19 meanness that made you kill this man. I think the
20 evidence was overwhelming. I concur in the Jury's
21 decision. As the widow said, it was unthinkable what you
22 did.

23 I have a job to protect this community. Our citizens
24 have the right to go down to the river at night, in the
25 afternoon and to fish. Your family has the right to live

1 without somebody sneaking up behind them and blowing their
2 brains out -- executing them.

3 There is only one sentence which is appropriate here.
4 It is the sentence where you will never ever walk this
5 earth as a free man. The sentence of this Court on the
6 murder charge is that you be committed to the State
7 Department of Corrections for the balance of your entire
8 life. As to the possession of a weapon during the violent
9 crime, it is a five-year sentence which runs after you do
10 your life sentence. Good luck to you. Get him out of
11 here.

12 Everybody remain seated.

13 (Whereupon, the jury exited the courtroom at 1:19.)

14 (End of transcript of record.)

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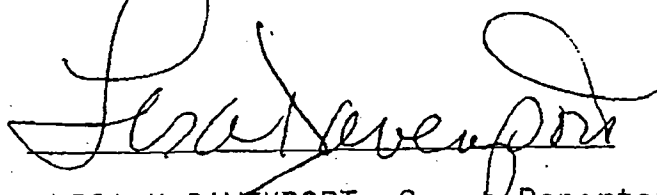
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. DAVENPORT, Official Court Reporter for the second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 1 - 4 day of December, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 2, 2009



LISA H. DAVENPORT, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Barnwell)William Allen Owens)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2011 - CP - 06 - 353

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Corr. Inst., 430 Oaklawn Rd. Pelzer
2. Name and location of Court which imposed sentence Barnwell County, Gen. S
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-GS-06-130/131
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 4, 2008
 - (b) _____

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2011 SEP 16 PM 2:00
RHONDA D. McKEE
CLERK OF COURT
BARNWELL COUNTY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 28, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to Properly; prepare for trial;
- (b) object to burden shifting;
- (c) See enclosed Memorandum
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is my first P.C.R.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. E.T. Morere, P.O. Box 160, Barnwell, S.C. 29812
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacate and grant a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Barnwell)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

William A. Owens

SWORN to and subscribed before me this 12th
day of September, 2011.

Steven T. McIntosh (S.)
Notary Public

My Commission Expires: January 7 2016

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2011 SEP 16 PM 2:00
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William A. Owens
Applicant

SWORN or affirmed to and subscribed before me this
12th day of September, 2011.

Steven C. Muntley
Notary Public

My Commission Expires: January, 2016

RHONDA D. McELYEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2011 SEP 16 PM 2:00

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MEMORANDUM

SUBJECT MATTER JURISDICTION NOT VESTED	1,2
BURDEN SHIFTING MALICE CHARGE	2
EXPERT WITNESSES	3
~~TRIAL OBJECTIONS AND ERRORS~~	~~3~~
PRIOR OFFENSES	3
INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL	3

FILED FOR RECORD
2011 SEP 16 PM 2:00
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

SUBJECT MATTER JURISDICTION NOT VESTED

S.C. Code Ann. 17-19-30 based on case law interpretation discussed herein, it appears this statute can be broken down and construed as follows:

1. The indictment must set forth the time and place "of Murder" although the words "of Murder" are not part of the statute, cases have apparently read these terms into the statute.

2. The indictment must include a plain statement of the manner in which the death of the deceased was caused. See Joseph v. State, 571 S.E.2d 280 (S.C.2002).

3. The indictment must charge that the defendant, with malice aforethought, murdered the deceased. State v. Rector, 158 S.C. 212, 155 S.E.2d 385 (1930) we went fully into the necessity of alleging and proving the place of death of the person alleged to have been murdered. State v. Shoemaker, 276 S.C. 86, 275 S.E.2d 878 (1981) however, it is absolutely necessary in this State, in an indictment for murder, to allege the place of death of the deceased. Blakeney, 11 S.E. 637 at 637-638, is absolutely essential in an indictment that the place of death of the party killed should be alleged therein, and that in the absence of such allegation, such indictment is fatally defective, and should be quashed on motion made and such a defective indictment is beyond the reach of amendment. A matter so vital as the place of death of the party killed is absolutely necessary to be alleged in a jurisdictional point of view and must be passed upon by the grand jury in accordance with the constitutional rights of the accused. Platt, 151 S.E. 207 at 211, Blakeney, supra thus, the court determined that this matter was jurisdictional in nature. State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (ct. App. 1999) The allegations of an indictment as to the place of assault and the place of the death are generally regarded as essential allegations in an indictment for murder. State v. Bostnick, 243 S.C. 14, 131 S.E.2d 841 (1963); Platt supra. Such allegations affect the jurisdiction or the essential elements of the crime. Likewise, the time of death is also a critical jurisdictional element. Indictments for murder must also allege, in addition to the place of assault and death, the time of the assault and death, Bostick supra Rector supra, Brown v. State, 320 S.C. 366, 465 S.E.2d 358 (1995) The indictment here alleges that an assault occurred, which allegation also asserts, the time and place of the actual assault. However, the indictment in question fails to allege the time or place of death of the deceased under Rector, and indictment for murder must also contain the time of death of the deceased.

The indictment in this case should have read in the common law of murder, but the solicitor in this case left out necessary elements in the indictment. Without a proper indictment, the

Circuit Court lack jurisdiction to enter a conviction and impose sentence for a crime.

S.C. Code of Laws Ann. § 17-19-10, S.C. Const. Art. 1, § 11 An indictment is proper if it is sufficient in charging the elements of the offense,, State v. Beachum, 288 S.C. 325, 342 S.E.2d 597 (1986) an indictment is sufficient in the charge if it contains the necessary elements of the offense and gives notice to the defendant of what he must be pre-pared to meet.

BURDEN SHIFTING MALICE CHARGE

TRIAL TRANSCRIPT Pg. 708 lines 5, 21 Quote "Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon." Quote "Malice can be expressed or inferred. It can be inferred with the use of a deadly weapon." Under a new opinion this charge shifts the burden on the defendant's back. The Supreme Court, reversed and remanded Belcher's case for new trial. (Opinion No. 26729 Heard May 14, 2009 Oct, 12, 2009) Justice Kittredge: Its has long been the practice for trial courts in S.C. as sanctioned by this Court, to charge juries in any murder prosecution that the jury may infer from the use of a deadly weapon. We granted Belcher's petition to argue against this precedent. Having carefully scrutinized the historical antecedents to this permissive inference, we hold today that a jury charge instructing that malice maybe inferred from the the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. We therefore reverse Belcher's convictions, and remand for a new trial.

The Law of course, today speaks in terms of "permissive inferences" not "presumptions" this transition resulted from the United States Supreme Court's pronouncement that the Due Process Clause of the Fourteenth Amendment is violated when a jury charge creates a mandatory presumption and impermissible shifts the burden of proof to the defendant. See Sandstrom v. Montana, 442 U.S. 510, 524 (1979) Holding that "Burden-Shifting presumption(s) or conclusive presumption(s) deprive a defendant of the 'Due Process of Law' and are therefore unconstitutional." Mullaney v Wilbur, 421 U.S. 684, 703-04 (1975) Holding that the "Due Process Clause" forbids a state from placing the burden on the accused to prove his actions reduced the crime from "Murder to Manslaughter" S.C. Const. Art. V § 21 "JUdges shall not charge juries in respect to matters of fact, but shall declare the law."

This case at bar, successful challenge to this jury charge requires the Court to reverse his convictions and remand for a new trial.

EXPERT WITNESSES

Counsel's failure to call an expert witness at trial to rebut the State's expert testimony will not necessarily raise to the level of deficient where he under takes a vigorous cross examination of the State's witness. This case at bar of Mr. William A. Owens counsel never vigorous cross examination State's witnesses. Frasier v State, 306 S.C. 158, 410 S.E.2d 572 (1991). In Frasier the Circuit Court granted Applicant relief on the allegation that counsel failed to attain an expert to counter DNA evidence presented at trial. On an issue of expert witness, these witnesses have to be at the P.C.R. Hearing and Testify to win on this issue.

TRIAL OBJECTIONS AND ERRORS

Counsel may be found deficient for ~~not~~ failing to object to trial Court error. This includes: failure to object to inadmissible evidence, Dawkins v State, 436 S.C. 151, 155 S.E.2d 260 (2001) [Failure to Objected to Hearsay]; improper arguments by the prosecution, Mathews v State, 2001 WL 1887491 (S.C.Sup.Ct. decided June 17 (2002) Erroneous jury instructions, Plyer v State, 309 S.C. 408, 424 S.E.2d 477 (1992) Counsel deficient for failing to object to improper charge on malice, which improperly shifted burden of proof from the State to Defendant.

PRIOR OFFENSES

Claims of ineffective assistance of counse, can focus counsel not sealing Defendant's prior record, so Defendant can testify, Green v State, 338 S.C. 428, 527 S.E.2d 98 (2000) Counsel was found deficient for not objecting to the use of prior offenses.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Strickland v Washington, 466 U.S. 669 (1984) The brechnmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial Process that the trial can not be relied on as having produced a just resualt Id the Court ruled that attorney performance must be measured by reasonableness under prevailing professional norms, Id. at 688. When an attorney fails to meet these standards, the attorney is said to have rendered deficient performance.

Just as the P.C.R. Court will see that this attorney has rendered very little of any help.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

William Allen Owens, #332121,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-06-0353

RETURN

FILED FOR RECORD
2011 DEC 21 AM 10:30
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

The Respondent, making its Return to the application for post conviction relief (PCR)

filed September 16, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the May 2008 term of the Barnwell County Grand Jury for Murder and Possession of a Weapon During a Violent Crime (2008-GS-06-0130/0131) Applicant was represented by E.T. Moore, Jr., Esquire, on the charges. On December 1, 2008, the Applicant proceeded to trial before the Honorable Doyet A. Early, III. On December 5, 2008, Applicant was found guilty of both charges and was sentenced to Life Without Parole for Murder and five (5) years on the Possession of a Weapon charge to run consecutively.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. The appeal was dismissed by the South Carolina Court of Appeals by written order filed June 28, 2011. State v. Owens, Op. No. 2011-UP-339 (S.C. Ct. App. filed June 28, 2011.) The Remittitur was sent July 14, 2011.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the relevant appellate documents, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to properly prepare for trial."
 - b. "Failure to call an expert witness at trial to rebut the State's expert testimony...counsel never vigorous cross examination state's witnesses."
 - c. "Failure to object to improper charge on malice, which improperly shifted burden of proof from the State to the Defendant." (*see Belcher*)
2. Subject matter jurisdiction not vested.
 - a. "Indictment left out necessary elements of the charges."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064; 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

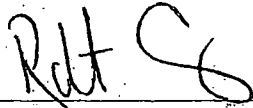
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 20, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

WILLIAM ALLEN OWENS, 332121,

Applicant,

vs

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-06-00353

AFFIDAVIT OF SERVICE BY MAIL

FILED FOR RECORD
2011 DEC 21 AM 10:37
HONORABLE JUDGE
CLERK OF COURT
BARNWELL COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

John E. Chambers Jr.
Knapp Law Firm, PC
Post Office Box 714
Barnwell, SC 29812

DATED this 20th day of December, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Aiken) Of Common Pleas
3
4 Docket No. 2011-CP-02-0353
5
6 William Allen Owens,)
7 Applicant,)
8 vs.) Transcript of Record
9
10 State of South Carolina,)
Respondent.)

11
12 July 10, 2012
13 Aiken, South Carolina
14

15 B E F O R E:

16 The Honorable Paul M. Burch, Judge.
17

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

19 John E. Chambers, Jr.
20 Attorney for the Applicant

21 David Spencer, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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(There were no exhibits
entered during this hearing.)

1 **MR. SPENCER:** We're going to go ahead and call
2 William Owens.

3 Your Honor, this next case is William Owens versus
4 the State, 2011-CP-06-353. This is from an application for
5 PCR that was filed on September 16, 2011. Mr. Owens was
6 indicted during the May 2008 term in Barnwell County for
7 murder and possession of a weapon during a violent crime.
8 He was represented by Mr. E.T. Moore, Jr., who is here
9 today. He went to trial on December 1st of 2008, and was
10 convicted as charged on December 5th; and was sentenced to
11 life without parole for murder and five years consecutive
12 for possession of a weapon charge; and the trial judge was
13 Judge Early.

14 There was an appeal filed. An Ander's Brief was
15 submitted and the case was dismissed by the Court of
16 Appeals and a remittitur for that was sent in July of 2011.
17 Mr. Owens is represented here today by Mr. John Chambers
18 and I would just ask so we can follow along, that
19 Mr. Chambers set out the allegations on the record.

20 **THE COURT:** Good morning, Mr. Chambers.

21 **MR. CHAMBERS:** Good morning, Your Honor. If I may,
22 before we do that, and I'm not one of these PCR experts
23 like everybody else here, but it occurred to me that given
24 the facts as alleged in the trial transcript that if the
25 Court granted Mr. Owens' petition, there's the theoretical

1 or more than theoretical possibility that on a retrial, the
2 State could seek the death penalty. Given that, I wanted
3 to put on the record that Mr. Owens is aware of that
4 possibility. That's my understanding, anyway, that the
5 solicitor would have that discretion to do that, and that
6 knowing that he still wanted to proceed with the PCR, given
7 the fact that if the Court does grant him the relief that
8 he seeks on a retrial there's a possibility that the
9 Court -- that the solicitor could seek the death penalty on
10 a retrial.

11 So that -- I just wanted the Court to let me put
12 that on the record that he understands that and that
13 knowing that he wants to proceed with the PCR.

14 **THE COURT:** And he would go back to ground zero.
15 If there were any other charges out there that were not
16 prosed or brought at the same time that the State didn't
17 pursue --

18 **MR. CHAMBERS:** There were no other charges, other
19 than the murder indictment and the possession during a
20 violent crime of a weapon, but the facts that the State
21 alleged in the evidence the fact that it could have
22 conceivably have been as part of an armed robbery, which
23 would be a statutory enhancing factor, so the State didn't
24 pursue it before. I don't know that they would again, but
25 given the possibility that they could, I just wanted to get

1 that on the record.

2 THE COURT: All right. Mr. Owens, you understand
3 the consequences?

4 THE DEFENDANT: Yes, I do, Your Honor.

5 THE COURT: All right. We'll proceed if that's
6 your desire.

7 MR. CHAMBERS: Thank you, Your Honor. Mr. Owens
8 would call his attorney at the trial, Mr. E.T. Moore, Jr.

9 Well, I wanted to -- I need to lay out the
10 allegations first, excuse me.

11 The allegations, Your Honor, in the application
12 were several. One, that Counsel failed to properly prepare
13 for trial. There was an allegation regarding burden
14 shifting on the malice charge, as I'm sure the Court is
15 aware. Subsequent to this trial, there was the Belcher
16 Opinion which changed the law in South Carolina regarding
17 permissive inferences and when those charges are
18 appropriate and not appropriate.

19 Mr. Owens' appeal was pending at the time, but as I
20 read the Belcher case, because I wanted to use it quite
21 frankly, but as I understand that, it cannot be raised on a
22 PCR, even though his appeal was pending at the time. And
23 also, there was no mitigation evidence or lesser-included
24 charges that were before the jury, so I don't believe that
25 that is -- I can make an appropriate argument based on that

1 subsequent case; and therefore, we're not pursuing that
2 allegation.

3 THE COURT: All right.

4 MR. CHAMBERS: The other allegations were set forth
5 in an attached memorandum, which included basically the
6 sufficiency of the indictment. I've discussed that with
7 Mr. Owens. Although the indictment was bare bones, I
8 believe it gave him sufficient notice as to what the
9 charges are and that it had the jurisdictional
10 requirements, I believe. I discussed that with him, so
11 we're not pursuing that as well.

12 The other charges, and the ones that are most
13 pertinent, I believe, are the general ineffective
14 assistance of counsel allegations. We'll be pursuing that,
15 obviously under the Strickland Doctrine. He -- trial
16 objections and error and the consultation as part of the
17 ineffective assistance of counsel would be pretrial matters
18 that were discussed or not discussed with Mr. Owens and his
19 attorney.

20 THE COURT: All right.

21 MR. CHAMBERS: And I believe that is the sum and
22 substance of the allegations.

23 And now if we're ready, I'll call Mr. Moore.

24 THE COURT: Mr. Moore, if you'll come around and be
25 sworn, please.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 E.T. Moore, Jr.,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat in the witness box.

4 DIRECT EXAMINATION

5 BY MR. CHAMBERS:

6 Q Mr. Moore, you're an attorney in Barnwell, as am I,
7 and we're colleagues over in that small town. You
8 represented Mr. Owens at his rather lengthy trial back in
9 2008; is that right?

10 A I did.

11 Q And that trial -- there was testimony for about
12 three days, I believe, and then the charges and
13 deliberations on the fourth day and probably about
14 seventeen to twenty witnesses called; is that correct?

15 A That sounds right.

16 Q And at the trial, Mr. Owens did not present a
17 defense and you made the last argument for the jury because
18 he did not present any case on his behalf; is that right?

19 A That's correct.

20 Q Now, as far as discussions on that strategy, not to
21 present a defense, in the transcript, I noted that after
22 the State rested their case, there was a brief break. You
23 and Mr. Owens and even his mother and a couple of the
24 bailiffs or deputies went back and discussed this and then
25 it was put on the record that he was voluntarily waiving

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 his right after the litany of questions by Judge Early,
2 that he understood his rights to present a defense and he
3 agreed not to; is that right?

4 A That's correct.

5 Q Now, prior to that meeting after the State rested
6 their case during the trial, had you and Mr. Owens had any
7 discussions regarding trial strategy as to whether, in
8 particular he would present a defense or that you would

9 rely on the benefits of the last argument in front of the
10 jury?

11 A Yes, we discussed everything before the trial.

12 Q And were those discussions lengthy or brief?

13 A Lengthy.

14 Q And is it your understanding that Mr. Owens was
15 cognizant of the fact at the end of the trial that he was
16 not going to present a defense?

17 A He was.

18 Q Now, basically, if I understand correctly, your
19 theory of the case was that, based on the timelines of
20 various people arriving at the bridge and river where the
21 victim, Mr. McCreary was killed and his arrival back at
22 home in Williston and a farmer hearing a shot, that that
23 timeline would have precluded him from being at the river
24 when the reverend was killed; is that a fair statement?

25 A That's a fair statement.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Q And is it also a fair statement that the
2 credibility of the State's witnesses, in particular Renee
3 McKinney, who was his girlfriend at the time, was a key
4 aspect of the case, being able to attack her credibility?

5 A That's correct.

6 Q And if I'm correct, Judge Early had indicated that
7 the minor criminal record that Mr. Owens had would not come
8 in and any prior bad act evidence that the solicitor may
9 have been considering, he was going to exclude so that
10 basically there wouldn't be any impeachable evidence
11 against him in regard to those cases?

12 A That's my recollection. I can't say for sure, but
13 that is my recollection.

14 Q Pretrial, did you make any motions in limine to --
15 or any motions to suppress any evidence coming in regarding
16 any of his prior convictions or any of the evidence that
17 was admitted in trial?

18 A Yes.

19 Q And could you describe what the scope of your
20 motions were?

21 A They were lengthy. As I recall, some thirty to
22 forty motions essentially from the same framework that I'd
23 followed in a couple of death penalty cases that I've done
24 before, you know, because we wanted to make sure that
25 everything was covered.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Q Right.

2 A I can't list every one of them off the top of my
3 head.

4 Q And I have copies of the number of motions that
5 you --

6 A All of them are in the record, I'm sure.

7 Q Right. And I'm at the disadvantage because I'm not
8 very active in criminal law as most other people in this

9 courtroom are, but I noticed that you made all the standard
10 motions that you would typically make pretrial. As far as
11 any -- any motions to keep evidence out, were you aware of
12 what would be coming in and what wouldn't be coming in
13 based on any motions you made to -- motions in limine not
14 to testify or for there not to be any discussions regarding
15 prior convictions, which were minor or any prior bad acts
16 that the solicitor would have?

17 A The judge excluded one piece of evidence that we
18 had attempted to raise, other than that, I was aware of
19 everything that was going to come in.

20 Q Now, the -- if this is a fair statement, the State
21 tried to portray Mr. Owens as some wild outdoors man
22 yahoo-type, keeping rattlesnakes and roaming around and
23 picking up road kill and stuff like that; is that a fair
24 statement?

25 A I wouldn't characterize it that way, no.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Q Well, they made a big deal about the fact that he
2 kept rattlesnakes in the house and things like that?

3 A I think that came out at trial.

4 Q Right.

5 A The deputies were cautious when they searched the
6 house because of the snakes in the house.

7 Q And I assume they didn't understand that they were
8 kept in cages, but that was sort of a gratuitous remark at
9 trial that you didn't object to; is that right?

10 A I don't think the rattlesnakes had anything to do
11 with the case.

12 Q Well, my point is that any number of things nipped
13 away until finally, there's a cumulative effect on what was
14 presented at trial; would you agree with that?

15 A As I said, I don't think the rattlesnakes had
16 anything to do with the case.

17 Q And I agree. I don't think that was determinative,
18 but the point being do you think that Mr. Owens would have
19 been a good witness had you presented a defense?

20 A It was Mr. Owens' decision not to testify at the
21 trial.

22 Q Had Mr. Owens testified, he could have refuted some
23 or many of the things that the State was trying to put
24 before the jury, probably to prejudice the jury, such as he
25 could have testified that his girlfriend, Renee, in fact,

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 had already planned to leave the household and go back to
2 Maryland rather than the State making it appear that she
3 fled because of her supposed knowledge of his murder of the
4 reverend?

5 A That issue was addressed on cross-examination.

6 Q It was addressed in cross-examination, but would
7 you not agree that the jury's actually hearing from him and
8 seeing that he is apparently not some sort of a monster and

9 that he had rational, logical explanations for many of the
10 allegations would have been helpful to the case?

11 A I'm not sure what rational explanations he had for
12 the allegations of murder.

13 Q Well, it's not only the allegations, but the
14 credibility and the appearance and appeal from the
15 witnesses that the jury also determined; is that not
16 correct?

17 A Could you rephrase that?

18 Q Well, there are allegations of murder and then
19 there's testimony from the State's witnesses as to his
20 activities that aren't necessarily directly related to
21 murder, but paint him in a bad light such as the
22 rattlesnakes or claims that there was this domestic
23 violence a few weeks before, things of that nature?

24 A All of those issues were addressed on cross. As I
25 said, the rattlesnakes, I think that was a concern of the

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 deputies when they were searching the house. I --

2 Q I understand that, but based on your discussions
3 with Mr. Owens, wasn't it the understanding that when he
4 went to the landing, he was just going there, stopping by
5 checking the water, gathering himself because he was
6 dealing with his girlfriend, Renee's, problems and her
7 leaving the household and trying to get back to Maryland;
8 and he was just stopping on his way home about fifteen
9 minutes from his home to gather himself. Is that your
10 understanding --

11 A No.

12 Q -- of his story?

13 A No, it's not.

14 Q So you don't believe he would have been a helpful
15 witness?

16 A That is a decision that the client has to make for
17 himself. What I think is irrelevant other than my advise
18 to him of what his options are and, you know, his final
19 decision is his.

20 Q Did you contact any other witnesses that he had
21 proposed that you possibly call?

22 A We spoke with witnesses, yes.

23 Q How many were there and can you remember who they
24 were?

25 A I spoke with all of his family members, which would

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 have been character-type witnesses. I spoke with all the
2 witnesses identified by the State and I can't recall
3 anybody else that Mr. Owens named as a witness to be
4 identified.

5 Q Did you have those witnesses available at trial?

6 A Everybody was there.

7 Q And had you subpoenaed everyone that Mr. Owens add
8 indicated so that they would be present?

9 A To my recollection, yes. But I don't -- I can't
10 say that for certain.

11 Q Now, the -- if I understand it correctly, and I
12 believe you've agreed with me, that the timeline of events
13 was critical to the theory of the case that y'all were
14 trying to get across to the jury?

15 A That was our strategy, which we were able to elicit
16 testimony from on cross-examination and still reserve the
17 right to have final argument. We were able to get in
18 everything that we wanted to get in in that regard through
19 cross-examination of the State's witnesses because they
20 were the ones who --

21 Q Right.

22 A -- gave the times of the various events. So all of
23 that was done during cross and we were able -- by doing it
24 that way, able to reserve the right for closing argument.

25 Q Exactly. And basically, you were establishing an

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 alibi defense through the State's witnesses; is that
2 correct?

3 A That's correct, essentially, yes.

4 Q And the lynchpin of that approach was the farmer,
5 Mr. Jamison's recollection that he heard a gunshot right at
6 dark; is that right?

7 A Well, I wouldn't say that was the lynchpin, but
8 that was one of the pieces of evidence that we argued.

9 Q Well, if I may, the -- there were several people
10 down at the landing where he was killed.

11 A Excuse me just one moment. (Getting water.)

12 There were several people identified as being at
13 the landing at various times that afternoon.

14 Q Right. There was one gentleman, Mr. Blackwood, I
15 think he was the first there. He left about 7:15 p.m.
16 Then Mr. Williams showed up with his son, red truck and a
17 trailer there out on the boat, saw Reverend McCreary. I
18 believe his testimony was that he got home and ate and he
19 left about 7 -- or he got home about 7:40, he would have
20 left about 7:25. And of course, the daylight -- I'm
21 assuming what you're trying to do, obviously, is put the
22 gunshot as late as possible in the day and Mr. Owens'
23 arrival home as early as possible on the day; is that
24 correct?

25 A Essentially, yes.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Q And you had phone records that Mr. Owens was
2 driving up in his driveway, based on the phone records and
3 you had testimony from Renee McKinney, the girlfriend and
4 the girlfriend's sister that he showed up right at eight
5 o'clock; is that right?

6 A That's correct.

7 Q So what you were trying to do was make sure that
8 there was no gap in time where he would have an opportunity
9 to kill Reverend McCreary; is that right?

10 A That's correct.

11 Q And the -- Mr. Jamison, the farmer, whose land
12 backed up or was about two hundred yards away from the
13 landing, where that he had heard the shot, he said that was
14 probably initially 8:30, 8:45 and then basically he just
15 said it was about dark, and that's all he was going to say.
16 Is that your recollection?

17 A That's correct.

18 Q Did you present -- I know that there was a
19 stipulation of the time of sun on that day. I believe it
20 was 8:39, probably ended at 9:07, so your contention was
21 about dark would have been 8:30, 8:40, somewhere in that
22 neighborhood; is that right?

23 A We obtained those times from the State
24 Climatologist and we were able to get those stipulated to
25 by the State for trial so that we could establish the time

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 of sunset.

2 Q Right. Those times were still twilight -- those
3 are available on the internet?

4 A We established that.

5 Q Right and it was stipulated to.

6 A Stipulated to at trial.

7 Q Now, when you were presenting this argument to the
8 jury, since you didn't put up a case for Mr. Owens, when
9 you were presenting this argument to the jury, did you have
10 any type of chart, demonstrative-type thing to show -- I
11 know that it was argued, but so that you could freeze it in
12 the jury's mind that there was no possible gap?

13 A There was a timeline on a big piece of paper or
14 cardboard or whatever that was presented during the closing
15 argument, which would have been a better opportunity for
16 the jury to recall those times.

17 Q Right. And when you were presenting the timeline,
18 were you, were you presenting it in a way to show that
19 there was no possibility of that gap?

20 A That's correct.

21 Q Because the solicitor argued that there was like a
22 7:30 to 7:45, 7 :45, eight o'clock gap, where he had
23 actually fifteen minutes to kill Reverend McCreary. So did
24 your presentation to the jury account for that?

25 A Everything -- based on the State's evidence in

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 cross-examination and their establishment of various times,
2 their testimony, all of that was presented in closing
3 arguments. Had I presented the chart as evidence during
4 the trial, that would have been evidence --

5 Q I understand --

6 A -- which I couldn't then -- I would have given up
7 the closing statement.

8 Q I understand that. I was asking you about --

9 A It was according to the program.

10 Q Now, did you -- and apparently nobody was wearing a
11 watch that day, that was relevant witnesses, so everybody
12 was going by how much sunlight there were and things like
13 that; is that your recollection?

14 A I don't recall whether anybody had a watch on or
15 not.

16 Q I don't think anybody did. Did you go out and meet
17 with Mr. Jamison, the farmer?

18 A I don't know if I went out and met with him, but I
19 did talk to him.

20 Q Do you think that would have been a good thing to
21 do since there was a July in between his indictment and the
22 trial so that you could have talked with him during those
23 times of day so see exactly how dark it was at what
24 different times?

25 A I thought what his statement was most beneficial to

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1 Mr. Owens and it wouldn't be any use to try to change it.

2 Q His statement that he had given to the
3 investigators?

4 A Uh-huh.

5 Q But wouldn't you agree that there was some
6 ambiguity in the times and what could have happened when?

7 A Well, obviously, the jury felt there was because
8 the time chart that we presented showed that, you know, it
9 would have been impossible for him to have been there. In
10 interviewing the jurors after the trial, they said they
11 asked themselves anybody know what time court started this
12 morning and nobody could answer that. So I think by that
13 they just threw out the timeline defense pretty quickly.

14 Q And they deliberated after a four day trial, they
15 deliberated like an hour and seven minutes; is that your
16 recollection?

17 A That sounds about right.

18 Q So they apparently didn't deliberate on too much of
19 anything. Were they eating their pizza at that same time;
20 do you recall?

21 A Pardon?

22 Q Were they also eat the pizza that had been ordered
23 in?

24 A I have no idea. I wasn't in the jury room.

25 Q I thought maybe you saw a box of pizza going in.

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1 Now, the -- I think you've already acknowledged
2 that the credibility of Renee McKinney was critical
3 particularly since there weren't any witnesses going up on
4 Mr. Owens' behalf, right?

5 A She was one of the State's witnesses, but all of
6 the witness's credibility was at issue.

7 Q Right, absolutely. But she was the one that
8 testified that -- about his alleged confession that he had
9 shot Reverend McCreary or shot a black man in the back of
10 the head and threw him in the river, this kind of stuff?

11 A She was one of the two people that testified --

12 Q One of the two people?

13 A -- about that.

14 Q And you know, on your cross-examination, you went
15 through her coke use. She did several lines of coke that
16 night?

17 A I did.

18 Q And the next day -- and took off the Maryland, sick
19 with the children and all that stuff, so that was all
20 before the jury?

21 A That was all before the jury.

22 Q Also, that was before the jury, but I don't believe
23 you emphasized in your argument was the fact that she had
24 testified that he had made the statement that he had, when
25 he drove up at 8:11 or whatever time that night on July

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1 6th, that he had made this very incriminating statement to
2 her out of the blue without any prodding, but the next day,
3 she had said to her sister that his mother had shot the
4 black man and that came out in cross-examination; but you
5 didn't reenforce that, I think, very important
6 inconsistency that at the time that this alledgedly
7 happened, she, within twenty-four hours, made two different
8 statements.

9 A There were two witnesses who testified that
10 Mr. Owens told them that he committed the murder. I didn't
11 see any purpose of bringing that testimony back out on
12 closing statement.

13 Q Well, there are things you just don't want to
14 remind the jury about, obviously, that's correct.

15 A That's correct.

16 Q And then there are things that need to be addressed
17 and dealt with and when a man supposedly makes a
18 confession, the jury's heard it, but wouldn't it --

19 MR. SPENCER: Your Honor, I just have an
20 argumentative objection.

21 THE COURT: The objection is you're arguing more
22 than you're asking the questions.

23 MR. CHAMBERS: I understand that. I'll try to
24 rephrase it.

25 ///

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 BY MR. CHAMBERS:

2 Q Don't you believe it's just as important based on
3 your trial experience, that you also have to face an issue
4 head on sometimes?

5 A Every trial is different. You know, there's
6 strategic decisions to make in every case.

7 Q Well, the fact that you had a direct conflict in
8 the testimony of Renee's sister and Renee, don't you think
9 that was an important thing to keep in front of the jury?

10 A The jury heard the evidence.

11 Q Well, the jury hears evidence and then the jury
12 hears the attorneys argument; is that correct?

13 A That's correct.

14 Q And you wanted to have the last argument so you
15 could drive this home; is that correct?

16 A We wanted to have the last argument so we could
17 present the timeline defense without rebuttal.

18 Q So that was basically the sum total of the
19 strategy, rely on the timeline?

20 A No, that was not the sum and total of it, but that
21 was the best defense that I thought we could offer on
22 Mr. Owens' behalf. And we were able to do that through the
23 State's witnesses. In hindsight, I don't think we would
24 have presented it any other way.

25 Q Now, one of the SLED agents, Agent Johnson was

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 testifying and the testimony --

2 MR. CHAMBERS: And I believe this is on page 544 of
3 the transcript about line 20, and also just for everyone's
4 edification, the testimony about the conflicting evidence
5 that I was just discussing with Mr. Moore is at -- one is
6 at page 423, lines 19 through 22.

7 BY MR. CHAMBERS:

8 Q But Agent Johnson was testifying about -- because
9 they had to go to Maryland and talk to her because she had
10 gone up there; is that correct?

11 A I believe he did.

12 Q And then they brought her back and she waived the
13 extradition back to South Carolina?

14 A She did waive extradition.

15 Q And he was going through processing her and he
16 mentioned that she was polygraphed?

17 A I don't recall. Probably so, yes.

18 Q Okay.

19 A I believe she was.

20 Q Do you need to see the transcript to refresh your
21 recollection?

22 A No, I'll accept the fact that she was polygraphed.
23 I believe I do remember that, yeah.

24 Q And Judge Early stopped him from proceeding at that
25 point and gave a very minimal curative instruction. Do you

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 remember that?

2 A Not off the top of my head, but I don't dispute it.

3 Q And later, y'all were having a business cleaning,
4 procedural session and you had mentioned that you wanted a
5 curative instruction on the polygraph and Judge Early
6 indicated that he would give you any instruction that you
7 wanted. Do you remember that?

8 A That sounds plausible, but I don't have a distinct
9 recollection of it.

10 Q Okay.

11 A I'm sure if the polygraph was mentioned, I would
12 have asked for a curative instruction, yes.

13 Q Now --

14 MR. SPENCER: Do you have the page site for the
15 curative instruction.

16 MR. CHAMBERS: I think I can find it. The first
17 mention of the polygraph I think I mentioned was 544 around
18 line 19 and then the discussion about the curative
19 instruction was age 587, lines one through ten. And there
20 was also discussion about, You have the results of the
21 polygraph test and then you discovered that you did in your
22 file there.

23 BY MR. CHAMBERS:

24 Q Isn't it not true that it would have been better
25 practice to have moved for a mistrial when this polygraph

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 discussion first arose?

2 A I don't think that was a relevant factor at that
3 time. I can't say it would have been a better strategy or
4 not. That was --

5 Q Well, if I could divert you for just a second -- if
6 I could site just a couple of cases that I wasn't familiar
7 with, so I don't expect you to be familiar with them, but
8 if I could just bring them out and see what we think about
9 them. It was the State versus Corrie Johnson, Court of
10 Appeals case, that was 610 SE 2nd 305, Court of Appeals
11 2005; and then there was the Supreme Court case, State
12 versus Johnson, dealing with the Court of Appeals decision,
13 2007. It's 654 SE 2nd 835.

14 Now, in the Court of Appeals case, the trial
15 judge -- and this was a polygraph-blurting-out type of thing
16 as we had here, the trial judge initially gave a -- what I
17 thought was a very good curative instruction -- and then
18 the attorney had moved for a mistrial; instead the judge
19 gave a curative instruction and then later granted the
20 mistrial. And there's also language in this case regarding
21 the Fourth Circuit looking into factors when you're dealing
22 with this as to whether it is error to grant a new trial
23 based on this two factors to consider is one whether an
24 inference about the result of the test may be critical in
25 assessing the witness's credibility; and I believe that we

E.T. Moore, Jr. Direct Examination by Mr. Chambers

1 both agree that her credibility was essential to this case.

2 And whether -- is that correct?

3 A I mentioned that all witness's credibility is at
4 issue.

5 Q But you agree particularly Renee's, given the fact
6 that she was testifying about this alleged confession?

7 A Obviously, that's an important issue.

8 Q And the second factor is whether the witnesses
9 credibility is vital to the case. That was the Fourth
10 Circuit.

11 Now, the Supreme Court case vacated this Court of
12 Appeals opinion on the basis that there wasn't grounds --
13 or that a new trial wasn't necessary. It didn't vacate or
14 it didn't disagree with the reasoning on polygraph, so in
15 effect, the trial judge granting a mistrial based on the
16 polygraph was upheld by the Supreme Court. So given that,
17 would you not agree that they -- at least a motion for a
18 mistrial at the point the polygraph is first mentioned
19 would have been an important trial procedural tactic to
20 follow?

21 A I don't specifically recall, but any decision that
22 you make during a trial, you have to look at it with an
23 overall view, the big picture, not specific to that
24 particular issue. I don't have a specific recollection of
25 that, but --

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Q Well, would it help to run through the litany here?
2 Because you didn't make any objection at all when this
3 first came up. Judge Early jumped in. The first time you
4 dealt with the mere mention of the polygraph was later
5 during the procedural cleaning up business that you asked
6 for the curative instruction?

7 A Judge Early is a very attentive judge and I'm sure
8 that he may have beat me to the punch, but I would have --

9 Q I think that's exactly what happened.

10 A That's right.

11 Q But the point being that don't you believe that the
12 mistrial -- a motion for a mistrial rather than just merely
13 had you asked for a curative instruction would have been
14 the best approach?

15 A No.

16 Q Well, if you had moved for the mistrial, you would
17 have preserved that issue for appeal. Otherwise, it's
18 unpreserved; is that correct?

19 A That would be for somebody else to decide.

20 Q Well, just as a matter of law, if you don't
21 preserve the issue, then it's not appealable; is that your
22 understanding?

23 A That's a fair statement. That's a fair statement.

24 Q And also, at the point this came up when Agent
25 Johnson was testifying, blurting this out, possibly

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 gratuitously, the State had already presented the case, so
2 you already had -- you knew what the case -- if a mistrial
3 had been granted, you were already in a better strategic
4 position on a retrial because you'd seen the State's case
5 at that point, isn't that true?

6 A There were no surprises at the trial. I knew what
7 the case was before we went to trial.

8 Q Well, then if you knew the case, then you must not
9 have held that much hope for Mr. Owens' acquittal?

10 A Mr. Owens was offered a thirty year sentence. He
11 rejected it.

12 Q And then he maintained his innocence throughout the
13 entire process, from your first interview until the end; is
14 that correct?

15 A He has.

16 Q And he didn't want to basically do thirty years for
17 something he didn't -- he wasn't conceding that he was
18 guilty?

19 A No one would want to do thirty years for something
20 they weren't guilty of.

21 Q But the fact remains that that issue wasn't
22 preserved for appeal. The only issue that went up on
23 appeal was the -- the alleged drug dealer, Section 45, that
24 was the issue that went up on the Ander's Appeal; is that
25 right?

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 A I didn't handle the appeal, but that's my
2 understanding.

3 Q I thought you might have been aware of it.

4 A Yeah, I am aware of it.

5 Q Now, as you noted, basically, you were doing an
6 alibi defense through the State's witnesses. As you also
7 noted, you had gotten what you thought you needed from the
8 State's witnesses on that; is that right?

9 A That's correct.

10 Q Did you request any type of jury charge from Judge
11 Early to, in effect, an alibi; something tantamount to an
12 alibi defense charge?

13 A I can't recall what the specific requests were, but
14 I'm sure, it was very likely we did.

15 Q Well, he didn't charge anything in that regard, are
16 you aware of that?

17 A I don't recall.

18 Q And don't you think that some charge -- that
19 basically that would have been a complete defense if the
20 jury believed -- that if the jury believed the timeline
21 theory, then the jury could not find him guilty. Some
22 charge in that nature would have been a helpful charge;
23 don't you agree?

24 A It may have been. I don't --

25 Q You didn't --

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 A The evidence was pretty overwhelming.

2 Q You didn't object to any of the trial charges, so
3 if you had requested it, you didn't note that after the
4 judge had indicated what the charges were going to be; is
5 that right?

6 A I don't recall specifically.

7 Q Now, the solicitor was giving what I thought -- I
8 think you probably agree -- at times an emotional argument,
9 as solicitor's are want to do?

10 A Uh-huh.

11 Q But one thing that stood out in my mind in
12 particular, was that during her argument, she extrapolated
13 from the forensic evidence to argue that Reverend McCreary
14 was basically executed while he was praying; do you
15 remember that?

16 A I don't think he was executed while he was praying.
17 It might have been as if he were praying.

18 Q Well, let's --

19 A I mean, I can't recall specifically what the words
20 were.

21 Q Well, let me just read it to you. It's page 667,
22 lines 21 through 23. This is the solicitor's argument. I
23 dare say that the defendant executed Reverend McCreary. He
24 was on his knees and I dare say Reverend McCreary was
25 praying. He was executed. Etc., etc.

E.T. Moore, Jr. - Direct Examination by Mr. Chambers

1 Now, the only evidence that was presented
2 forensically from the medical examiner, and I believe from
3 the EMTs on the scene was that he was either sitting on his
4 bucket as he was fishing or was leaning over or was
5 kneeling, and from that she extrapolated to he was shot in
6 the back of the head, the front of his head was blown off
7 while he was praying, apparently for his life. Do you
8 think that was excessively inflammatory and would raise
9 passion and prejudice before the jury?

10 A No.

11 Q But you could have made an objection to that
12 statement?

13 A No -- well, I could object to anything.

14 Q Right. So you didn't have any problem interrupting
15 her argument by making an objection?

16 A Did I have a problem with doing that?

17 Q Yeah.

18 A No. I had a death penalty case one time I objected
19 in closing statement and the case got reversed and the
20 fellow is now doing life instead of death. So yeah, I've
21 done that before when I thought it was appropriate.

22 Q And that could be a good tactical approach as well,
23 because you could throw off the argument; is that correct?

24 A Reverend McCreary was shot in the back of the head,
25 whether he was kneeling, sitting on the bucket, it didn't

E. T. Moore, Jr. Direct Examination by Mr. Chambers

1 make any difference. You know the fact is he was shot in
2 the back of the head. It is reasonable to assume that the
3 person who's about to be shot in the back of the head would
4 be praying. So I didn't think it was necessary or
5 important to call that to the jury's attention. Sometimes
6 you just don't want to get into things, you know, that
7 could inflame the jury, you know, even more. Sometimes you
8 just don't want to emphasize things by having it repeated

9 Q I understand that. I've fallen into that trap.
10 I'm sure we all have at times. But in any event, he was
11 left being the executioner of a man praying and there was
12 no evidence that Reverend McCreary, even now, that anybody
13 was approaching him. In fact, there was no evidence
14 placing him there other than the testimony that he showed
15 up with a fishing bucket and some crickets and a pink bag
16 that was discovered four weeks later. There's no
17 fingerprints, no blood evidence. All the blood evidence
18 was either where -- where Mr. Owens, where he had cut
19 himself or it was animal blood; is that right?

20 A The case was largely circumstantial, but there was
21 evidence that Reverend McCreary had given some Catawba
22 worms. Mr. McCreary's two sons both testified that
23 Mr. Owens came home with fish and Catawba worms. It was --
24 you know, nobody can say they were the same worms or the
25 same fish, but it was -- as I said it was a circumstantial

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1 evidence case and...

2 Q And do you think that the things that I've
3 mentioned even if you don't agree that -- any one of these
4 things could have been determinative in the case. If you
5 disagree with that concept, the multitude of them, do you
6 think they rose to a situation where Mr. Owens did not
7 receive really a fair trial?

8 A It's extremely difficult to defend a fellow in a
9 murder case when he's confessed to two different people,
10 both of whom were close acquaintances of his.

11 Q And indeed one of them apparently, changed her
12 story within twenty-four hours to her sister; is that
13 right?

14 A Yeah, she did make conflicting statements.

15 MR. CHAMBERS: That's all I have at this time, Your
16 Honor.

17 THE COURT: Your witness.

18 MR. SPENCER: Thank you.

19 CROSS-EXAMINATION

20 BY MR. SPENCER:

21 Q I wanted to talk a little bit about the evidence
22 first if I could; and I wanted to turn to what was just
23 briefly mentioned, but -- which is the Catawba worms?

24 A Catawba worms. You're from New York.

25 Q I gave it away. But in terms of the -- how do you

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 say it?

2 A Catawba.

3 Q Catawba -- I'm going to try to do it like the
4 Romans. Catawba worms. In terms of Catawba worms, do you
5 recall testimony of Robert Williams? He would be the guy
6 with the eleven-year-old?

7 A Yeah, I do.

8 Q And his testimony was that he drove to the landing.
9 I think he saw the Reverend and had been fishing for a
10 while and then had some of those Catawba worms left over
11 and gave them to the reverend; is that correct?

12 A That's correct.

13 Q And the reverend had dumped them in a cricket box?

14 A Something like that.

15 Q Basically a cricket-for-bait kind of box?

16 A I can't remember.

17 Q And do you recall there was testimony from law
18 enforcement that they found a cricket box with a bunch of
19 Catawba worms and a few crickets when they did a search of
20 the house?

21 A I think so.

22 Q A search of the premises?

23 A Uh-huh.

24 Q And I'd think Ms. -- I think there was some mention
25 of a pink bag, but do you recall also that there was a pink

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 bag with jewelry that the girlfriend's sister had turned
2 over to law enforcement?

3 A Yes.

4 Q And that actually had some jewelry that the
5 reverend's wife had identified as his jewelry?

6 A That's correct.

7 Q Okay. And of course the girlfriend had testified
8 that when he appeared that night that he had a bunch of
9 Catawba worms; and actually at least one of the sons also
10 testified to that too. One of the sons testified to that
11 too, didn't he?

12 A That's correct.

13 Q Okay. And then he not only told his girlfriend
14 that he had killed the reverend, but he -- or killed a
15 black man I think was his terms -- but he also told his
16 cousin; is that correct?

17 A That's correct.

18 Q And the cousin actually had called the police to
19 give a tip?

20 A That's correct.

21 MR. SPENCER: Beg the Court's indulgence.

22 BY MR. SPENCER:

23 Q And now Mr. Owens actually gave a statement to
24 police and he admitted to seeing Mr. Robert Williams at the
25 landing with his son?

E.T. Moore, Jr. -- Cross-Examination by Mr. Spencer

1 A That's correct.

2 Q He denied seeing the reverend?

3 A He did.

4 Q But he put himself at the scene at the approximate
5 time?

6 A He did.

7 Q And the crime scene expert, Mr. Kinsey had actually
8 testified to the extent -- had testified in his opinion

9 that the reverend was bent over at the time he was shot?

10 Do you recall that testimony?

11 A Yes.

12 MR. SPENCER: And that would be 495 for the record.

13 BY MR. SPENCER:

14 Q And you would opine that the reverend was shot on
15 shore and thrown into the river?

16 A That's correct.

17 Q And, in fact, he had told -- Mr. Owens had told, I
18 think the cousin that he had shot him on shore and thrown
19 him in the river?

20 A That's correct.

21 Q And I wanted to ask about -- in terms of the time
22 frames, nobody was very specific on time frames; is that
23 correct?

24 A Nobody could pinpoint to the minute. We -- it was
25 always something like about 8:30 or about quarter to nine

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 or about sunset. We took those times as they testified to
2 and tried to formulate a timeline that would present an
3 alibi defense.

4 Q Right. And the girlfriend also, she had testified
5 at one point that it was fifteen minutes before dark?

6 A Yes.

7 Q And she admitted that she was, I think, high on
8 coke at the time?

9 A She did say she had used coke, yes.

10 Q Used coke. So it wasn't a perfect alibi, it was --
11 it was just a matter of doubt creating inference?

12 A That's correct. I mean there wasn't anybody that
13 said Mr. Owens was here. Well, first of all, the time of
14 the shooting, obviously, couldn't be specifically
15 established because there were no eyewitnesss, so -- and
16 nobody -- if you'd had a time that the thing happened and a
17 time that somebody said he was here at that time and not
18 there, then that's a perfect alibi defense, but basically
19 in this case, we were taking the statements and trying to
20 formulate a timeline that would give the jury a reason to
21 believe he wasn't there.

22 Q So it really isn't even a situation where he would
23 be entitled to an alibi charge?

24 A No. No.

25 Q And just one more point on that. I am a Yankee,

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 but I am from the country. I grew up in the country and
2 where I was, you heard shotguns all the time because people
3 hunt and people practice. And there was no testimony --
4 the farmer that heard the shot, he didn't like run down to
5 the landing to see what it was or anything?

6 A No.

7 Q And so we don't even know if that shot is -- was
8 the shot that killed the reverend or if that was somebody
9 hunting rabbits or something?

10 A There was no testimony that the shot he testified
11 that he heard was the one that killed Reverend McCreary.

12 Q And there was a mention -- at some point there was
13 some sort of hearsay testimony that the girlfriend had told
14 either a sister -- I guess it was her sister, that
15 Mr. Owens' mom had killed the reverend or something to that
16 effect?

17 A It was something along those lines.

18 Q But was there actually any evidence kind of tying
19 him to -- tying the mother to this sort of thing?

20 A No.

21 Q Was there any real viable third-party guilt
22 defense --

23 A No.

24 Q -- towards the mother?

25 A No.

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 Q You did try and develop a third-party defense as
2 to -- based on what the reverend's son had said about his
3 involvement?

4 A I did.

5 Q With a man named Forty-five?

6 A I did.

7 Q And basically that Forty-five had said if anyone --
8 anyone had said he was dealing drugs, he would kill them?

9 A Right.

10 Q And the evidence -- I think you mentioned the
11 evidence that kept out is -- you attempted also to get in
12 the record that the son had been involved, even though he
13 ceased to be involved, but he had been involved with the
14 Folk Nation?

15 A I did.

16 Q And the judge excluded that?

17 A He did.

18 Q But did he let you explore that the son had talked
19 about Forty-five and Forty-five's kind of big threat to
20 shoot anyone that said he was a drug dealer?

21 A We would -- we tried to get into all that.

22 Q I want to ask about the polygraph too. Let me grab
23 my transcript. And you don't have a specific recollection
24 of the testimony and the polygraph testimony do you?

25 A No, the trial lasted four days. I don't recall

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 every specific moment of it.

2 Q Okay. If I could just hand you the transcript.
3 I'm on page 544. If you could just read -- probably
4 just -- well, I would say line -- start on line 14 and read
5 to the bottom of the page. And actually it's 544 on this
6 side, I'm sorry.

7 A It says, Then what did you do, Agent Johnson?

8 ~~We had to wait around. I stayed over the weekend~~

9 in Maryland for an extradition hearing and Renee
10 voluntarily waived extradition and came back with us. Got
11 back to South Carolina. She was booked in at the Barnwell
12 County Detention Center, yeah Barnwell County Detention
13 Center. She was subsequently, I think polygraphed.

14 And there -- then there's a question mark after the
15 Court, Ladies and gentlemen, just disregard that. That's
16 not relevant to the trial of this case. It's not
17 admissible.

18 And the solicitor, Ms. Morgan, says, No it's not.

19 Q All right. And so while there was testimony that
20 she was polygraphed, it didn't say whether she passed or
21 failed, right?

22 A No, it didn't say anything about that. I think in
23 looking at that, it looks like I started to ask a question
24 and the judge stepped in to object or whatever and the
25 judge jumped right in and -- so I believe I did -- I was in

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 the process of saying something.

2 Q All right.

3 A But the judge interrupted me.

4 Q And this is actually during direct; isn't it?

5 A Right. That's correct.

6 Q But you think you probably were already on your
7 feet to object if it --

8 A It's obvious I was saying something and the judge
9 interrupted me.

10 Q And the solicitor actually said after the judge
11 said it's not relevant, Solicitor Morgan also said, No,
12 it's not?

13 A She did.

14 Q So in a sense you got a curative from the judge and
15 the prosecutor?

16 A That's correct.

17 Q And again, going back to what I asked before, we
18 don't even know what question she was polygraphed on, do
19 we?

20 A No.

21 Q We don't know if she passed or not?

22 A No.

23 MR. CHAMBERS: Your Honor, I just want to make sure
24 we're clear on this. The interruption was while Solicitor
25 Morgan was examining on direct Detective or Agent Johnson.

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 I think that there was some confusion about this. This
2 wasn't cross-examination. This was Ms. -- the solicitor's
3 direct examination.

4 MR. SPENCER: Okay. I think you're right. So it
5 wouldn't have been.

6 THE WITNESS: Yeah, it wouldn't have been mine
7 then.

8 MR. SPENCER: It wouldn't have been his comments.

9 It would have been Ms. Morgan who was starting her next
10 question, I guess.

11 BY MR. SPENCER:

12 Q And the other thing I wanted to ask, that question
13 posed by the prosecutor wasn't designed to elicit polygraph
14 testimony, was it?

15 A I don't think he was -- no, the question she asked
16 him, no.

17 Q It was just sort of the law enforcement explaining
18 too much?

19 A Yeah.

20 Q And that -- actually the judge stopped him?

21 A Right.

22 Q In terms of the standard appeal for a mistrial
23 motion, it would be the judges discretion whether or not to
24 grant a mistrial, would it not?

25 A That would be correct.

E.T. Moore, Jr. - Cross-Examination by Mr. Spencer

1 Q All right. And so had you made a mistrial motion
2 at this point, it -- would you agree with me it wouldn't be
3 very likely that Judge Early would have granted that?

4 A Been highly unlikely.

5 Q And I know he mentioned later about the possibility
6 of the curative instruction, later during the trial, but in
7 fact, the judge had already given the curative instruction;
8 is that correct?

9 A Yeah.

10 Q I wanted to ask about your -- about the strategic
11 decision for last closing statement. Is that something
12 that's often beneficial to get the last closing statement
13 as a defense attorney?

14 A Very much so.

15 Q And basically the balance against the benefits of
16 putting a defense on versus the benefit of that last
17 closing statement?

18 A Particularly in a case like this, where you can
19 establish your defense through the State's case.

20 Q Now, what did Mr. Owens tell you about the night of
21 the incident?

22 A As I recall, he told me he stopped by the river on
23 the way home. He went home. He went down to a pond by his
24 house, caught a couple of fish, came back to the house.
25 That's essentially what he said.

E.T. Moore, Jr. -- Cross-Examination by Mr. Spencer

1 Q Did he give any explanation what he was doing down
2 at the landing?

3 A I don't remember that he did. I mean it's a fairly
4 popular place. Sometimes people stop by and ask other
5 people if they caught any fish or whatever. It's just a
6 landing. It's in the middle of the swamp, but it's a
7 landing. There's always somebody there fishing just about.

8 Q But he actually -- and he also basically -- his
9 statement corroborated -- what he told you actually
10 corroborated Robert Williams testimony --

11 A Yeah.

12 Q -- concerning seeing him at the scene?

13 A And then Mr. Blackwood testified about
14 Mr. Williams. I believe Mr. Blackwood's a police officer
15 or was at that time and it all pretty well tied in as to
16 who was where when.

17 MR. SPENCER: Beg the Court's indulgence.

18 THE WITNESS: At the river.

19 BY MR. SPENCER:

20 Q At the landing. And just concerning in general
21 preparation for trial, did you feel you were prepared for
22 trial?

23 A Yes.

24 Q Did you strategically think Mr. Owens would have
25 made a good witness had he testified?

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 A No.

2 Q Would he have been able to add anything for the
3 benefits of his defense beyond reinforcing the fact that he
4 was at the landing that night?

5 A I don't know of anything he could have said that
6 would have helped. I mean, obviously, he could have said I
7 didn't do it and the jury could have believed him, but you
8 know, that was a decision he made to not testify.

9 Q In terms of his prior record, he didn't have much
10 of a prior record?

11 A No, not a lot.

12 Q And he wasn't going to be impeached with a prior
13 record?

14 A No, I had represented him one time previously on
15 another case, but that was some years before that.

16 MR. SPENCER: Your Honor, I don't have any further
17 questions.

18 THE COURT: Anything?

19 MR. CHAMBERS: If I may, Your Honor, just a few.

20 REDIRECT EXAMINATION

21 BY MR. CHAMBERS:

22 Q Now, regarding the Catawba worms -- I know I've
23 pronounced that correctly since I'm from South Carolina --
24 Catawba worms in the cricket cage, isn't it true that when
25 the police searched there were lots of five gallon buckets

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 for carrying fish and the bait in and things like that at
2 his premises?

3 A There were -- I believe -- I believe so. I can't
4 remember.

5 Q And I believe you also argued that he had fishing
6 poles with the green corks there just like Reverend
7 McCreary had had that were still in the water?

8 A Well, if he did, I would argue with it.

9 Q So it's not unusual, particularly in that part of
10 the State for people at that time of year for people to use
11 Catawba worms because they're great bait, and crickets
12 because they're good bait?

13 A People use Catawba worms and crickets for bait.

14 Q So that was not unusual. He also came home, there
15 was testimony, with a rabbit that he skinned right when he
16 got home. So he was always out gathering wildlife for
17 whatever purpose. You remember that?

18 A I do remember something about the rabbit, yes.

19 Q Now, he also -- Susan, I think her name was Susan
20 Miles, Susan had come to trial, that was the cousin that
21 was the second supposed confession that he blurted out.
22 She was there with Mr. Owens' mother and aunt and somebody
23 else sitting on the porch and that was supposedly the
24 second confession; is that right?

25 A That's correct.

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 Q And this all was going on while there was a phone
2 conversation going on with Renee up in Maryland and the
3 phone was lost and people borrowing phones and all that
4 stuff, right?

5 A I don't remember that.

6 Q And it was her father that actually got in touch
7 with the sheriff's office, not her; is that your
8 recollection?

9 A I don't remember. I think it was an anonymous call
10 if I recall. But I can't remember for sure.

11 Q I believe it started out as being an anonymous call
12 from the father or Sheriff Carroll figured out who it was
13 or he'd indicated who it was and then they went from there;
14 is that your recollection?

15 A I think that's about right.

16 Q Now, had you called Mr. Owens as a witness, and I
17 don't know if y'all discussed this, what his explanation
18 would have been for these alleged confessions, but
19 presumably, you had even mentioned that there were other
20 people that supposedly heard this and the State didn't call
21 them as witnesses. So the State could have called and
22 corroborated this supposed blurted out confession by they
23 didn't. And you mentioned that in your cross-examination
24 of somebody or in your closing arguments, so there were
25 defenses to these supposed admissions. Would you agree

E.T. Moore, Jr. -- Redirect Examination by Mr. Chambers

1 with that?

2 A Well, I think we did make a motion to suppress the
3 information as I recall. But I'm not positive of that.

4 Q Now, the attorney general had indicated that
5 supposedly there was forensic testimony from Mr. Kinsey, I
6 believe -- you have that cite again? I was trying to
7 save -- the actual testimony was that he was bent at the
8 waist. I believe in the record when I was looking at it,
9 not that he was down praying or anything else. I think --
10 I believe the medical examiner corroborated that he was
11 bent at the waist based on the blood spatter and the
12 infusion of blood that he would have been sitting
13 presumably on his bucket or leaning or bent over and I just
14 wanted to clear that up. There was some indication that --
15 there were many possibilities based on the blood spatter
16 evidence, would you agree with that?

17 A There weren't too many possibilities.

18 Q Well, there were at least three, based on the
19 testimony of the medical examiner?

20 A Well, if that's what he said, that's what he said.
21 But I don't see a great distinction in it.

22 Q Now, the attorney general also asked you regarding
23 the

24 MR. SPENCER: 495 in the record.

25 MR. CHAMBERS: Okay. Thank you.

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 BY MR. CHAMBERS:

2 Q There was also testimony about the girlfriend
3 stating that he got home about fifteen minutes before dark,
4 but there were also statements from her that he got home
5 before eight, do you recall that?

6 A I do.

7 Q And sunset that day, I believe, was 8:39? You --

8 A I don't remember specifically, but you --

9 Q It was 8:37 or 8:39. I'm almost positive it's
10 8:39.

11 A That's close enough.

12 Q 8:11, 8:39, that would have fit in with the
13 timeline; is that right?

14 A That's right.

15 Q Now, even though it may be that he was not entitled
16 to an alibi charge or something tantamount to an alibi
17 charge, you weren't precluded from requesting that or
18 objecting to the fact that it was not given; is that right?

19 A You wouldn't ask for something if it would be
20 improper.

21 Q Well, it would not be improper because there was
22 testimony from all the State's witnesses that there was
23 evidence that met your timeline; isn't that right?

24 A Mr. Owens didn't put up an alibi defense.

25 Q And I said something tantamount to that. I said as

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 a jury charge, that the jury would have to find him not
2 guilty if they believed the timeline. There was nothing
3 improper about requesting that timeline, was there?

4 A You know, the Court's all give charges and one of
5 the things is they tell the jury that they make the
6 decisions about the facts of the case and they can believe
7 one witness or all witnesses or no witnesses or, you know
8 that's a standard charge and so the jury was informed that
9 they were able to believe the timeline or not, just like
10 any other piece of evidence.

11 Q Right, obviously. I mean they can believe what
12 they want to believe or believe part of what they want to
13 believe. And that was charged. But that would have
14 reinforced, would it have not, the crux of your case if you
15 had requested such a charge. Otherwise, there were just
16 these two little charges floating around that the trial
17 judge typically gives; is that right?

18 A I don't have a specific recollection of the jury
19 charges requested argument, but --

20 Q I mean that's one of the trial lawyers jobs and
21 duties is to try to get the best charges he can get; isn't
22 that right?

23 A That's correct, yes.

24 Q And if you don't get what you get and you think
25 it's important, then you put it on the record before the

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 jury is sent out; is that right?

2 A It depends; generally.

3 Q Well, I mean isn't that the regular role of the
4 advocate to do that?

5 A There are a lot of different ways to skin a cat.

6 Q That's right; and what I've just indicated to you
7 is one typical way, would you agree with that?

8 A That's one of the ways, yes.

9 Q Now, the shot testimony from the farmer, there was
10 no testimony that there were any other shots. In fact, he
11 testified that he heard shots all the time, but he didn't
12 testify that he ever heard any more shots that day; is that
13 correct?

14 A Well, he testified he'd been running the hay bail,
15 which makes quite a bit of noise and if there had been
16 another shot, he probably wouldn't have heard it. But at
17 this time he was loading the hay when the tractor wasn't
18 running, so he said he heard the shot.

19 Q That's right. He was up on top, loading the hay?

20 A I believe he was, yeah.

21 Q And had the best vantage audibly of anybody in the
22 field; is that correct?

23 A I don't know who else was in the field.

24 Q Well, presuming he had some workers out there, but
25 there was no testimony that there were any other shots

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 other than that shot at the time that was relevant to this
2 case; is that right?

3 A I don't recall any of the testimony.

4 Q Okay. Now, the polygraph, we determined that was
5 on direct examination when that was blurted out. There was
6 no motion made for mistrial then. Basically the two pages
7 out of two when Agent Johnson said that, so the bell had
8 been rung, so the judge gave a very minimal curative
9 instruction, not anywhere close to the curative instruction
10 that's in the case that I cited.

11 MR. SPENCER: Your Honor, I object that's
12 argumentative.

13 MR. CHAMBERS: Well, it's prefatory to the
14 question. But I'll wait for a ruling.

15 THE COURT: Well, it was argumentative.

16 MR. CHAMBERS: Well, that's just the nature, Judge,
17 I'm sorry.

18 THE COURT: I've heard it three times.

19 MR. CHAMBERS: I'll try again.

20 THE COURT: Go ahead.

21 BY MR. CHAMBERS:

22 Q We had talked about the curative instruction that
23 Court of Appeals noted in that case. Do you recall that?

24 A I do.

25 Q And it's there in black and white and the cite is

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 there and it's a much more comprehensive instruction for
2 the jury. Now, are you satisfied with the very brief
3 curative instruction that was read into the record a little
4 while ago?

5 A My recollection is that when they passed the
6 polygraph test, it's not admissible. The agent blurted it
7 out and the judge immediately said it was not relevant, not
8 admissible. The solicitor agreed to it. You know, why
9 would I call attention even though it's not admissible to a
10 polygraph test thinking that the jury could infer if the
11 State was going to talk about it, it must have been
12 favorable to the State.

13 Q And I believe you just answered my question. Some
14 things you don't want to call attention to?

15 A That's correct.

16 Q You want to keep them under the leaves; is that
17 right?

18 A That's right.

19 Q But again, some things rise to the level that it
20 needs to be dealt with on a more straightforward way and
21 had an instruction -- in fact, you asked for one later. I
22 mean, we've already gone through that. You recall that?

23 A Whatever the record says is what it says.

24 Q Okay. So -- I mean, I think the record's clear
25 that you said later, Judge, I think we need to do a

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 curative instruction on that polygraph thing. But instead
2 of when you could have made a mistrial motion and got a
3 ruling on that and then got a better curative instruction
4 that would say they're not admissible, ladies and gentlemen
5 because it's been determined that they're not reliable,
6 something akin to the more comprehensive curative
7 instruction, about five or six lines rather than half a
8 sentence that Judge Early gave. Don't you think that would
9 have been a better approach?

10 THE COURT: I'm going to intervene here. When
11 you're dealing with polygraph testimony. You've got two
12 different angles you've got to look at it. There was a
13 mention of a polygraph. There wasn't a mention of the
14 results of the polygraph. If there had been -- if they had
15 not stopped it, if Judge Early had not stopped it when he
16 did, it could have led to that next step of polygraph
17 results which would have resulted certainly in probably
18 further curative instructions or possibly, necessary
19 motions for a mistrial or whatever. That stage was not
20 reached. But just to tell you, to be honest with you, I've
21 heard all I want to hear about the polygraph. Let's move
22 on.

23 MR. CHAMBERS: Thank you, Your Honor, just for the
24 record, I believe that stage one was sufficient enough.

25 And I believe that's all I have with Mr. Moore.

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 I'm sure we're all happy about that.

2 MR. SPENCER: If I could do a brief recross, Your
3 Honor?

4 THE COURT: As long as it's not about the
5 polygraph.

6 MR. SPENCER: I'm done with the polygraph.

7 **RECROSS EXAMINATION**

8 BY MR. SPENCER:

9 Q I just wanted to ask, there was some mention about
10 five gallon -- five different gallon buckets found at the
11 premises.

12 A Yeah.

13 Q And, in fact, the reverend had a couple of --
14 testimony established that the reverend had a couple of
15 five gallon buckets when he was down at the river?

16 A That's correct.

17 Q And so there was some evidence that perhaps those
18 buckets were --

19 A And I think when he was found there was only one
20 bucket there.

21 Q In terms of not being unusual for someone perhaps
22 to have Catawba worms that fishes, there was -- the
23 testimony of one of the sons was that he didn't even know
24 what Catawba corms were until --

25 A Until he was informed.

E.T. Moore, Jr. - Redirect Examination by Mr. Chambers

1 Q And there's also some testimony on redirect about
2 him having a rabbit when he got home. There was also blood
3 on his shoe, right?

4 A There was.

5 Q And you used the rabbit to try and explain why he
6 might have blood on his shoes?

7 A I did. About the buckets, there was testimony that
8 the reverend had two buckets typically. He would take one
9 to sit on and one to put the fish in and that was the
10 testimony that he had two when he was witnessed and when he
11 was found, there was only one there. So that's why I
12 didn't want to get too much into the buckets.

13 MR. SPENCER: Your Honor, I think that was it.
14 Thank you, Your Honor.

15 MR. CHAMBERS: That's all I have of Mr. Moore, Your
16 Honor.

17 THE COURT: Just out of curiosity, what was the
18 alleged date of the homicide? What month?

19 MR. CHAMBERS: It was July 6 of 2007, Your Honor.

20 THE COURT: So about this time of year. Okay.
21 Just curious about that.

22 You may step down.

23 MR. CHAMBERS: Your Honor I would call Mr. William
24 Owens.

25 THE COURT: Does anybody need a brief recess?

William Owens - Direct Examination by Mr. Chambers

1 MR. CHAMBERS: I could use one to be honest.

2 THE COURT: Okay. Let's take about ten minutes.

3 MR. SPENCER: And Your Honor, if I could just keep
4 Mr. Moore here until we hear Mr. Owens' testimony.

5 THE COURT: Sure. Don't leave us, Mr. Moore.

6 THE WITNESS: Yes, sir, I'll be here.

7 (WHEREUPON a recess was observed.)

8 THE COURT: All right.

9 MR. CHAMBERS: Thank you, Your Honor. Mr. William
10 Owens, please.

11 THE COURT: Come around and be sworn, please.

12 WILLIAM OWENS,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CHAMBERS:

16 Q Mr. Owens, would you describe your first meetings
17 with Mr. Moore?

18 A Brief. He came and explained that he was my
19 attorney, that he was appointed to me and I explained my
20 case from A to z, or my day if you will.

21 Q And he was appointed in August of 2007; does that
22 sound about right?

23 A Sounds correct.

24 Q And is that about when you first met with him and
25 you laid everything out?

William Owens -- Direct Examination by Mr. Chambers

1 A Yes, sir.

2 Q And then what subsequent meetings did you have
3 during that time frame?

4 A There was one time he came to let me know that SLED
5 wanted to do DNA testing on me and asked if I would allow
6 it and I said, yes, sir.

7 There was another time --

8 Q Let me back up just a second. At that second
9 meeting, was that a substantive discussion of your case or
10 primarily would you consider the DNA test?

11 A That was pretty much if I would consent to DNA
12 testing.

13 Q Okay. And when was the next time and what was the
14 substance of your conversation?

15 A The next time was to let me know that there was a
16 preliminary hearing coming up, if I'm correct. And that if
17 I would want to be there then I could, but it was not
18 mandatory and he would be against it.

19 Q Okay. And were there any others early on in his
20 representation of you?

21 A No, sir.

22 Q All right. Is it fair to say that substantively
23 these conversations basically laid out your side of the
24 story and presumably he took notes and everything; is that
25 correct?

William Owens - Direct Examination by Mr. Chambers

1 A Yes, sir, that is correct.

2 Q And that would have been Summer and Fall, 2007; is
3 that right?

4 A Yes, sir.

5 Q And you were arrested on July 12, 2007; is that
6 right?

7 A That is correct.

8 Q Okay and then Mr. McCreary was killed on July 6,
9 2007; is that right?

10 A Yes, sir.

11 Q Okay. So Summer, Fall, 2007; and then when did you
12 meet with him again?

13 A There was a gap there between eight and nine months
14 that I wrote him a few letters I never got no return on.
15 And when he did show up, I let him know that I was
16 disappointed and he stated to me that there was no other
17 reasons for him to come at that time and that I wasn't his
18 only case and that I should understand.

19 Q And did y'all have any substantive discussions
20 about trial strategy or anything at that time?

21 A No, sir.

22 Q And when do you think this would have been? You
23 said like eight or nine months later? Was this shortly
24 before the trial? Do you recall?

25 A Shortly before the trial. He showed up about two

William Owens Direct Examination by Mr. Chambers

1 weeks before the trial and he was -- he seemed to have
2 jumped in it with both feet at that time, yes, sir,

3 Q And this would have been -- well, the trial started
4 December 1st, 2008; is that right?

5 A Yes, sir.

6 Q So this would have been maybe mid November, is that
7 fair?

8 A That is correct.

9 Q And then between then and the time that the trial
10 was called, did y'all have any substantive discussions
11 about trial strategy or what to expect or whether there was
12 going to be a defense or anything?

13 A Right. As I was requesting to put up a defense and
14 to give him names of character witnesses and different
15 people, he would come back and let me know he got in touch
16 with them and they'd be glad to show up and so on. Then
17 when the trial -- the day before trial, he let me know that
18 he had called one of my working companions and said there
19 was really no need for him to come to testify on my behalf
20 as a character witness.

21 Q Did he give you any reason why he didn't feel like
22 he needed to be there?

23 A No, sir.

24 Q Do you know how many witnesses that Mr. Moore had
25 lined up to testify in your behalf?

William Owens - Direct Examination by Mr. Chambers

1 A Not to an exact amount, but there was at least
2 five.

3 Q Okay. And was there any discussion about whether
4 you would actually put up a defense or not at that time?

5 A I was under the impression I was.

6 Q And then it's already been alluded to in court
7 today that after the State rested their case, then y'all
8 had a discussion about whether to put up a defense or not
9 put up a defense and get the last argument. You remember
10 that?

11 A Yes, sir, I do.

12 Q And what was your feelings and impressions when you
13 were discussing that with Mr. Moore?

14 A Well, he called me and my mother back in the -- I
15 guess it would be the jury room or some kind of little
16 conference room, but he called my mother, myself and it was
17 he and his paralegal and two sheriff deputies. He said I
18 could speak in front of them, that they were -- it was
19 okay. And that how did I think things was going and I told
20 him before I got sent to prison, I wanted to defend myself
21 and he said, Well, nobody said you were going to prison.
22 So he said -- but my reasons for saying this is because I
23 want to put up the last closing statement and in order to
24 do so, I have to not put up a defense. And my mom was
25 across the room and she said --

William Owens - Direct Examination by Mr. Chambers

1 MR. SPENCER: Your Honor, I'd object to any
2 hearsay.

3 MR. CHAMBERS: Don't say what anybody else said.

4 THE WITNESS: Okay.

5 BY MR. CHAMBERS:

6 Q Don't say anything a third party said. So is it
7 correct that this was the first discussion substantively
8 that y'all had had about whether there was going to be a
9 defense or not?

10 A Yes, sir.

11 Q And this was right before it was time to put you or
12 your witnesses up?

13 A Yes, sir.

14 Q And did you understand that when it meant that he
15 wouldn't put up a defense, he wouldn't call any witnesses
16 on your behalf, including you?

17 A Yes, sir.

18 Q Did you understand that he could have called
19 witnesses, but not called you and put up a case?

20 A Yes, sir.

21 Q Okay.

22 A Yes, sir.

23 Q Do you believe that had you testified that you
24 could have refuted some of the State's testimony and
25 evidence?

William Owens - Direct Examination by Mr. Chambers

1 A Yes, I would have. I would have explained exactly
2 what was going on.

3 Q And could you give us some brief examples of that?

4 A I could explain my reasons for having the
5 rattlesnakes in my possession. I could have explained
6 the -- the fact that I'm not the kind of person that they
7 portrayed me out to be. I could have explained that where
8 I was that day, what time it was, where I was supposed to
9 be and I do feel like it would have helped me, yes, sir.

10 Q Okay. Do you think you could have had any
11 explanation about your girlfriend's activities?

12 A Most definitely.

13 Q Okay. Do you think that your ability to explain to
14 the jury your position would have outweighed the benefits
15 of Mr. Moore having a final argument before the jury?

16 A Yes, sir.

17 Q And you understand that that's what all attorneys
18 want is to get the last say, that's the last thing the jury
19 hears, you understand that?

20 A I do.

21 Q And you still believed that it would have been more
22 beneficial had you put up a case?

23 A Yes, I do.

24 Q All right. Now, you've heard the other items that
25 we have dealt with today about polygraphs, which I surely

William Owens - Cross-Examination by Mr. Spencer

1 don't want to get into because the judge may throw
2 something at me and the failure to make objections, the
3 failure to request jury charges. You heard all of that
4 because you were sitting here, right?

5 A Yes, sir.

6 Q And do you agree with those contentions that I made
7 on your behalf today?

8 A Yes, I do.

9 Q Okay. Is --

10 MR. CHAMBERS: I believe that's all I have, Your
11 Honor.

12 CROSS-EXAMINATION

13 BY MR. SPENCER:

14 Q Mr. Owens, do you recall the judge telling you that
15 you had a right to testify or not testify?

16 A Yes, I do.

17 Q And did he tell you that it was your decision?

18 A Yes, sir.

19 Q And you made that decision, right?

20 A Yes, sir.

21 Q And it didn't work out the way you wanted, but it
22 was your decision, wasn't it?

23 A It was my decision partially because of the way I
24 was under the impression of Mr. Moore.

25 Q And you're talking about Mr. Moore's advice that

William Owens - Cross-Examination by Mr. Spencer

1 would be beneficial to get the last argument?

2 A I'm talking about if he was so dead set against
3 going -- putting up a defense that told me he wasn't ready
4 for a defense, so I didn't want to put him out there and
5 crash.

6 Q And the defense you contemplated was you testifying
7 and then character witnesses?

8 A Yes, sir.

9 Q Okay. Thank you very much.

10 MR. CHAMBERS: That's all we have, Your Honor.

11 THE COURT: Thank you, you may step down.

12 THE WITNESS: Thank you, Your Honor.

13 MR. SPENCER: The State would not have any evidence
14 to present.

15 THE COURT: Okay. I've had a chance to look over
16 some of the documents, but I want to look at the transcript
17 whenever I can. I'm probably not going to get to it for a
18 day or two, but I'm going to hold it under advisement until
19 I do that and be back in touch.

20 MR. CHAMBERS: Thank you, Your Honor. And I'm
21 assuming the trial transcript is part of your record.

22 THE COURT: It is.

23 MR. CHAMBERS: Thank you, Your Honor.

24 THE COURT: I appreciate y'all coming in and
25 representing the respective parties. You did an excellent

William Owens Cross-Examination by Mr. Spencer

1 job. Give me some time to go over it.

2 MR. CHAMBERS: Thank you, sir.

3 MR. SPENCER: Thank you, Your Honor.

4 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

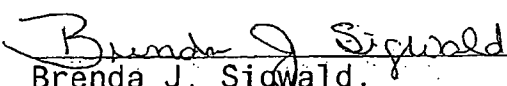
Certificate of Reporter

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5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 10th day of July, 2012.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 66 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 31st day of December 2012.

19
20
21
22 
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BARNWELL)

C.A. NO. 2011-CP-06-0353

William Allen Owens,
S.C.D.C. No. #332121,)

Applicant,)

ORDER OF DISMISSAL

VS.)

State of South Carolina,)

Respondent.)

FILED FOR RECORD
2012 AUG 30 PM 1:44
RHONDA D. MEELEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 16, 2011. The State made its return on December 20, 2011. A hearing was convened at the Aiken County Courthouse on July 10, 2012, at which time Applicant was present in court and represented by John E. Chambers, Jr., Esquire. Respondent was represented by David Spencer of the Office of the South Carolina Attorney General.

Applicant testified on his own behalf and also called his trial counsel, E.T. Moore, Jr., Esquire, as a witness. This Court also had before it the PCR application, the State's return, the Applicant's records from the South Carolina Department of Corrections, the Clerk of Court's records regarding the subject convictions, and the transcript of Applicant's trial.

PROCEDURAL HISTORY

Applicant is presently confined with the Department of Corrections pursuant to the orders of commitment by the Barnwell County Clerk of Court. Applicant was indicted in May 2008 for Murder and Possession of a Weapon During a Violent Crime. Applicant was represented by E.T. Moore, Jr., Esquire. Applicant proceeded to jury trial on December 1, 2008 and was found guilty

as charged on December 5, 2008. The Honorable Doyet A. Early, III, sentenced Applicant to life without parole for murder and five years consecutive imprisonment for the weapons charge.

Applicant appealed and an Anders brief was filed on Applicant's behalf. The appeal was dismissed by the South Carolina Court of Appeals on June 28, 2011. Op. No. 2011-UP-339. The remittitur was issued on July 14, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability

sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Polygraph testimony

At trial, Applicant's girlfriend, Renee McKinny, who he lived with at the time of the murder, testified that Applicant told her he shot a black man by the river. She initially thought he might be joking, but later became convinced he was serious when he brought her by the crime scene. She fled with her two children to Maryland. SLED Agent Richard Johnson testified that as a result of the investigation, he went to Maryland to bring her back on belief of her possible involvement. Johnson testified as follows:

Q: And you interviewed her how long?

A: Oh, it was a period of time.

Q: And you took an initial statement from her?

A: That's correct.

Q: And then – and you arrested her?

A: Yes. We ended up arresting her on a murder charge which is also at the point where we realized that we should have been looking for catawba worms as well.

Q: And did you also at that juncture get a warrant for William Owens?

A: That's correct. Well, I didn't sign the warrant. I was in Maryland at the time.

Q: All right. But, you were aware –

A: Yes.

Q: – in your investigation they were simultaneously getting a warrant for Mr. Owens?

A: Uh-huh

Q: then what did you do, Agent Johnson?

A: We had to wait around or stayed over the weekend in Maryland for an extradition hearing, and Renee voluntarily waived extradition and came back with us. Got back to Carolina. She was booked in at the Barnwell County Detention Center. Yea, Barnwell County Detention Center. She was subsequently, I think, polygraphed.

Tr. p. 543, line 21 - 544, line 20.

The trial judge quickly advised the jury to “just disregard that. That’s not relevant in the trial of this case. It’s not admissible.” Tr. p. 544, lines 22-24. The Solicitor then stated: “No, it’s not.”

Tr. p. 544, line 25.

Counsel testified that in light of the comments by the trial court and the Solicitor, he did not think further curative instruction was needed, nor did he want to call attention to the matter further. Additionally, he did not think it likely the court would grant a mistrial. Counsel agreed that the testimony did not indicate whether McKinney passed or failed the polygraph, or what was asked of her while she was tested. This Court notes that Agent Johnson only stated that he thought she was polygraphed. This Court finds Counsel articulated reasonable trial strategy in regards to this testimony. Additionally, this Court finds that Applicant was not prejudiced by an alleged deficiency as the trial court gave an immediate instruction to the jury to disregard it and the Solicitor agreed the testimony was not proper. Further, this Court finds that a reasonable probability does not exist that

a mistrial would be granted or that it would be considered reversible error on appeal. Accordingly, this claim is denied.

Rattlesnake testimony

Applicant complains that counsel should have objected to testimony that Applicant caught rattlesnakes and kept them in his house. Counsel testified that he felt that the rattlesnake testimony was not harmful to the case and that the testimony was elicited to explain how law enforcement executed the search warrant; law enforcement had to gingerly search the premises because they were aware that there were rattlesnakes in the premises. This Court finds that Counsel made a reasonable assessment and that his performance was not deficient. Further, this Court finds that Applicant was not prejudiced as the testimony was admissible for the reason counsel stated and that had Counsel objected, there is not a reasonable likelihood it would have affected the outcome of the trial. Accordingly, this allegation is denied.

Alibi defense

Applicant complains that an alibi instruction should have been requested by Counsel. Counsel testified that his defense was to establish a time line indicating that Applicant could not have committed the murder although he was at the crime scene that day. However, the various witnesses were ambiguous on the times and Counsel agreed that the testimony failed to establish the impossibility of Applicant being present and therefore, Counsel testified that the evidence was not sufficient to require the court to give an alibi instruction. Further, Counsel indicated that post-verdict interviews with jurors indicated that they gave no weight to the time line defense. This Court finds Counsel testimony establishes reasonable trial strategy. Counsel's assessment that an alibi charge was not warranted is reasonable. See State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980)

(quoting Am.Jur.2d Criminal Law § 136 for the proposition that "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all."). The exact time of the murder was not firmly established and the witnesses gave ambiguous testimony as to the time frames. This Court finds that Applicant has failed to meet his burden as to either prong of Strickland. The allegation is denied.

Failure to present a defense/prepare for trial

Applicant alleges counsel was ineffective because he was not prepared for trial and did not present a defense. Counsel testified that he did not believe Applicant would have benefitted from testifying and that Counsel would gain a strategic advantage from gaining last argument. However, Counsel testified that it was Applicant's decision not to testify. He testified that he did interview several witnesses who would have provided character testimony, but did not feel there were any fact witnesses beneficial to the defense that were not called by the State. Counsel testified that he did not think Applicant would have been a good witness at trial. Applicant testified at the PCR hearing that he would have been able to explain a number of things to the jury, but he did not provide any such explanations at the PCR hearing. This Court finds that the trial transcript and the PCR hearing testimony establishes that Counsel was well-prepared for trial and that his decision to not present a defense was sound trial strategy. Further, this Court finds that Applicant made a knowing and voluntary decision not to testify.

Closing argument

Applicant complains that Counsel should have objected to the Solicitor's closing argument. The Solicitor suggested to the jury that the victim, a minister who was fishing, was kneeling, perhaps

praying, when he was shot at close range by Applicant. Counsel testified that it was not an unreasonable inference from the evidence and that the argument was not prejudicial. Counsel testified that he would have objected if he thought an objection was appropriate. This Court finds Counsel's strategy for not objecting to be reasonable. Further, this Court does not believe that the closing argument was objectionable. This Court finds that Applicant has not met either prong of Strickland and denies this allegation.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

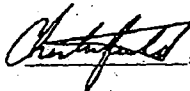
IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19th day of August, 2012.



Paul M. Burch
Presiding Judge
4th Judicial Circuit

 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

William Allen Owens, 332121,

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

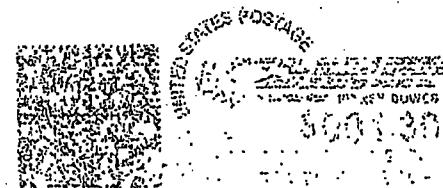
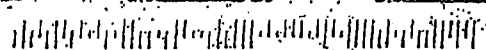
IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-06-0353

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John E. Chambers, Jr., Bar No. Address: Post Office Box 714 Barnwell, SC 29812 phone: (803) 541-7676 fax: (803) 541-7677 e-mail: other	Defendant's Attorney: David Spencer, Bar No. Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-7737 fax: (803) 734-4113 e-mail: other
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
August 13, 2012 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	



First Class Mail

Knapp Law
Firm_{PC}

POST OFFICE BOX 714
BARNWELL, SOUTH CAROLINA 29812

To:

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29210.

WITNESSES

R. Johnson - S.L.E.D.

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

True bills

Emma G. Okeap

Foreperson of Grand Jury

Date: May 1, 2008

VERDICT

GUILTY

By: J. Cave 12/4/08

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-06-131

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

MAY 5, TERM 2008

THE STATE

vs.

WILLIAM A. OWENS

Indictment for

POSSESSION WEAPON DURING A
VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

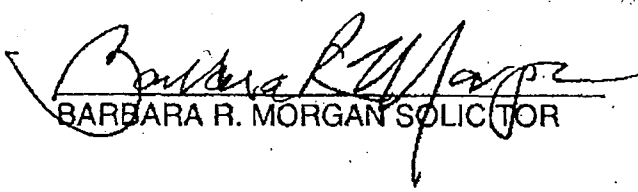
INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Barnwell County present upon their oath:

POSSESSION WEAPON DURING A VIOLENT CRIME

That WILLIAM A. OWENS did in Barnwell County on or about July 6, 2007, while committing the crime of Murder, a crime of violence, have in the defendants possession a firearm, all in violation of § 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

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


BARBARA R. MORGAN SOLICITOR

WITNESSES

R. Johnson - S.L.E.D.

ARREST WARRANT NUMBER

H868160

ACTION OF GRAND JURY

True bills

Emma J. Okeaf

Foreperson of Grand Jury

Date: May 1, 2008

VERDICT

GUILTY

By J. Cane 12/4/08

Foreperson of Petit Jury

Date

DOCKET NO. 2008-GS-06-130

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

MAY 5, TERM 2008

THE STATE

vs.

WILLIAM A. OWENS

Indictment for

MURDER

SC Code 16-03-0010

CDR Code 116

CLASS FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

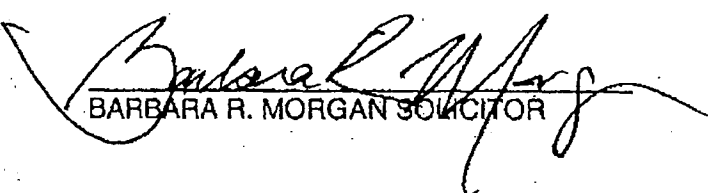
INDICTMENT

At a Court of General Sessions, convened on July 6, 2007 the
Grand Jurors of Barnwell County present upon their oath:

MURDER

That WILLIAM A. OWENS did in Barnwell County on or about July 6, 2007, with malice aforethought, kill one Phillip McCreary by shooting the victim and said victim died as a proximate result thereof, all in violation of § 16-3-10, *South Carolina Code of Laws*, (1976) as amended.

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


BARBARA R. MORGAN SOLICITOR