

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Jennifer B. McCoy, Circuit Court Judge

RECEIVED

Nov 01 2022

SC Court of Appeals

QUOTEAS S. NESBITT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000072

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT AUGUST 25-28, 2014.....	1
APPLICATION FOR POST-CONVICTION RELIEF	607
RETURN, PARTIAL MOTION ATO DISMISS, AND MOTION FOR MORE DEFINITE STATEMENT	613
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	620
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 27, 2019.....	622
ORDER OF DISMISSAL.....	657
INDICTMENTS	669

1 IS PLACED ON THE RECORD.)

2 THE COURT: Is the State ready to proceed?

3 ASST. SOL. LEGETTE: State's ready, Your Honor.

4 THE COURT: Is the defendant ready?

5 MR. WALKER: We are, Your Honor.

6 THE COURT: Bring us the jury, please.

7 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
8 FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, we will now continue with the testimony in the trial
11 of this case. Solicitor, call your next witness.

12 ASST. SOL. LEGETTE: Thank you, Your Honor. The State
13 calls Dr. Ellen Riemer.

14 (WHEREUPON, DR. ELLEN RIEMER ENTERS THE COURTROOM AND
15 IS DULY SWORN BY THE CLERK OF COURT.)

16 THE COURT: Hello, Doctor. Have a seat, make yourself
17 comfortable. Adjust the microphone; it's going to amplify
18 your voice. Would you begin by stating your full name and
19 spelling your last name for the court reporter.

20 WITNESS: Okay. My name is Dr. Ellen Riemer and last
21 name is R-I-E-M-E-R.

22 THE COURT: Very good. Your witness, counsel.

23 ASST. SOL. LEGETTE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY ASST. SOL. LEGETTE:

1 Q Dr. Riemer, where do you work?

2 A I work at Medical University of South Carolina as a
3 forensic pathologist.

4 Q And what does a forensic pathologist do?

5 A A forensic pathologist performs complete autopsy
6 examinations in order to determine the cause and manner of
7 death of an individual.

8 Q And are you also a licensed medical doctor?

9 A Yes.

10 Q And how long have you been a licensed medical doctor?

11 A I've been licensed to practice medicine since 1997.

12 Q And how long have you been in pathology?

13 A I have been a forensic pathologist since 2002 when I
14 completed my training in forensic pathology.

15 Q Okay. Now, please tell us about your education,
16 training and experience as it relates to forensic pathology.

17 A Well, after completing medical school, I did my
18 training in pathology at Columbia Presbyterian Medical
19 Center in New York City. And after completing successfully
20 my residency in pathology, just in general pathology, I did
21 subspecialty training in forensic pathology which was at the
22 Office of the Chief Medical Examiner in the state of
23 Maryland. And after completing that, I did an additional
24 Fellowship in cardiovascular and pulmonary pathology at
25 Johns Hopkins Hospital, and after completing that I started

1 as an attending pathologist and faculty member where I
2 initially worked in North Carolina at Wake Forest School of
3 Medicine and I stayed there for six years before moving to
4 Charleston, South Carolina.

5 Q Thank you. Now, you told us earlier that a forensic
6 pathologist performs autopsies?

7 A Yes.

8 Q Now, can you tell us how many autopsies you have
9 performed?

10 A Well, I haven't kept track exactly; but it's in the
11 range of 3,000.

12 Q Now, Dr. Riemer, what is the American Board of
13 Pathology?

14 A The American Board of Pathology is the certifying
15 authority that determines whether a person is entitled to
16 and has earned Board Certification, so that's the American
17 Board of Pathology that issues Board Certifications for
18 specialty of pathology. It's the most authoritative
19 certifying authority in the U.S.

20 Q And are you certified by that Board?

21 A Yes, I am.

22 Q Now, Dr. Riemer, in your years of practice as being a
23 forensic pathologist, have you ever had occasion to perform
24 autopsies where the cause of death was gunshot wound to the
25 back?

1 A Yes.

2 ASST. SOL. LEGETTE: Your Honor, at this time, I would
3 offer Dr. Ellen Riemer as an expert in the field of Forensic
4 Pathology.

5 THE COURT: As to qualifications?

6 MR. WALKER: No objection.

7 THE COURT: Ladies and gentlemen of the jury, recalling
8 my earlier instruction to you concerning expert testimony.
9 The witness is qualified in the field of forensic pathology
10 without objection. You may proceed, counsel.

11 ASST. SOL. LEGETTE: Thank you, Your Honor.

12 Q Dr. Riemer, please educate us. How many manners of
13 death are there?

14 A There's homicide, so the manner of death is how -- it's
15 not the exact cause of somebody's death, but it's the
16 manner. So there's a homicide, there's suicide, there's
17 natural, there's accident, and there's undetermined.
18 There's five total manners of death.

19 Q And during the month of September 2012, did you have an
20 occasion to perform an autopsy?

21 A Yes, many autopsies.

22 Q Yes, ma'am. Were you working as a forensic pathologist
23 in September of 2012?

24 A Yes.

25 Q I want to turn your attention specifically to September

1 7th, 2012. Did you have an occasion to perform an autopsy
2 on a decedent known as Moray Holmes?

3 A Yes, I did.

4 Q Dr. Riemer, I will hand you in a moment what has been
5 marked for identification as State's 56. Please tell me if
6 you recognize State's 56.

7 ASST. SOL. LEGETTE: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 A Yes, I recognize this photo.

11 Q And what is State's 56 a photo of?

12 A It's an identification photo that we took of the
13 deceased individual before we began the autopsy.

14 Q And is State's Exhibit 56 a fair and accurate
15 representation of the deceased individual who you autopsied
16 on September 7th, 2012?

17 A Yes.

18 ASST. SOL. LEGETTE: Your Honor, at this time, I would
19 offer State's Exhibit 56 into evidence.

20 THE COURT: As to State's 56?

21 MR. WALKER: No objection.

22 THE COURT: Ladies and gentlemen of the jury, State's
23 Exhibit Number 56 will be admitted into evidence in the
24 trial of this case without objection.

25 (WHEREUPON, STATE EXHIBIT NUMBER 56, PHOTO, IS RECEIVED

1 INTO EVIDENCE.)

2 THE COURT: State's 56 is in evidence. You may publish
3 to the jury.

4 Q Dr. Riemer, you performed an autopsy on Moray Holmes on
5 September 7th, 2012. Was that the first time that you had
6 ever seen Moray Holmes?

7 A That was the first time I had ever seen him.

8 Q Can you tell us approximately how long the autopsy
9 lasted?

10 A I don't know -- remember exactly, but it was
11 approximately four hours.

12 Q Okay. And based on that particular autopsy, within the
13 bounds of reasonable medical certainty, did you form an
14 expert opinion as to the cause of death?

15 A Yes.

16 Q And before we go any further, what is causes of death?

17 A Well, there's just many possible causes of death in an
18 individual. Somebody could die of a stroke or somebody could
19 die of blunt force injuries, a car accident, there's any
20 number of medical diseases. People have coronary artery
21 disease. Some can die of gunshot wound or a stab wound.

22 There's any number of ways that an individual can die, but
23 the cause of death is how this particular individual died.

24 Q Okay. So based thereon, did you form an opinion as to
25 the cause of death or how the decedent, Moray Holmes, died?

- 1 A Yes.
- 2 Q And what is that opinion?
- 3 A Mr. Holmes died of gunshot wounds to the back.
- 4 Q And Dr. Riemer, when you performed the autopsy, were
- 5 you able to collect any -- you said gunshot wounds. Were
- 6 there any projectiles located in the body?
- 7 A No, because the bullets went in the body and exited the
- 8 body, so I was able to, by performing the autopsy, track the
- 9 wound paths of each of the bullets, but because they exited
- 10 the body, I did not recover those bullets at the autopsy.
- 11 Q Okay. Was there any other evidence recovered, like
- 12 clothing or anything of that matter?
- 13 A Well, I received Mr. Holmes body when he was unclad.
- 14 And he did have a ring on him, so that was the only
- 15 personal effect.
- 16 Q And any fingernail clippings were sent back, too?
- 17 A Oh, yes. Fingernail clippings are a procedure that I
- 18 perform when I determine somebody died from gunshot wounds.
- 19 Q Okay. And also any hair?
- 20 A And hair samples.
- 21 Q And is that just standard procedure?
- 22 A Standard procedure.
- 23 Q Okay. And that was turned over to the detective who
- 24 attended the autopsy?
- 25 A I have to recall my notes who it was handed over to.

1 (REVIEWS NOTES BRIEFLY.) Yes, the ring and the
2 fingernail clippings and the scalp hair were turned over to
3 Dorothea Gathers of the Colleton County Sheriff's Office.

4 Q And Dr. Riemer, during the autopsy, were you able to
5 document the injuries of Mr. Holmes during that autopsy?

6 A Yes, that's my job.

7 Q And you document those how, by pictures?

8 A By photographs and also I make a diagram so I'm able to
9 compose an autopsy report that accurately reflects the
10 injuries and other abnormalities in the deceased individual.

11 Q Dr. Riemer, I'm going to hand you in a moment what has
12 been previously marked for identification as State's 58,
13 State's 59, State's 61, State's 62, State's 63, State's 64,
14 State's 65, State's 66, State's 67, and State's 68. Please
15 take a moment and tell me if you recognize these items. Let
16 me show them to counsel.

17 MR. WALKER: Your Honor, the defense would stipulate as
18 to foundation. I have no objection to them being entered
19 into evidence.

20 THE COURT: To any of these exhibits?

21 MR. WALKER: That's correct.

22 THE COURT: All right. Hand them to her and ask them
23 to identify them and give me the numbers again for the
24 record.

25 ASST. SOL. LEGETTE: Yes, Your Honor.

1 THE COURT: You may approach.

2 Q Doctor, I'm handing you State's 58, 59, 61, 62, 63, 64,
3 65, 65, 66, 67, and 68. Do you recognize each of the
4 State's exhibits?

5 A Yes. Each of these photographs are photographs that I
6 took of injuries to Mr. Holmes at the time of the autopsy.

7 Q All right. And are they a fair and accurate
8 photographs that you took to document his injuries?

9 A Yes.

10 Q All right.

11 ASST. SOL. LEGETTE: Your Honor, at this time I offer
12 State's 58, 59, 61, 62, 63, 64, 65, 66, 67 and 68 into
13 evidence.

14 THE COURT: That would be a total of an additional 10
15 beyond State's 56, Solicitor?

16 ASST. SOL. LEGETTE: That's correct, Your Honor.

17 THE COURT: Counsel, as to State's 58, 59, 61, 62, 63,
18 64, 65, 66, 67 and 68?

19 MR. WALKER: No objection.

20 THE COURT: Ladies and gentlemen of the jury, State's
21 58, 59, 61, 62, 63, 64, 65, 66, 67 and 68 will be admitted
22 into evidence in the trial of this case without objection.

23 (WHEREUPON, STATE EXHIBIT NUMBER 58, PHOTO, IS RECEIVED
24 INTO EVIDENCE.)

25 (WHEREUPON, STATE EXHIBIT NUMBER 59, PHOTO, IS RECEIVED

1 INTO EVIDENCE.)

2 (WHEREUPON, STATE EXHIBIT NUMBER 61, PHOTO, IS RECEIVED
3 INTO EVIDENCE.)

4 (WHEREUPON, STATE EXHIBIT NUMBER 62, PHOTO, IS RECEIVED
5 INTO EVIDENCE.)

6 (WHEREUPON, STATE EXHIBIT NUMBER 63, PHOTO, IS RECEIVED
7 INTO EVIDENCE.)

8 (WHEREUPON, STATE EXHIBIT NUMBER 64, PHOTO, IS RECEIVED
9 INTO EVIDENCE.)

10 (WHEREUPON, STATE EXHIBIT NUMBER 65, PHOTO, IS RECEIVED
11 INTO EVIDENCE.)

12 (WHEREUPON, STATE EXHIBIT NUMBER 66, PHOTO, IS RECEIVED
13 INTO EVIDENCE.)

14 (WHEREUPON, STATE EXHIBIT NUMBER 67, PHOTO, IS RECEIVED
15 INTO EVIDENCE.)

16 (WHEREUPON, STATE EXHIBIT NUMBER 68, PHOTO, IS RECEIVED
17 INTO EVIDENCE.)

18 ASST. SOL. LEGETTE: Thank you, Your Honor. May I
19 approach the witness?

20 THE COURT: You may.

21 ASST. SOL. LEGETTE: Your Honor, may she come down, if
22 we can get a microphone, please.

23 THE COURT: Madame Clerk, Doctor, my lawyers like to do
24 this. I'm going to give you a portable microphone, because
25 when you turn your back to my court reporter, it becomes

1 difficult for her. I will have them hold the microphone for
2 you, but I want you to use it, because my court reporter
3 needs to be able to hear. Mr. Walker, you may come around
4 by my bailiff outside my jury box so you can also view.

5 Q Dr. Riemer, I will hold the microphone. You can stand
6 whichever way is easier for you. I will hold the
7 photograph. In State's 58, what are we seeing in State's
8 58?

9 A Well, you can recognize that this is the belly button
10 of the deceased individual. Here are two holes on the right
11 side of the abdomen and those were the exit wounds. That's
12 were the bullets exited by.

13 Q Okay. State's 59, what are we seeing in State's 59?

14 A That's a photo of one of the exit wounds.

15 Q State's 61?

16 A That's a photo of the other exit wound.

17 Q State's 62?

18 A So now we have a photo of the deceased individual's
19 back and we can see -- I don't know if you can see it from
20 here, but there are two holes on the left side of the back.
21 And those are the entrance wounds. Those are the two
22 locations where the bullets entered the body.

23 Q State's 63?

24 A That's another photo of the two entrance wounds.

25 Q State's 64?

1 A That's a close-up of one of the entrance wounds on the
2 back.

3 Q State's 65?

4 A And that's a photo of both of the entrance wounds on
5 the left side of the back.

6 Q And State's 68?

7 A That's a closer up picture of one of the entrance
8 wounds on the back.

9 Q Okay. Thank you, Dr. Riemer, I think we can dispense
10 with photographs. You can take a seat, please.

11 (DR. RIEMER RESUMES THE WITNESS STAND.)

12 Dr. Riemer, using a human representation, are you also
13 able to document the injuries and tell us what direction?
14 Or were you able to determine a direction of the actual
15 entrance wounds and exit wounds?

16 A Yes.

17 Q Can you tell us about the actual injuries themselves?

18 A Well, I'll describe each one individually.

19 Q Okay.

20 A So there were a total of two gunshot wounds to Mr.
21 Holmes' body. One of the gunshot wounds -- both of them
22 entered on the left side of the back as we saw. And one of
23 the gunshot wounds after it entered the left side of the
24 back; this is the one closest to the middle of the body. It
25 went over toward the right side of the back and while it was

1 in the body, it went through the right kidney, as well as
2 loops of small bowels, so the intestines as well, before
3 exiting on the right side of the abdomen. So we saw the two
4 entrances on the left side of the back and the two exits on
5 the right side of the abdomen; so that was one of the
6 gunshot wounds. Then there was the second gunshot wound. I
7 don't know which one came first or second. But there was
8 another gunshot wound also on the left side of the back and
9 that gunshot wound went into the abdomen and went through
10 the abdominal aorta, which is a major blood vessel of the
11 body. The aorta is a major blood vessel that leaves the
12 heart and supplies the rest of the body with blood. So the
13 aorta goes -- after it leaves the heart, it goes down into
14 the abdomen and is kind of in the middle down there, and
15 this bullet pierced the aorta and after doing so, it also
16 went through some of the intestines before exiting the right
17 side of the abdomen.

18 Q And Dr. Riemer, you talked about the abdominal aorta,
19 as a result of the gunshot wounds, what was the condition of
20 the actual decedent's body as far as the aorta is concerned
21 and the actual injuries?

22 A Well, the bullet pierced and went through the aorta and
23 because this is a very large blood vessel with a lot of
24 blood flowing through it, all of that blood ended up leaving
25 that aorta and collecting in his abdominal cavity, so he had

1 a lot of internal bleeding as a result of both of these
2 gunshot wounds.

3 Q And so were you able to document how much blood there
4 was inside his abdomen?

5 A Yes, I was able to document it, because I was actually
6 scooping it out and putting it in jars to measure how much
7 there was and there was -- I was able to measure 2,650
8 milliliters of blood. So that's between two and three
9 liters of blood. That was just sitting loose in his
10 abdominal cavity.

11 Q And that's as a result of the piercing of the aorta?

12 A The aorta and the kidney. They're both, you know, it's
13 going through the aorta and the kidney and those are very
14 vascular structures which means there is a lot of blood
15 flowing through it and so when they were damaged, all of
16 that blood ended up pooling in his abdomen.

17 Q Dr. Riemer, are you able to demonstrate or document the
18 injuries of Mr. Moray Holmes on a human representation?

19 A I can point that out, yes.

20 ASST. SOL. LEGETTE: Your Honor, at this time, I would
21 ask that she come down and document the injuries using a
22 human representation.

23 THE COURT: Madame clerk, microphone please. Mr.
24 Walker, let me know if you can't see. Ladies and gentlemen
25 of the jury, hold your hand up if anyone blocks your view.

1 (WHEREUPON, DR. RIEMER COMES DOWN FROM WITNESS STAND
2 AND INDICATES VICTIM'S INJURIES ON A REPRESENTATION OF HUMAN
3 MODEL.)

4 Q Dr. Riemer, this is the human representation that we
5 have.

6 THE COURT: State for the record what you are doing,
7 counsel.

8 ASST. SOL. LEGETTE: Yes, Your Honor, I am.

9 Q Dr. Riemer, this is a human representation of a human
10 body or a representation of a human body, and you indicated
11 earlier that you're able to explain to us the injuries of
12 Moray Holmes on the autopsy you performed?

13 A Yes.

14 Q Will you take these rods and demonstrate for us the
15 actual injuries. I will hold the mic for you.

16 A Thank you. So each one of these rods is going to be
17 used to represent each one of the bullet paths through the
18 body. So one of the wounds entered the back about there and
19 exited the right side of the tummy. So that's the wound
20 path direction. It's going from back to front and from left
21 to right. Along the wound path, this bullet went through
22 the right kidney, which caused a lot of bleeding into the
23 abdomen.

24 Q Okay. Now, as to the second gunshot wound you
25 documented.

1 A This is the other gunshot wound that was to the back.
2 This was further to the left side of the back. It exited --
3 I'm trying to get this to come out of the right side.

4 Q Do you need me to hold it?

5 A Well, it's just kind of difficult to poke through.
6 Yeah, this is about right. So that's the exit wound from
7 the other bullet. So this bullet -- and you can see that
8 they're both kind of going in the same direction; both going
9 from left to right and back to front. And so this gunshot
10 wound that I just put this rod in, that exited the right
11 side of the belly button, went through the aorta, along the
12 wound path. The aorta, being the major blood vessel of the
13 body, was responsible for lots of internal bleeding.

14 Q And Dr. Riemer, we also have another human
15 representation. I can roll this out for you.

16 A So in this model, a person's body, you just see the
17 skin, but we obviously we can't see the internal organs and
18 structures that are inside, like even we know there's stuff
19 in there, we can't see it on this particular model. But
20 this model has the skin and muscle of the abdominal cavity
21 exposed, and this is a bunch of intestines, which is, you
22 know, lower part of the abdomen. But if I take that out
23 just to demonstrate, we can see this red -- big red blood
24 vessel, we can see it leaves the heart up in the chest and
25 that's where the blood leaving the heart is going to supply

1 the rest of the body. And it's going down through this red
2 blood vessel, which is the aorta. So this is the abdominal
3 aorta because it's in the abdominal cavity. It's the same
4 blood vessel that started up here and it's like a big
5 conduit that carries blood and then it sort of branches off
6 to supply the legs. But the bullet on the left side of the
7 back, as it went through the left side of the back, actually
8 went right through that abdominal aorta before exiting the
9 right side of the abdomen. So that caused a lot of blood to
10 pour into this open area space in the abdominal cavity. And
11 the other bullet that entered the back didn't go through the
12 aorta but it made its way through the body. It went through
13 this right kidney, which also there is a lot of blood in the
14 kidney and blood is going to leak out of the kidney as well.
15 So between the two gunshot wounds, there was 2,615
16 milliliters of blood that was accumulated in the abdominal
17 cavity.

18 Q Okay. Thank you, Dr. Riemer. If you can have a seat
19 back on the witness stand, I will take the microphone from
20 you.

21 (WITNESS RESUMES STAND.)

22 Q Dr. Riemer, just briefly, would you consider the aorta
23 a super highway of blood vessels?

24 A Yes. It's the major highway that all the blood goes
25 through and then it sort of, you know, it's sort of like

1 exits along little smaller roads off of the main highway.
2 That's to supply the arms and the legs, but the aorta, you
3 can see as I demonstrated, this is the major blood vessel of
4 the body that everything else comes from.

5 Q Okay. And the cause of death for Moray Holmes was
6 what?

7 A Two gunshot wounds to the back.

8 Q Thank you, Doctor. I have no further questions.
9 Please answer any questions from the defense.

10 THE COURT: Cross-examination?

11 MR. WALKER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WALKER:

14 Q Good afternoon, Doctor.

15 A Good afternoon.

16 Q During the course of your autopsy, did you conduct a
17 test entitled comprehensive drug scan?

18 A Well, I drew blood and sent it to a toxicology lab
19 which performed a drug testing.

20 Q Can you explain more fully what that entails, what
21 you're testing for?

22 A Well, I take a blood sample and the toxicology
23 laboratory tests for any alcohol or drugs.

24 Q And what were the results of that comprehensive drug
25 scan?

1 A The results were that there was 0.07 percent weaker
2 volume of ethanol, which is alcohol. And 15.3 anagrams per
3 milliliters of THC, as well as a metabolite of THC, which is
4 marijuana.

5 Q And also, along with that THC, a measured amount, there
6 was also a positive test for cannabinoids; or is that just a
7 subset, the cannabinoids?

8 A No, that's just like a screening. It is the exact
9 amount of cannabinoids. So they got a positive test of
10 cannabinoids and then they ---

11 Q They break it down like that?

12 A That's exactly right.

13 Q And .070 translates into what as a percentage?

14 A Well, it's .07, so we like BAC, this is how we're
15 familiar with it. BAC of 0.08 would be the legal driving
16 limit and he was 0.07, which is less than that.

17 Q You say the legal driving limit, is that the amount we
18 say someone is drunk?

19 A Yes, driving while intoxicated; but this was lower than
20 that.

21 Q It's a tenth of the percent ---

22 A Yes, correct.

23 Q I don't have any further questions. Thank you.

24 A Okay.

25 THE COURT: Redirect?

1 ASST. SOL. LEGETTE: None, Your Honor.

2 THE COURT: As to this witness?

3 ASST. SOL. LEGETTE: We ask that she be excused, Your
4 Honor.

5 THE COURT: Any objection, Mr. Walker?

6 MR. WALKER: None, Your Honor.

7 THE COURT: Doctor, you may step down and you are
8 excused from the trial of this case. Leave my exhibits and
9 take your file.

10 DR. RIEMER: Thank you very much.

11 THE COURT: Call your next witness.

12 ASST. SOL. LEGETTE: Your Honor, the State rests.

13 THE COURT: Are there any matters of law that you need
14 for me to take up?

15 MR. WALKER: Yes, Your Honor.

16 THE COURT: Madame Foreperson, ladies and gentlemen of
17 the jury, I'm going to ask you to step to your jury room. I
18 need to take up a matter of law. We won't be long. Please
19 do not discuss the case. I will be right back with you.

20 (12:00 A.M., WHEREUPON, THE JURY EXITS THE COURTROOM
21 AND THE FOLLOWING IS HELD ON THE RECORD.)

22 THE COURT: Let the record reflect that the jury is not
23 present. Yes, sir, Mr. Walker.

24 MR. WALKER: Thank you, Your Honor. At this time, the
25 defense would make a motion for directed verdict on the

1 charge of murder. The evidence taken in the light most
2 favorable to the State, which in this case we have a
3 videotape where we can see the actual crime occurring. That
4 videotape view shows again, in the light most favorable to
5 the State, Quoteas Nesbitt and the deceased in a consensual
6 encounter in which the time the video shows a brief
7 conversation and shows some sort of touching, grabbing,
8 something of the arms, and then they break apart, and the
9 deceased begins to walk away. The deceased is much larger
10 than Mr. Nesbitt. The State elicited numerous witnesses
11 that there was no prior disorder or problem between the two,
12 so as to the element of premeditation, we believe that had
13 nothing to do with it.

14 THE COURT: Very well. Solicitor?

15 ASST. SOL. LEGETTE: Thank you, Your Honor. I would
16 respectfully ask the Court to deny the defense's motion for
17 directed verdict on the offense of murder. There has been
18 numerous testimony about the actual shooting itself
19 regarding the identification of Quoteas Nesbitt as the
20 shooter. Additionally, there were statements made by
21 Quoteas Nesbitt two days prior to the actual shooting itself
22 where Quoteas Nesbitt is quoted as saying, "One of these
23 days someone is going to take care of Bobo," or "I wouldn't
24 have handled mine like that," which goes toward motive and
25 premeditation, Your Honor. In addition, we watched the

1 video and Mr. Nesbitt is walking around with his hands on
2 his hips, perhaps on a gun. Additionally, all of the
3 witnesses testified that there was no argument. There was
4 not a fight between Mr. Nesbitt and the decedent, Mr. Moray
5 Holmes. In addition, you have additional witnesses testify
6 that Mr. Nesbitt had a towel wrapped around his hand where
7 he pulled out the gun and he shot Mr. Holmes twice in the
8 back. All witnesses testified that Mr. Holmes walked away
9 from Mr. Nesbitt, in which Mr. Nesbitt pulled out the gun
10 and shot him in the back which requires forethought, Your
11 Honor. The Court is aware that forethought can be done in
12 an instant. So Your Honor, we would submit to the Court, in
13 the light most favorable to the State, this is a jury issue,
14 as far as the evidence and weight. Your Honor, at this
15 time, we would submit that the case is -- we have proved the
16 case at least beyond the stage at directed verdict. We
17 would ask the Court to deny defense's motion for directed
18 verdict on the charge of murder. Thank you.

19 THE COURT: Very well. Mr. Walker, I've listened
20 carefully to the evidence in this case and the standard in
21 the light most favorable to the State, your motion for
22 directed verdict is respectfully denied. Would you and your
23 client please come forward to the microphone. Madame Clerk,
24 please swear the defendant.

25 MADAME CLERK: Please raise your right hand.

1 (WHEREUPON, THE DEFENDANT, MR. QUOTEAS NESBITT IS DULY
2 SWORN.)

3 THE COURT: Put your hand down and speak into the
4 microphone for me and speak up so everybody in the courtroom
5 can hear you.

6 MR. NESBITT: Quoteas Nesbitt.

7 THE COURT: Mr. Nesbitt, at this time, I'm going to
8 advise you or explain to you certain of your rights. If you
9 do not understand anything that I say, please let me know.
10 If you want me to explain anything in further detail, please
11 let me know. Do you understand?

12 MR. NESBITT: Yes, sir.

13 THE COURT: We've now reached the state of the trial
14 where you may present your defense. You have the right to
15 testify on your own behalf. However, no one, not this
16 Court, not anyone, not your lawyer, not anyone, can make you
17 testify. In the event you have a record for any conviction
18 involving dishonesty or false statement or for a crime
19 punishable by imprisonment of more than one year and this
20 Court determines as a matter of law that the probative value
21 of admitting this evidence of prior crimes outweighs its
22 prejudicial effect to you, the Solicitor would be able to
23 introduce your record for impeachment purposes to attack
24 your credibility or your believability with the jury. If
25 you elect not to take the witness stand, I will charge the

1 jury that they are not to give the fact that you did not
2 testify any consideration whatsoever. And there is to be
3 absolutely no prejudice to you because you did not testify.
4 You have the constitutional right to remain silent. The
5 burden of proof remains in a criminal case on the State of
6 South Carolina. The decision as to whether or not you
7 testify in this case will be left entirely up to you as to
8 whether or not you testify. You certainly can talk with
9 your attorney, but the ultimate decision is yours and no one
10 else's. So the matter will be left entirely up to you as to
11 whether or not you wish to testify in the trial of this
12 case. Solicitor, does the defendant have a prior criminal
13 record?

14 ASST. SOL. LEGETTE: Yes, he does, Your Honor.

15 THE COURT: Mr. Walker, I assume you have a copy?

16 MR. WALKER: Yes, Your Honor.

17 THE COURT: Do you agree there are crimes which
18 potentially, depending on the Court's ruling, could subject
19 him to impeachment?

20 MR. WALKER: Yes, sir.

21 THE COURT: Solicitor, do you agree there are such
22 crimes of prior convictions?

23 ASST. SOL. LEGETTE: Yes, Your Honor.

24 THE COURT: Are you aware of your prior record, Mr.
25 Nesbitt?

1 MR. NESBITT: Yes, sir.

2 THE COURT: I don't need the solicitor to go over it
3 with you and your attorney, because your attorney tells me
4 he already has a copy; is that correct?

5 MR. NESBITT: Yes, sir.

6 THE COURT: You've been over it with your attorney?

7 MR. NESBITT: Yes, sir.

8 THE COURT: All right. Would you like additional time
9 to talk to your attorney?

10 MR. NESBITT: No, sir.

11 THE COURT: Have you made a decision about whether or
12 not you wish to testify in the trial of this case?

13 MR. NESBITT: Yes, sir.

14 THE COURT: And what is your decision?

15 MR. NESBITT: Not to testify.

16 THE COURT: And that is your decision and nobody
17 else's?

18 MR. NESBITT: Yes, sir.

19 THE COURT: No one forced you into that decision?

20 MR. NESBITT: No, sir.

21 THE COURT: You made that decision of your own free
22 will?

23 MR. NESBITT: Yes, sir.

24 THE COURT: No one promised you anything not to
25 testify?

1 MR. NESBITT: No, sir.

2 THE COURT: No one threatened you if you decided not to
3 testify?

4 MR. NESBITT: No, sir.

5 THE COURT: It is your decision and not your attorney's
6 or anyone else's?

7 MR. NESBITT: Yes, sir.

8 THE COURT: And it is your decision not to testify in
9 the trial of this case?

10 MR. NESBITT: Very well.

11 THE COURT: You and your attorney may return to your
12 seats.

13 MR. WALKER: Your Honor, before the jury returns, can
14 we do some housekeeping here?

15 THE COURT: Turn to your seat, Matt. One thing at a
16 time. All right. Counsel, so that you all know -- now, Mr.
17 Nesbitt, I've got to talk to your lawyer now. I'll let you
18 talk to him, but you can't talk to him when I'm talking to
19 him.

20 WITNESS: I apologize.

21 THE COURT: All right. I have been over every topic in
22 my charge with the lawyers. Does anyone want me -- before
23 we go to argument, does anyone want me to read any portion
24 of my charge to them in order to prepare their argument;
25 from the State?

1 ASST. SOL. LEGETTE: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. WALKER: No, Your Honor.

4 THE COURT: All right. My law clerk has shown you the
5 verdict form. It is my understanding that there is no
6 objection to the verdict form which I have prepared. Is
7 that correct, from the State?

8 ASST. SOL. LEGETTE: That's correct, Your Honor.

9 THE COURT: Is that correct, from the defendant?

10 MR. WALKER: Yes, Your Honor.

11 THE COURT: Obviously, I will not be sending the
12 indictments into the jury. I will have my law clerk have
13 the foreperson of the jury write whatever is written on the
14 verdict from on the indictments after the jury finishes its
15 deliberations.

16 Now, as to order of argument. Solicitor, as you know,
17 Mr. Walker tells me -- Mr. Walker, is it still the
18 defendant's decision not to present any evidence?

19 MR. WALKER: Yes, Your Honor.

20 THE COURT: In that case, you will rest when I bring
21 the jury back in the presence of the jury. However,
22 Solicitor, that gives counsel for the defendant the final
23 argument in this case. Therefore, the State will open and
24 the defendant will close. Solicitor, how long do you
25 request for closing argument in this case?

1 ASST. SOL. LEGETTE: Your Honor, I believe I need about
2 40 minutes.

3 THE COURT: How long?

4 ASST. SOL. LEGETTE: About 40, Your Honor. I won't
5 take the entire thing, but just to be on the safe side, Your
6 Honor, I know you give us the familiar tapping.

7 THE COURT: Very well. Mr. Walker, how long do you
8 need? I'm certainly going to give you whatever the State
9 has, although I have a rule, which Ms. Legette's forgotten,
10 and that's that jury's don't normally listen after 20
11 minutes, however, lawyers seem to think they are fascinated
12 by their words.

13 MR. WALKER: I was going to say in the neighborhood of
14 30 minutes, depending on what the Solicitor said.

15 THE COURT: I'm going to give you 40 if you need it.
16 Ms. Legette, since you want 40 minutes, after 35 minutes if
17 you're still talking, you will hear the familiar tapping.
18 That means you have five more minutes; do you understand?

19 ASST. SOL. LEGETTE: Yes, Your Honor.

20 THE COURT: Do you understand that, Mr. Walker?

21 MR. WALKER: Yes, sir.

22 THE COURT: The State will argue first, followed by the
23 defendant. Now, Mr. Walker's concerned about housekeeping,
24 do you intend to use your demonstrative exhibits and for the
25 record since nobody asked the witness to explain, one

1 demonstrative exhibit is a human body showing just the skin
2 that has two wire rods running through it, based on the
3 testimony of the pathologist. The other is just the inside
4 anatomy of the stomach portion of the body in which the
5 intestines have been removed so the jury can visualize the
6 internal organs of the body behind the intestines.

7 Now, Mr. Walker is concerned about these exhibits. Do
8 you intend to use the exhibits in your argument, Solicitor?

9 ASST. SOL. LEGETTE: Well, Your Honor ---

10 THE COURT: You can, but I want to know what we're
11 going to do with them after you've finished so that Mr.
12 Walker has his request complied with.

13 ASST. SOL. LEGETTE: Your Honor, if I use them in the
14 argument, which at this point, I don't see myself doing so,
15 we will remove them.

16 THE COURT: Ms. Stallings, it will be your job, along
17 with Mr. Davis, to take the demonstrative exhibits, okay?
18 And move them out of the jury's sight before Mr. Walker
19 comes to my podium. Now, counsel, despite my best efforts,
20 y'all still insist -- although, Mr. Walker has gotten pretty
21 good about trying to use the microphone. Adjust the rostrum
22 however you want, but I would urge you to use the
23 microphone. You don't realize when you're walking up and
24 down and pacing how difficult it is sometimes for the court
25 reporter to pick you up, so please remember that. If you

1 need to move the rostrum, you may do so.

2 Mr. Walker, do you understand they will be moving the
3 exhibits out of the jury's view to decide. The reason I
4 have to keep them is even though they are not in evidence
5 and won't be going to the jury room, if there is a question,
6 obviously, I need them here, because they were shown to the
7 jury during the trial of the case?

8 MR. WALKER: I would like the rostrum moved over by the
9 court reporter.

10 THE COURT: It has wheels and you can do so. I'm going
11 to let the solicitor move it wherever she wants it, but I
12 just ask you to use it. Any other questions, Mr. Walker?

13 MR. WALKER: No, sir.

14 THE COURT: Solicitor?

15 ASST. SOL. LEGETTE: We will go ahead and move the
16 exhibits -- I'm not going to use the ---

17 THE COURT: You're not going to use the demonstrative
18 exhibits?

19 ASST. SOL. LEGETTE: No, Your Honor.

20 THE COURT: Rusty, if you will move them out of the way
21 of the jury, because they are going to be coming in and out.

22 THE COURT: Is the State ready to proceed?

23 ASST. SOL. LEGETTE: Yes, Your Honor.

24 THE COURT: Is the defendant ready?

25 MR. WALKER: Yes, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, I'm happy
2 for people to remain. Once again, I caution you that there
3 will be no type of emotional showing, favorable or
4 disfavorable in the presence of the jury. I will enforce
5 that condition with the contempt powers of this Court. If
6 you feel you can't control your emotions, now is the time to
7 get up and leave this courtroom. Bring us the jury, Coach.

8 (12:25 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
9 AND THE FOLLOWING IS HELD ON THE RECORD.)

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, you've heard the evidence from the State of South
12 Carolina. We will now hear from the defendant. Mr. Walker,
13 you may call your first witness.

14 MR. WALKER: Your Honor, the defense rests.

15 THE COURT: Ladies and gentlemen, you have now heard
16 all of the evidence in the case. You will now hear the
17 closing arguments of the attorneys, followed by my charge to
18 you on the law of this case. I ask that you give the
19 attorneys your careful consideration. Ms. Legette?

20 ASST. SOL. LEGETTE: Thank you, Your Honor. May it
21 please the Court?

22 CLOSING ARGUMENT

23 BY ASST. SOL. LEGETTE:

24 Good morning. When we first met, I told you this was a
25 case about respect. And it is about respect; respect and

1 Quoteas Nesbitt wanting the respect that Quoteas Nesbitt
2 seemed to want from Cornelius White and from Bobo. But this
3 is also a case about choices. Choices.

4 *The Road Not Taken.* *The Road Not Taken* is a poem about
5 choices. And choices, two roads diverged in a wood and
6 sorry I could not travel both. And being one traveler
7 alone, I looked down one as far as I could see until where
8 it bent in the other road. And basically, the writer,
9 Robert Frost, goes on to say that I shall be telling this
10 with a sigh, days and days hence; two roads diverged in a
11 wood, and I, I took the one less traveled by. And that has
12 made all the difference. Choices.

13 September 6th, 2012, Quoteas Nesbitt made a choice. A
14 choice that brought us all here this week. That choice was,
15 that road was, murder, to kill Moray "Bobo" Holmes. That
16 night, Quoteas Nesbitt took away Moray Holmes' choice,
17 because Moray Holmes, as you heard from all the witnesses,
18 chose to walk away. He chose to walk away. He chose life.
19 Quoteas Nesbitt was having you turn your back on Quoteas,
20 Quoteas pulled out his gun and shoots Bobo in his back. A
21 choice. And that choice, Quoteas Nesbitt's choice to end
22 Moray "Bobo" Holmes' life is why we're here today. His
23 choice left the State of South Carolina no choice. No
24 choice but to pursue and to prosecute. And that choice,
25 ladies and gentlemen, leaves you here listening, and at the

1 end of this case, you'll be faced with a choice.

2 And once you have reviewed the evidence, the State
3 believes you will have no choice but to find Quoteas Nesbitt
4 guilty of murder and of possession of a weapon during the
5 commission of a violent crime of the murder of Moray "Bobo"
6 Holmes.

7 But now, ladies and gentlemen, before we tried this
8 case, before the learned trial judge tells you what the law
9 in this case is, let me lead you down the road of the facts
10 in this case. Now, I wasn't really a math scholar, but I
11 have found in my later years that the facts of these cases,
12 and the law of these cases, form an equation. The law is
13 what it is. And then you take the facts and you apply them
14 to the law, kind of like an equation. Like I said, I wasn't
15 really good at algebra, none of that stuff, trigonometry, I
16 can barely spell trigonometry; however, I have figured it
17 out. So let's take the facts and apply them to the law and
18 you will come out with your one choice, guilty.

19 Let us discuss the actual law of this case, because
20 see, it is not the State's contention to convict an innocent
21 man, just a guilty one. So should you find that once you
22 are done reviewing the facts of this case that perhaps the
23 State has not met its burden, if it doesn't fit, then quite
24 frankly, ladies and gentlemen, you will have to acquit him.
25 But the State submits that once you are done reviewing the

1 facts, reviewing the law, that you will be left with that
2 one choice. That one choice that Quoteas Nesbitt took from
3 each and every one of us that night he shot Bobo in the
4 back.

5 So let's go through this. Now, we're going to talk
6 about murder, and while we're doing murder, we're going to
7 talk about a few things to help you understand what murder
8 is. We're going to talk about why Quoteas Nesbitt is a
9 killer.

10 Now, let's discuss who said Quoteas Nesbitt is a
11 killer. But before we do, let's talk about what murder is.
12 Murder is the unlawful killing of another with malice
13 aforethought, either expressed or implied. Now, what does
14 that tell us? Murder is an unlawful killing. Unlawful
15 meaning not lawful. You don't have the right to do it.
16 Quoteas Nesbitt had no right to kill Bobo Holmes. There was
17 no altercation. There was no fight. There was no argument.
18 Bobo Holmes was not even trying to defend himself; he was
19 just walking away. Quoteas simply had nothing to do, but
20 just turn and walk away, but instead, what did Quoteas
21 Nesbitt do? Let's talk about identification.

22 What did Renatta Ellison say? See, identification,
23 you're going to hear about identification. Who can identify
24 Quoteas Nesbitt? Who is Quoteas Nesbitt? Who saw Quoteas
25 Nesbitt? Renatta Holmes. She said she knew Quoteas Nesbitt

1 since he was a child. Went to the Chase with her husband,
2 sitting in the car at perfect angle, and is one hundred
3 percent positive. She grew up around the corner from him.
4 You heard he would come over to her moma's house. That's
5 what Renatta Ellison Holmes told you.

6 Brian Manigo told you he knew Quoteas Nesbitt. He knew
7 him for a long time. Quoteas came up to the car talking to
8 him and Kevy. He even went through the video with you.
9 Here's the thing, you will have that video. Watch that
10 video. You'll have ample time to watch and rewatch and
11 watch again. Brian Manigo said he knew Quoteas. Quoteas
12 comes over asking, "Bobo got a problem with me." He asks
13 Kelvin Mitchell who was sitting in the car with Brian
14 Manigo. Now, I told y'all that the witnesses in this case
15 were from the pool hall; I told you that. I told you.
16 Brian, he's got a record. Kelvin's got a record.
17 Everybody's got a record. Coot's got a record. They've all
18 got records. They go to the pool hall. And for what? They
19 smoke a little weed. Yeah, you heard the pathologist say
20 Bobo had some THC in his system. What did Coot tell you?
21 "Man, we were going to smoke a blunt. He was coming back to
22 smoke with me." Yeah, I told you from the beginning, these
23 are who the people are.

24 So Brian said, "I know Quoteas Nesbitt." All these
25 things, Brian's on his own. Bobo: "I ain't got time for

1 that. I'm walking away." Walking away. Quoteas pulls out
2 a gun, shot Bobo in the back. Shot Bobo in the back, and
3 that's the recurring thing -- recurring thing -- recurring
4 thing, Bobo walked away. He turned and walked away. He
5 turned and walked away. The unlawful killing of another. A
6 man turns and walks away, you shoot him in the back,
7 unlawful killing.

8 Now, ladies and gentlemen, I'm a movie buff. When I
9 was a little girl, my parents used to always watch westerns
10 on Saturday afternoon. They were good times. And we
11 watched westerns, and there was a thing about westerns. You
12 know, you're going to see that video. Who was it? Captain
13 Chapman talked about how he had his hands on his hips and I
14 got to thinking about it and you know, with those westerns,
15 it seemed like the bad guys walked around with their hands
16 on their hips. And in the video, if you watch it, and watch
17 it again, that's kind of how Quoteas was standing; hands on
18 his hips the whole time. Moving side to side, just walking.
19 Then, Bobo walks away. In westerns, you know, they didn't
20 shoot people in the back. There was a code. There was a
21 code, ladies and gentlemen. There was a code. I wonder
22 what happened to the code. A man walks away, he's big.
23 He's a big fellow, 300 pounds, six-something, worked in the
24 woods. He turns and walks away, "Man, I ain't got time for
25 that. I ain't got time for that." So ladies and gentlemen,

1 let's talk about malice. We've got all these witnesses:
2 Kelvin Mitchell. He's known him for a long time. Bobo was
3 like a brother. Quoteas want to know, "Man, why Bobo ain't
4 speak to me?" Remember, Quoteas asked Cornelius, "Bo, you
5 ain't going to speak?" Quoteas wanted respect. When Bobo
6 turned his back on him, he turned his back on him.

7 Malice, ladies and gentlemen, let's talk about malice.
8 I told you this was a case about respect, and it is a case
9 about respect. Quoteas Nesbitt's demand for respect. But
10 Quoteas Nesbitt's lack of respect for others, his lack of
11 respect for Moray Holmes, and his lack of respect for the
12 law. This is also a case about evil, because malice, ladies
13 and gentlemen, malice means wicked, wicked, wicked heart,
14 evil intent. Oh, yeah, you see that evil intent in the
15 video. You might not be able to see his eyes, but you can
16 sure enough see that evil intent while he's walking around.
17 Oh, yeah, there goes Bobo. He going to holler at me. He
18 ain't been speaking to me. "Bo, why you been disrespecting
19 me, man?" Remember Coot? "Bobo, you be disrespecting me."
20 Oh, yeah, let's go back to malice. Two days before,
21 remember those two days before. What did the witness's tell
22 you? Man, I wouldn't have handled mine like that." I can
23 see him now standing there with his hands on his hips.
24 Quoteas Nesbitt telling his own brother, telling Bobo's
25 brother, "One of these days somebody gonna take care of

1 Bobo." Who else hears that? Somebody was Nicholas
2 Williams. "One of these days somebody gonna put a stop to
3 Bobo." That is malice. That is evil. That is wicked.
4 That is malice aforethought. Aforethought, meaning it has
5 to be formed sometime before. It can be a short period
6 before or it can be a long period before, but you know what
7 in this case, seems like it was a long time before. They
8 said they used to ride around together. You reckon Quoteas
9 was looking at him while he was riding in his car, Bobo was
10 bouncing to the music, boom-boom, boom-boom, Quoteas sitting
11 there thinking about it, wanting respect from Bobo. Then,
12 Bobo doesn't speak to him. Oh, yes, malice. And two days
13 prior, "somebody gonna take care of Bobo." "I wouldn't have
14 handled mine like that." And you know what, he didn't
15 handle his like that. You know how he handled his? Six
16 shots, ladies and gentlemen. Six shots. There are six
17 shell casings. He hit him twice in the back. Ladies and
18 gentlemen, malice, evil, without excuse, without cause.
19 That man was walking away. Just leave that man alone. Just
20 leave that man alone. Let that man go. That man came out
21 there -- if you watch that video, the light of his car were
22 still on. He didn't come for nothing. Coot said he came to
23 smoke. If a man wanna come smoke, a man wanna come drink,
24 let the man come smoke and drink. You ain't the police.
25 Let that man go. But, no, Quoteas had other things on his

1 mind. He had a wicked spirit, he had an evil intent. This
2 case is about respect, choices, evil and justice.

3 Ladies and gentlemen, malice. Now, malice has to be
4 either expressed or implied. What do I mean by express or
5 implied? Express, meaning you say it. Did he say it? Oh,
6 yeah, remember two days prior, "I wouldn't have handled mine
7 like that." "One of these days, somebody gonna put a stop
8 to Bobo." "Somebody gonna take care of Bobo." Somebody was
9 Quoteas Nesbitt. He said it two days prior, but nobody
10 thought Quoteas, man. Y'all been riding in the same car.
11 Why, Quoteas, why? Hate. Evil. Wicked. Just hating on a
12 man.

13 Malice aforethought, express or implied, it can be
14 either one. Implied: malice can be implied through use or
15 inferred meaning the use of a deadly weapon. A deadly
16 weapon is a gun or anything else that can cause death. In
17 this case, it was a gun. That's implied.

18 Ladies and gentlemen, that's your murder. And I know
19 that we haven't talked about everything that everybody's
20 said. But look at this, Quoteas went on to say what we've
21 already heard, "Why you ain't speak to me?" Quoteas, Bobo
22 walked away, he pulled out a gun, kept shooting. Nicholas
23 Williams, the same thing. The same story is consistent over
24 and over and over and over. And then there was Coot. He
25 walks away.

1 Ladies and gentlemen, we also need to talk about
2 everybody puts him there. Everybody puts Quoteas Nesbitt at
3 the Chase Lounge. They all put him there. They all put him
4 there. Kenya Kelly, she puts him there. Malachi, he puts
5 him there. Who says he was there? Let's talk about who
6 says he was there. Who says? They all say. Renatta Holmes,
7 he was there. Cornelius White, he was there. Kenya Kelly,
8 he was there. Malachi, he was there. Brian Manigo, he was
9 there. Kelvin Mitchell, he was there. Nicholas Williams,
10 he was there. Donald Odom, he was there. Jason Chapman, "I
11 know him. He turned himself in to me." "That's him in the
12 video." How can nine people be wrong? How can nine people
13 be wrong? They're not wrong. They are not wrong. Quoteas
14 was at The Chase the night of the murder and Quoteas had to
15 kill Moray Holmes. That's your answer. He killed Moray
16 Holmes.

17 But now ladies and gentlemen, there is another charge:
18 possession of a firearm during the commission of a violent
19 crime. Let's talk about this. This is real simple, because
20 if you find him not guilty of murder, then there's no need
21 to even consider this charge. But if you find that the
22 State has met its burden, that you cannot write off nine
23 people who put him at the Chase Lounge and nine people who
24 all, one, by one, by one, by one, all walk in here and sit
25 on the stand under the scrutiny of the entire courtroom and

1 Mr. Walker, and told you the same consistent story over and
2 over and over and over again, then you can talk about this.
3 Let's discuss it.

4 Possession of a firearm during the commission of a
5 violent crime. A person, meaning Quoteas Nesbitt, is in
6 possession of or visibly displays -- you see it on the
7 video: boom, boom, boom, boom, boom, boom. You see it on
8 the video. Watch the video. I didn't want to insult you by
9 keeping you here watching it over, and over, and over again,
10 but you'll have time; watch it. Watch it for yourself and
11 you will see the gun is in his hand.

12 During the commission of a violent crime. And a
13 violent crime is murder. The judge himself will charge you
14 that murder is a violent crime. So ladies and gentlemen,
15 that's your case: Murder and possession of a weapon during
16 the commission of a violent crime. But now, we want to add
17 up the facts. Let's just add it up. We talked about the
18 facts, so now we're going to just add up the facts. And let
19 us add, because I do know how to add, subtract, multiply and
20 divide. I told you I wasn't real good at the rest of that
21 stuff, but we're going to add right now.

22 Adding up the facts, Quoteas Nesbitt is guilty. Number
23 one, "Quoteas shot and killed my husband," Renatta Ellison
24 Holmes said that. Plus, "Quoteas shot Bobo." Brian Manigo
25 said that. Kelvin Mitchell told you, "Quoteas killed Bobo."

1 Kelvin Mitchell's been shot before; carries a gun. He was
2 scared. I reckon he might have been scared, he said he was
3 scared at the hospital. Not only that, Nicholas Williams,
4 "Quoteas killed Bobo." Donald "Coot" Odom, "Quoteas killed
5 Bobo." Jason Chapman, "Quoteas Nesbitt is the man in the
6 video." It's simple. Add it up, ladies and gentlemen.
7 Quoteas Nesbitt is a murderer. Quoteas Nesbitt is a killer.
8 Quoteas Nesbitt is guilty.

9 Ladies and gentlemen, let's talk about a guilty man and
10 what a guilty man does. He's guilty. You've already
11 decided. The State submits to you he's guilty. But what
12 does a guilty man do? A guilty man knows in his heart when
13 he knows his wicked, evil heart has made a choice for him.
14 What does a guilty man do? A guilty man runs after he
15 commits murder. Watch the video. Some said he hopped -- he
16 hopped. And when you watch the video, watch the video,
17 after he pulled out the gun and shot, he hops away. He hops
18 away. He runs away. A guilty man stays on the run after he
19 commits murder. How long was he gone? Not one day, not two
20 days, a whole week went by; seven full days. He was nowhere
21 he normally was. Any other time he would be readily found.
22 Nobody knew. They went to his mom's house that night,
23 couldn't find him. He ran. Then, he stayed in hiding. A
24 guilty man does that. Waited seven days before he turned
25 himself in. And guess what he did? Remember we didn't have

1 a gun to compare shell casings to? Remember that? He
2 turned himself in, but he didn't bring the gun with him.
3 Oh, yeah, that's what a guilty man does.

4 Now, ladies and gentlemen, let's talk about the red
5 herring. The red herring. I call them Sirens, because see,
6 I told you earlier that I was a movie buff. I love movies.
7 *Pirates of the Caribbean* is one of my favorites. I notice
8 about *Pirate of the Caribbean's*, there's a part in there
9 about Sirens. And the Sirens, they warn the pirates about
10 the Sirens. The Sirens sing this song and they will lull
11 men out of the ship and they will lull people to sleep,
12 cause you to miss the ball. The ball we're going by, the
13 chance goes by, and you miss it, and you never get it back
14 again. But I want you to keep your eye on the ball, ladies
15 and gentlemen. Do not be lulled by the Sirens. Do not let
16 the Sirens put you to sleep. What are the Sirens? Do not
17 be misled, the cigarette butt. There was a big production
18 made about that cigarette butt. Oh, there was DNA on that
19 cigarette butt. Uh-huh, there was DNA on that cigarette
20 butt. Yep, sho 'nuf. Guess whose it wasn't? It wasn't
21 Quoteas's DNA. So guess what else? Quoteas was not smoking
22 the night he shot and killed Moray Holmes. Oh yeah, he was
23 not smoking, and when you watch that video, you notice there
24 were people out there after the thing is over, after the
25 shooting is over, and they could have put it there. We

1 don't know whose DNA it is. But we know one thing, witness
2 after witness after witness told you that Quoteas wasn't
3 smoking. One witness said he couldn't have been. He had a
4 towel wrapped around one hand and he had one hand on his
5 hip. Look at the video; Quoteas wasn't smoking. That's a
6 red herring. Do not be lulled to sleep by that. He could
7 not have been smoking. He was not smoking. But I tell you
8 what he was doing. He was laying in wait to ambush Moray
9 "Bobo" Holmes. Because that's what it is, an ambush and a
10 bushwhack. That's what they call it in the old west. But a
11 man's gonna have some respect, and a man that shoots another
12 man in the back ain't got none for the law.

13 Ladies and gentlemen, how about these other guns you've
14 heard about? Let's talk about the other gun that came into
15 play in this case. The other guns, they mean nothing; they
16 mean nothing. The 380, Paris Williams, nephew of Bobo was
17 shooting the gun, he was upset that his uncle was killed.
18 The .40 caliber in Kelvin Mitchell's car? It was turned
19 over to SLED. It was analyzed and came back not to be the
20 murder weapon. Brian Manigo, if he could have found that
21 gun, would have helped Bobo that night. He would have taken
22 care of the situation, but he could not get his hands on it
23 to finish or fix it.

24 Coot was looking for it, couldn't get his hands on it.
25 That gun was not the murder weapon; we know this. We talked

1 to Mr. Smith yesterday and what did Mr. Smith tell you? I
2 never got the gun. Why didn't you get the gun? Guess why?
3 Because when Quoteas turned himself in after being on the
4 run for seven days, a guilty man, he didn't bring the gun
5 with him. And why would a guilty man bring a gun with him?
6 Why? I know why. The gun we haven't recovered. The gun
7 you didn't hear about? Guess what, the gun that wasn't
8 mentioned? That's Quoteas Nesbitt's gun. The gun that
9 wasn't compared? That's Quoteas Nesbitt's gun. The gun
10 that wasn't turned over? That's Quoteas Nesbitt's gun. The
11 murder weapon? That's Quoteas Nesbitt's gun.

12 Oh, yeah, the other red herring, the GSR kit. GSR:
13 Gunshot residue. Ms. Berry said something about chromium,
14 sounded like something off of X-men; I don't know, you see,
15 proper names, but she said three elements, but she also said
16 one important thing. You expect to find GSR on a person
17 that's been shot. She said another important thing, you
18 don't take GSR kit after six hours, but guess what? You
19 don't do a GSR kit after a man has been on the run for seven
20 days and then turns himself in. Because guess what? It
21 absorbs into the skin. It gets on your clothes. It's no
22 longer there. Guess what Quoteas Nesbitt didn't have when
23 he turned himself in? He didn't have GSR. He didn't have
24 the murder weapon; he didn't bring none of that. Do not be
25 misled, ladies and gentlemen.

1 So ladies and gentlemen, where we are is simply this,
2 we're at a point now where it's time to make a choice. It's
3 time to decide. When you enter your deliberation room,
4 you'll be faced with two questions. Is Quoteas Nesbitt
5 guilty of murder and possession of a weapon during the
6 commission of a violent crime? Is Quoteas simply not guilty
7 of murder and possession of a weapon during the commission
8 of a violent crime? Those are your two questions. You have
9 a choice. The State believes -- the State submits that
10 there is only one choice. Quoteas Nesbitt is guilty of
11 murder and possession of a weapon during the commission of a
12 violent crime. All the reasons why he's guilty have been
13 laid out before you. Do not be misled by the sirens, the
14 red herrings. I want to leave you with the pool hall -- the
15 pool hall. I told you in the beginning that the witnesses I
16 brought before you would be not perfect. They would be akin
17 to something that would happen on a pirate ship. I
18 mentioned to you my favorite movie, *Pirates of the*
19 *Caribbean*. Whatever happens there at the pool hall, the
20 pool hall witnesses keep at the pool hall, and the things
21 that happen at the pool hall, hey, they have a good time.
22 They drink, they hang out. And whoever wants to, whosoever
23 will, let him come. But something I've noticed about
24 *Pirates of the Caribbean*, even though they were pirates,
25 there was a point in time where when they had to become a

1 bigger force that would not be stopped, they formed an
2 alliance, and all the pirates, people who were of not so the
3 best: they smoke a little bit, have a prior record, they
4 came together, and they convened and they told the truth,
5 and they stood against thieves. That's what you have here:
6 Donald Odom, Kelvin Mitchell, Brian Manigo, Nicholas
7 Williams, Malachi Sanders, Renatta Holmes, Cornelius White,
8 Kenya Kelly. They all came here to tell you their story,
9 naked and unashamed. Telling you what they saw.

10 Ladies and gentlemen, because they came in here and
11 stood up and told you what happened, when on September 6th,
12 2012, Quoteas Nesbitt and now we know him as the man who did
13 it. The judge will tell you that he wears a robe of
14 righteousness. Well, ladies and gentlemen, let me take off
15 his robe of righteousness, because right now, ladies and
16 gentlemen, the robe of righteousness is tattered shreds, and
17 I cast it down among you. I cast it down. There is no robe
18 of righteousness for Quoteas Nesbitt, because Quoteas
19 Nesbitt no longer has that robe. Because Quoteas Nesbitt,
20 when the doctor told you that there was three liters of
21 blood -- not one liter, not two liters, almost three liters
22 of blood in Moray Holmes's body, ladies and gentlemen, that
23 robe is gone -- that robe is gone. Quoteas Nesbitt is a
24 guilty man -- a guilty man. And it's time for you to
25 decide: evil or justice. A just verdict requires the truth.

1 Speak the truth, that's why we're here. A just verdict is
2 that Quoteas Nesbitt is guilty of shooting Moray Holmes in
3 the back twice, killing him, while his body filled up with
4 blood, three liters of blood in his body. A just verdict
5 requires that. There is no more righteousness. There is no
6 more robe of righteousness for Quoteas Nesbitt, because
7 right now Quoteas Nesbitt is a guilty man and ladies and
8 gentlemen, it is time to speak. What side are you on?
9 Justice, he's guilty. Evil is what Quoteas Nesbitt is.
10 Wicked, evil intent, that's what he is. Finding such,
11 because ladies and gentlemen, when you find him, Quoteas
12 Nesbitt with his wickedness will seek each other and
13 justice, your just verdict will seek the truth, Moray Holmes
14 murdered by Quoteas Nesbitt. Thank you.

15 MR. WALKER: May it please the Court?

16 THE COURT: Proceed.

17 CLOSING ARGUMENT

18 BY MR. WALKER:

19 First, this was a case about respect, then it became a
20 case about choices. But what it's really a case about is
21 identification. That's the issue. In the video, who was
22 the person doing the shooting?

23 In the elements charge the solicitor put up for you a
24 moment ago, was actually a little bit short of a couple of
25 things, because in addition to the things she put up there -

1 - actually, unlawful killing is two elements: you have to
2 kill and you have to prove it's unlawful. But there's also
3 two elements that she didn't put up there. One, that it
4 occurred in Colleton County, that the crime occurred in
5 Colleton County. And the second one is the one that this
6 case is about: the identity of the person. The element is
7 that you would have to find that identity of the person who
8 did the crime was the defendant in order to sustain a guilty
9 verdict.

10 So this case is about identity. The only choice is for
11 you. After listening to the evidence, you're going to call
12 someone a murderer on the testimony of people that have such
13 a lack of respect that they will sit on this witness stand
14 and tell you bold-faced untruths.

15 They were caught doing it. Before we go into each of
16 the individual witnesses, I want to talk about some
17 concepts. We talked earlier and you've heard about every TV
18 show on crime you've heard about beyond a reasonable doubt.
19 Well, what does that mean? That's kind of legal mumbo-
20 jumbo. Some of you might have served on a jury before; you
21 have criminal or civil. And those are the suspenders that
22 we have jurors hold themselves to when making a decision.

23 In a civil court, where the issue is money, pretty much
24 the standard is more probable than not. There is a little
25 more evidence for one side than the other. You picture

1 often in courthouses, you see the scales of justice weighing
2 out. If one scale is just a little bit higher than the
3 other, that's that standard of more probable than not.

4 Then, we move into criminal court and we have a much
5 higher standard that you must test your decision-making by,
6 which is beyond a reasonable doubt, and that's where that
7 comes from. Because if the stakes are so high because of
8 your function, standing between the power of an accused
9 citizen. Well, between an accused citizen and the power of
10 the State and all the resources they bring to bear in the
11 prosecution, and because as the Solicitor said, we want to
12 be sure, very, very sure that the person we're labeling as a
13 criminal after a trial is an actual criminal that did the
14 actual crime.

15 They talk about justice and of course, there's an
16 injustice when someone is killed and we hope that we catch
17 the right person. But if we pick the wrong person, we've
18 doubled that injustice, because not only is an innocent
19 person and the actual culprit not being punished, that
20 innocent person is. That's why we have that standard so
21 high.

22 Now, the judge will tell you that a reasonable doubt is
23 the sort of doubt that will cause a reasonable person to
24 hesitate to act when making an important life decision.
25 This is certainly an important life decision for Quoteas,

1 and I submit it's an important life decision for you as
2 well. Of course, you have to live with this decision.

3 The judge talked to you earlier in the trial before we
4 began that you shouldn't worry about his decisions on the
5 law; that was his function. He's the judge of the law and
6 you are the judge of the facts. He said don't worry about
7 my decisions on the law. There are people in place to
8 review those decisions, and if I make an error, that can be
9 corrected. You are the final judges of the facts. There is
10 no reviewing authority of your decision on the facts. So
11 the decision you make is very serious, because you're
12 ultimate judges of those issues.

13 The judge told you at the beginning of the trial, and
14 we discussed earlier that when you're sitting there, every
15 piece of evidence, you're clinging to that robe of
16 righteousness or innocence that we say everyone accused of a
17 crime has. And because of the high standard, you should be
18 dragged. You should be very clear. You should not have any
19 reasonable doubt about your decision at the end of the trial
20 and when you've returned in your verdict form.

21 So it's the State's job, the State of South Carolina,
22 to help you make your decision. They provide you with the
23 evidence. They provide you with the witnesses. It's their
24 job to make sure you feel comfortable beyond a reasonable
25 doubt in making that decision. Don't do their job for them.

1 Imagine you're at the Grand Canyon. A guilty verdict
2 is on the other side, and that's where the State wants you
3 to go. Think of it as the witnesses and evidence you hear
4 and are presented. The State is building you a bridge that
5 you feel comfortable, that you would not be worried about
6 your safety or the perils of a failure to get to where the
7 State leads you to go. But if they don't build you that
8 bridge, they haven't gotten you there.

9 Now, after I speak to you, the judge will speak to you,
10 and then the case will be given to you, and then you will go
11 back and you will deliberate and discuss your recollection
12 of the evidence. You'll be able to view the evidence and
13 exhibits that were entered in evidence and discussed. It's
14 important that you have, as I said earlier, a critical
15 mindset of all the evidence and look at it carefully and how
16 each piece relates to the other.

17 And as you deliberating, listen to not only each other,
18 but yourself. Watch out for what I call "not guilty" words.
19 You start to think to yourself in your own mind or you're
20 having a discussion with another juror about an outcome, or
21 you're thinking about how something should be, and you're
22 thinking about it in terms of maybe, probably, could have,
23 might; these are words of supposition. These are words of
24 probability. They're not words of certainty beyond a
25 reasonable doubt.

1 I want to talk briefly, honestly, we had a lot of
2 evidence in this trial, and some of it I know can be kind of
3 boring, and the State has to do their job because they have
4 to prove it's in Colleton County. So you hear a lot of
5 things that maybe aren't related to the primary issue in
6 this case which is identification. I'm not going to waste
7 time going over each and everything. I'm going to focus in
8 on the issues. As to the two charges, the first is murder
9 and the second is possession of a weapon during the
10 commission of a violent crime. Don't worry about the
11 possession of a weapon during the commission of a violent
12 crime. If, after you deliberate, you find Quoteas guilty of
13 murder, you can go ahead and find him guilty of that. If
14 you find him not guilty, then you should find him not guilty
15 of possession of a weapon during the commission of a violent
16 crime. I'm not going to say anything else about it, because
17 again, the issue is who on the screen is pulling that
18 trigger? We can see an unlawful killing. We can all see it
19 happen. We all know it happened at Chase Lounge in Colleton
20 County from the testimony. Identity is the main issue and
21 that's what you have to focus on. You didn't hear from
22 Quoteas, and the judge will tell you when he addresses you
23 in a moment that that is not something you can consider at
24 all in your deliberations. In fact, you did kind of hear
25 from him because he said he's not guilty and that's why

1 we're having this trial; that's what he'd say.

2 Another thing about that, something I encourage, the
3 judge told you earlier, we have a lot of little rules in
4 Court that people aren't aware of. One of our rules is that
5 if the defense in a case puts up any evidence or any
6 witnesses, then the State gets to talk to you last, and I
7 covet the opportunity to have the last argument and speak to
8 a jury. So from my prospective, it has to be a payoff to
9 lose that chance to speak to you.

10 Now, the State seems to confuse presence with
11 identification. They say, well, he was there. Well, there
12 were lots of people there at the Chase Lounge. Being
13 present doesn't mean you're the person on the screen
14 shooting the gun, or we would have a room full of people
15 that were at the Chase Lounge that night. We have to focus
16 in narrowly on the identification. So how do we do that? I
17 submit there are three ways that y'all will do that in your
18 deliberations.

19 First, you will look at the video. And that is a
20 unique -- well, not unique, but it's certainly not common
21 that you have a full record of the actual crime. So you
22 don't have to worry about what somebody said happened, you
23 can see it. We also ask you to look at that in the idea
24 that looking carefully that you reach the same conclusion
25 that some of the people who spoke to you do.

1 The other identification would be through statements of
2 witnesses who said, "I was there and I saw Quoteas do it."
3 The statements would be how you would evaluate
4 identification issues. And finally, you can evaluate the
5 physical evidence that was recovered and the testing that
6 was done. And again, it's really the State's job to put
7 all that together for you so that it is easy to make that
8 evaluation. And if you're finding that difficult and you're
9 saying maybe and probably and could have, then they didn't
10 do their job.

11 So how could the State have helped you make this
12 decision more easily? Philosophically, if a crime is
13 committed, we would like for a detective or a police agency
14 to say everyone is a suspect. We're going to gather all the
15 evidence we can find. We're going to follow every lead up
16 to the fullest extent we can, and let the massive amount of
17 evidence that we have eliminate everybody until we've
18 narrowed it down to one. Unfortunately, we've had the
19 problem, and we've had it in this case, that early on law
20 enforcement decided who it was. So it wasn't necessary to
21 follow every lead or do a full thorough investigation.
22 Leaving you to do their job for them.

23 Basically, people didn't want to talk to us, so we just
24 walked away. They could have asked the CID and written down
25 names and addresses and contacted them later, followed up,

1 spoken to them when there wasn't a crowd of people around,
2 checked into other witnesses. And let's talk about, just
3 briefly, and I'll mention it again later, I'm sure; but
4 think about the category of witnesses that you have seen.
5 If Mr. Holmes had been killed at his home, these are the
6 witnesses you would expect to see, close friends and family.
7 But he was killed in the middle of a public parking lot in a
8 public place and you haven't heard from any disinterested
9 witnesses. Everybody in that family has got their story
10 straight.

11 What else could the police have done? They could have
12 attempted to ask Inv. Bazzle, did you ask the owner for his
13 credit card receipts that night, maybe get some names that
14 way. No, I didn't do that. Maybe in that club or in that
15 parking lot was someone who did have a beef with Moray
16 Holmes. You heard a lot of evidence that Quoteas never had
17 a beef with Moray. A lot of sloppy investigating. Det
18 Gathers couldn't even remember when she took statements from
19 arguably the State's most important witness, Renatta Holmes.
20 She can't remember if it was 10 days apart, two days apart,
21 what order they were in. It's important because those
22 statements were inconsistent.

23 What else could they have done besides gather more
24 evidence they decided they didn't need. They could have
25 investigated further the evidence they did have. Could have

1 been more thorough. We don't dust shell casings; it's way
2 too expensive. We don't have any money. There's a lot of
3 Tahoe's and Ford Crown Vic's driving around out there. I
4 think they could afford a little fingerprint powder. How
5 hard is it to check? Why not eliminate it. Maybe you would
6 get a fingerprint. Maybe you would get a solid ID of
7 someone that you know touched that gun. But we're not gonna
8 check and we're gonna ask the jury to do our job for us. I
9 mean, that would have been the perfect piece of evidence: a
10 thumbprint off of a round that was fired into Mr. Holmes.

11 How easy would your decision be at that point if you
12 had it? That's part of their burden is to provide you with
13 that evidence or at least try to. You should hold that
14 against them. You shouldn't give them a pass on it. When
15 they make deliberate decisions to deny a jury information,
16 you shouldn't fill in the gaps for them.

17 So let's talk about that first category of evidence we
18 seen that was the videotape of the Chase Lounge. You see
19 what happens. You have no question in your mind as to what
20 happened. You don't have to worry about whose version is
21 this or who was where, who's giving self-interested
22 statements. The video is independent. It's not lying to
23 you. It has no agenda.

24 On that video, you cannot see anyone's face. You sat
25 in the courtroom with Quoteas for three days. Watch that

1 video. Did you identify anybody on that screen? If you
2 couldn't, you shouldn't necessarily think that anybody else
3 could. It would be a shame to call someone a murderer
4 because they have their hands on their hips or on their belt
5 or in their pocket, depending on the testimony you heard.
6 It would be a shame because somebody has a gait that's not a
7 limp, it's maybe a hop. But when you watch that video, the
8 shooting happens, and I'm sure you will watch it many times.
9 The person seems to kind of back away, and then he doesn't
10 seem to me to have any problems running.

11 Does the person walk funny to you when you're watching
12 it? The video is fantastic evidence for the elements of
13 murder that have to do with what happened. It is terrible
14 evidence for the deciding factor in this case which is
15 identification; deciding who did it. Without facial
16 features or some dramatic physical feature, like one leg, or
17 someone that's six foot, eight inches tall. Somebody that's
18 dramatically different, a rare distinguishing feature,
19 you're just guessing, and guilt's not something you want to
20 guess at.

21 The State say the person in that video was Quoteas and
22 that there was premeditation and that he somehow ambushed
23 Mr. Holmes in the parking lot and all this bad blood going
24 on. The video doesn't show that. The video shows two
25 people walking up, having a conversation, a brief

1 conversation, there's some little movement around the arms,
2 and one person walks away and is shot. But the two people
3 are walking towards each other. One is not trying to get to
4 the other and one is not trying to get away from the other.

5 So let's look at the statements that we have. Because
6 the Solicitor puts a huge amount of stock in these people
7 that come up here and say that Quoteas did it. That's
8 Quoteas, I saw him do it. I want you to do the math. Look,
9 I've got one, two, three, four, five people that say it. I
10 can fill this courtroom with people that say the moon
11 landing was fake. It doesn't mean it happened. If
12 everybody's got their story straight, the mere numbers
13 doesn't signify anything. It's whether you believe it or
14 should believe it. Generally, the State kept asking
15 witnesses, do you know of any problems between Quoteas and
16 Mr. Holmes? No. No. They hang out, they talk, never had any
17 problems. Do people that never had any problems just all of
18 a sudden have a shooting in the middle of the parking lot?
19 Quoteas had no problems. Quoteas was cool. Ms. Holmes we
20 pulled up, saw Quoteas, didn't think anything of it. The
21 State is working backwards in light of what happened.
22 They're trying to make some kind of big things out of
23 statements that happened a couple of days earlier that they
24 say Quoteas made.

25 Even if you take what their witnesses say on face value

1 that Quoteas made these statements two days earlier, you
2 would have to put them in context. Mr. Holmes had just had
3 an encounter with two young men who had accosted him about a
4 gun. Sounds like Mr. Holmes has no problem running into
5 problems on his own without Mr. Nesbitt around.

6 He's gonna get his. Somebody's gonna get him. Keep
7 running around with those kind of people, it could happen;
8 and it did. One of Renatta Holmes's statements said, the
9 one that she describes the shooter as a young man in his
10 20's wearing a white shirt would fit perfectly with someone
11 like that. But how could you know that their ambiguous,
12 that those statements don't show any kind of premeditation
13 or bad attempt. And you can know that because of what the
14 reaction of the people was to them. If they were bad
15 statements, if they were mean statements, they would have
16 been worried about it, but everybody said he started the
17 air, he's mouthing off, didn't feel threatened; that's all
18 they were, they were statements. Because the people that
19 were with him and knew him didn't think anything of it.
20 They don't show any kind of beef or intent. There's no
21 reason for him to have a beef or intent. We haven't heard
22 that from anybody.

23 Mr. Holmes' brother said Quoteas was just talking in
24 the air. Now, some of those statements, people say, I was
25 there. Quoteas was the shooter. In order to find that, you

1 would have to find those statements to be reliable, and they
2 aren't. If they aren't reliable, how are you going to
3 determine that? Some factors you can look into are when
4 were those statements given? Are there any inconsistencies
5 in the statements? Either internally or with each other?
6 Is there a reason for the person giving this statement to be
7 partial or biased? The demeanor of the witness that you
8 observed on the stand. We have a reason to be untruthful.
9 That's how you would evaluate to see whether or not you
10 should believe them. And use those as a basis in the
11 finding of guilt. Now, when we're talking about the
12 witnesses you've heard of, the witnesses that do an ID, one
13 of these things is not like the other. We have Jason
14 Chapman from the police department and that's an interesting
15 identification for a couple reasons. One is the timing.
16 This incident happened, we're a couple weeks shy of two
17 years ago, and he testified three weeks ago in a pretrial
18 meeting for this case, and they say, "Hey, we need to see if
19 you can identify somebody." So he goes into a pretrial
20 meeting which he knows is for this case, where he knows
21 Quoteas Nesbitt is the person they think did it. Where he's
22 shown a video and he expects Quoteas to be on it. You've
23 experienced in your life, you've heard, we see what we want
24 to see. If you're expecting to see something, that's what
25 you're going to see. I've heard it said that to a

1 carpenter, everything looks like a nail, and that's what
2 happened. It's completely unreliable. That's not how you
3 would identify anything if you were truly trying to get a
4 fresh identification on something. If you really were
5 curious about getting an identification, they would have
6 shown that video to Det. Chapman two years ago. So you
7 shouldn't use Det. Chapman's identification in your
8 determination of this case for identification purposes.

9 However, Det. Chapman said that testimony and
10 identification is useful for another purpose. It tells you,
11 the jury, that the State has no confidence in their other
12 identification witnesses. They know they're horrible, so we
13 need somebody that isn't partial, isn't biased, isn't
14 related, isn't a close friend. Where is the badge that has
15 that aura of respectability? Is it a pirate? Is it a pool
16 hall guy to come in and say that it's the defendant?

17 The fact that a week and a half before trial and a two-
18 year old case need him to come in and identify tells you
19 volumes about their opinion of their other witnesses. Let's
20 look at those other witnesses, the pool hall people, or as
21 the Solicitor accurately called them the pirates in her
22 opening statement and then again. What did she say? All
23 the pirates come together.

24 Kelvin Mitchell got up and testified to you. He's
25 related, a family member to Mr. Holmes. First time anybody

1 in law enforcement ever heard from him was August the 19th
2 of this year. Nicholas Williams, close friends with Mr.
3 Holmes, also Mr. Odom that we heard from. He said, "I never
4 called the police; just got a subpoena. Got that subpoena
5 August 15th of this year. He's been keeping in touch with
6 the status of the case through his good friend, Mr. Odom.

7 Mr. Odom, that was a great performance. What did he
8 tell you when I asked him about his inconsistent prior
9 statements? Well, this is my statement now. Got any reason
10 to name Quoteas Nesbitt and maybe say something that wasn't
11 true. "You don't have any problem with Quoteas Nesbitt do
12 you, Mr. Odom?" "No." Seemed to have a little problem when
13 I brought up the fact that his wife was living with Quoteas.
14 Seemed that all of a sudden he developed a problem pretty
15 quick. What better way to get rid of your wife's lover than
16 get him locked up?

17 And we recall Mr. Odom and all these other witnesses,
18 and they come in here and they tell you what happened, I was
19 there. I got my facts down. They've all watched this video
20 that you're gonna watch. They all know exactly what
21 happened, regardless of where they were, if they were
22 looking, or if they were actually there. They've seen that
23 video and they can compare it back to you what's on that
24 video with whatever embellishments they feel necessary.

25 Mr. Odom said I was there. I was five feet from him

1 when it happened. I heard everything. The video doesn't
2 show anybody within five feet of that happening. He said
3 he'd been working on his story for 23 months. And you got
4 to hear it and experience it. Brian Manigo came in, also
5 related to Mr. Holmes. Didn't care -- the police didn't
6 hear from him until the end of November of 2012 where he
7 gave his statement. Went on the stand and admitted, "Well,
8 I gave you false information in that statement about what I
9 heard." Look at the timeline of the events that were
10 brought on in Mr. Manigo's life that may have caused him to
11 come forward and be helpful to police.

12 Mr. Manigo had been arrested on two counts of attempted
13 murder. Those charges were pending. I'm not sitting here
14 telling you that the Solicitor's Office offered him anything
15 in exchange for his testimony. But if one was accused of
16 those things, one might be interested in doing whatever they
17 could to help themselves out. And perhaps showing yourself
18 to be cooperative in a murder investigation would work out
19 alright for him.

20 We heard that in February of this year, it went from
21 two counts of attempted murder and he ended up with
22 probation; whether or not done there, he's still got to be
23 helpful because if he gets in trouble again, he could go to
24 jail for 10 years and he's got pending charges. So he's got
25 to continue to be helpful. Because if he makes them mad, he

1 could violated on his probation, which he does not want.

2 Which brings us -- well, let me talk about this first.

3 If you had a close friend or a family member that was the
4 victim of an awful crime, wouldn't it seem like the natural
5 reaction to be if you had information that could be helpful
6 to beat down the door at the police station and give it to
7 them. But we're seeing statements months and years later.
8 For people that are so distraught and overwhelmed, it's not
9 the behavior you would expect. It should be raising huge
10 red flags. Renatta Holmes, the person you would think be
11 most motivated to be honest and helpful, yet she's
12 untruthful. She told you she didn't tell the truth to Det.
13 Chapman when she was on the stand; I asked her. She said,
14 "No, I didn't do that." She said she didn't have a gun in
15 the car. What did Det. Chapman say? Yeah, she came and got
16 her gun. She said it was taken out of her car. The day
17 after the shooting. Her husband isn't even dead a day, and
18 her priority is to go retrieve a gun from the police
19 station. Said Mr. Holmes didn't handle guns. Didn't have a
20 gun in the car. The car, it was his car, that he washed
21 twice a day, maybe that's where he got that gunshot residue.
22 She gave two statements. The only witness that you've heard
23 from that gave anything close to a contemporary statement --
24 her two conflicting statements are what get us on the
25 Quoteas Nesbitt train. Two different dates on them. What

1 are they given a day apart? Ten days apart? The important
2 thing, which raises a giant red flag around, one statement
3 said it's Quoteas. The other said I saw a medium build man,
4 probably in his twenties, wearing a white shirt firing a
5 gun. Later in that same statement, she said that she failed
6 to mention initially that "when we first pulled in, I saw
7 Quoteas Nesbitt standing near the car that Kelvin Mitchell
8 was driving." Now why is that important? The State asked
9 her why would you do that and not actually name Quoteas as
10 the person shooting. She said, "Oh, I was frustrated,
11 flustered, I just forgot." We know that can't be true
12 because it might be believable if we already didn't know
13 that she didn't tell the truth. It might be believable if
14 it had just given a description: a medium built man in a
15 white shirt. She came in then and said, "Oh, I forgot to
16 say it was Quoteas." But we know that's not true because
17 that's what they're trying to say happened. But we know
18 it's not true because she mentioned Quoteas in that same
19 report and the internal logic of those statements doesn't
20 fit. It doesn't make sense to, one, describe a person when
21 you know who they are and can just say their name. And two,
22 in the same statement give a description of a person in one
23 context and then use their name in another without at some
24 point saying, "The person I described is person X."
25 Remember her direct testimony, she stated Quoteas was lit up

1 and stood out. If that were true again, she wouldn't have
2 had to give a description of the shooter, if she knew
3 Quoteas and she could have just said it was Quoteas. So we
4 got pirates. We got a case built on pirates. All these
5 people are friends and family. There is no independent --
6 you can treat them all as one witness, frankly. Where are
7 the other people that were there that night? Nobody. No
8 one you've heard from.

9 Physical evidence in this case doesn't have any bias.
10 The solicitor said in her opening statement that this isn't
11 a CSI case, and that isn't true. They just want you to
12 ignore the CSI evidence. So watch out of the red herrings,
13 the red flags. 380 means nothing. Well, it means Ms.
14 Holmes wasn't telling the truth, because she said, "I didn't
15 have a gun." and then she went and told Mr. Chapman, "Yeah,
16 I did. Paris took it out of my car." "GSR means nothing."
17 Well, yes, it does. It shows, again, she's not telling the
18 truth. There's a gun in her car and that's where we could
19 have gotten the gunshot residue from. The investigator said
20 in his affidavit for the application of the DNA sample, we
21 want it because it's material to guilt or innocence. And
22 what the State wants you to do is apply that evidence when
23 it shows guilt. And all we're asking for is to be fed out
24 of that same spoon. It didn't show guilt. It shows
25 innocence. Jeff Scott, why don't you send the food cups and

1 containers to be tested? He said they have a backlog and
2 they want us to send our best stuff. So he sent the
3 sunglasses and the cigarette. Jeff Scott said the cigarette
4 -- what did he say about that cigarette? He said it was
5 very valuable evidence. He said they hold DNA well and it
6 did in this case. He said it was very fresh, located close
7 to three shell casings, and we don't know whose DNA is on
8 that cigarette. WE know it wasn't Quoteas.

9 The State is tasked with building you a bridge and that
10 bridge is rickety and unsafe and it's still under
11 construction. Their workers in orange vests are Renatta
12 Holmes, Brian Manigo, Mr. Odom. The State wants you to do
13 their job for them. They want you to ignore unreliable
14 building materials, gaps in the span. A reasonable person
15 would hesitate to act in crossing the bridge they were
16 building. The State of South Carolina is sending you onto a
17 structure built by pirates, but you're not crossing a
18 bridge. You're walking the plank. I ask you to return a
19 verdict of not guilty. Thank you.

20 THE COURT: Madame Foreperson, my charge is probably
21 going to take about 15 to 20 minutes. Would you like a
22 break or would you like to go ahead and take the charge at
23 this time? Look at the other jurors and see if anybody
24 needs a break.

25 MADAME FOREPERSON: Take a break.

1 THE COURT: Please do not discuss the case. Please
2 retire to your jury room. I'm ready to go within five
3 minutes after you have a break.

4 (1:25 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM AND
5 THE FOLLOWING IS HELD ON THE RECORD.)

6 THE COURT: Since the jury wanted a break, you can take
7 five minutes. I'm not taking any longer. Coach, find out
8 when they're ready. I'm ready to go.

9 (1:26 P.M., WHEREUPON, THE TRIAL IN THIS CASE IS IN A
10 BRIEF RECESS. THEREAFTER, THE TRIAL RESUMES IN THIS CASE
11 AND THE FOLLOWING IS HELD ON THE RECORD.)

12 THE COURT: Is the State ready to proceed?

13 ASST. SOL. LEGETTE: We are, Your Honor.

14 THE COURT: Is the defendant ready to proceed?

15 MR. WALKER: Yes, Your Honor.

16 THE COURT: Bring us the jury, please.

17 (1:35 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
18 AND THE FOLLOWING IS HELD ON THE RECORD.)

19 JURY CHARGE

20 BY THE COURT:

21 All right. Ladies and gentlemen of the jury, Madame
22 Foreperson, it is now my duty to charge you the law of this
23 case. The State of South Carolina has charged the
24 defendant, as I told you in the beginning, with these
25 documents -- the defendant being Quoteas Nesbitt, which we

1 call indictments. One indictment charges the defendant with
2 murder. One indictment charges the defendant with the
3 offense of possession of a weapon during the commission of a
4 violent crime.

5 I remind you, first of all, that the fact that the
6 defendant was arrested, the fact that the defendant was
7 charged, the fact that the defendant was indicted in this
8 case is not evidence in this case, nor does it create any
9 presumption or inference of guilt.

10 These indictments, these documents, are simply the
11 formal written instruments which contain the charges made
12 against the defendant. They are the formal documents by
13 which the case is brought into this Court. To these
14 indictments, the defendant has entered a plea of not guilty.
15 This plea of not guilty places the burden of proof on the
16 State of South Carolina to prove the guilt of the defendant
17 to you, the jury, beyond a reasonable doubt.

18 A person charged with committing a criminal offense in
19 South Carolina is never required to prove himself or herself
20 innocent. I charge you, ladies and gentlemen, that it is an
21 important rule of the law that the defendant in a criminal
22 trial, no matter what the seriousness of the charge may be,
23 will always be presumed to be innocent of the crime for
24 which the indictments were issued, unless guilt has been
25 proven by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 This presumption of innocence does not end when you
3 begin your deliberations, but it accompanies every defendant
4 throughout a trial until you, the jury, reach a verdict of
5 guilt based on evidence satisfying you of that guilt beyond
6 a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It's not just a legal phrase. It is a substantial
9 right to which every defendant is entitled, unless you, the
10 jury, are satisfied from the evidence of the defendant's
11 guilt beyond a reasonable doubt.

12 What is a "reasonable doubt" in the law? A reasonable
13 doubt is the kind of doubt that would cause a reasonable
14 person to hesitate to act. The State has the burden of
15 proving the defendant guilty beyond a reasonable doubt.
16 Some of you may have served as jurors in civil court, where
17 in civil court, unlike a criminal case, you were told that
18 it is only necessary to prove that a fact is more likely
19 true than not true. We call that in civil court by the
20 greater weight or the preponderance of the evidence in a
21 civil case.

22 In a criminal case, ladies and gentlemen of the jury,
23 the State's proof must be more than that. It must be beyond
24 a reasonable doubt. Now, proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the defendant's

1 guilt.

2 There are very few things in this world that we know
3 with absolute certainty, and in criminal cases, ladies and
4 gentlemen, the law does not require proof that overcomes
5 every possible doubt. If, based on your consideration of
6 the evidence, you are firmly convinced that the defendant is
7 guilty of the crime charged, you must find the defendant
8 guilty. On the other hand, if you think there's a real
9 possibility that the defendant is not guilty, you must give
10 the defendant the benefit of the doubt and find the
11 defendant not guilty.

12 I remind you, ladies and gentlemen, that during this
13 trial, you and I have had certain duties to perform. As a
14 trial judge, it's been my responsibility to preside over the
15 trial of the case, and I also have the duty to rule on the
16 admissibility of evidence offered during the trial of this
17 case.

18 You, as a jury, are only to consider the competent
19 evidence before you. If there was any testimony ordered
20 stricken from the record in this case during this trial, you
21 should disregard that testimony. You are to consider only
22 the testimony which has been presented from the witness
23 stand, any exhibits which have been made a part of the
24 record in this case, which in part, I'll have in your jury
25 room; some I'll have to keep here, ladies and gentlemen,

1 because you have to have equipment in order to use it. And
2 if there were any stipulations between the parties that a
3 fact is true.

4 I, also, as the presiding judge have the additional
5 duty to charge you the law that applies to this case. As
6 the presiding judge, I am the sole judge of the law, and it
7 is your duty as jurors to accept and apply the law exactly
8 as I now state it to you. If any of you walked into this
9 courtroom, and you already had any idea as to what you think
10 the law is or what the law ought to be, and it does not
11 agree with what I'm now telling you what the law is, you
12 must as a juror abandon any of your preconceived ideas,
13 because you are sworn in that oath which each of you took,
14 to accept and apply the law exactly as I state it to you
15 now.

16 In every case tried in this Courtroom before a jury,
17 the jury becomes the sole and exclusive judges of the facts
18 in the case. A trial judge, such as myself, cannot
19 intimate, state, comment on, or make any statement
20 whatsoever, to a trial jury, such as yourself, about the
21 facts in a case.

22 You are not to infer from what I have said during the
23 progress of this trial, and ruling upon the admissibility of
24 evidence, or otherwise, or anything that I now say during
25 this instruction to you on the law, that I have any opinion,

1 whatsoever, about the facts in this case. The law does not
2 allow me to have an opinion about the facts in this case.
3 This is a matter solely for you, ladies and gentlemen of the
4 jury, to determine.

5 As jurors, then, you remember that it is your duty
6 under your oath, to determine the effect, the value, the
7 weight and the truth of the evidence presented during the
8 trial of this case.

9 Now, I instruct you and I charge you, ladies and
10 gentlemen, that the fact that the defendant did not testify
11 in this case is not a factor to be considered by you in any
12 way in your deliberations and in your consideration on the
13 question of the guilt or the innocence of the defendant. It
14 must not be considered, Madame Foreperson, ladies and
15 gentlemen of the jury, in any manner whatsoever. A
16 defendant has the constitutional right to remain silent and
17 the assertion of one's constitutional right must not be
18 considered by you in your deliberations as a jury.

19 You're to draw no conclusion whatsoever from the fact
20 the defendant did not, in this case, did not testify. The
21 fact that the defendant did not testify should not even be
22 discussed in your jury room. The burden of proof is on the
23 State of South Carolina. The defendant is not required to
24 prove his innocence. The burden of proof remains on the
25 State to prove guilt beyond a reasonable doubt.

1 Now, in a trial, ladies and gentlemen, there are two
2 types of evidence that are generally presented during a
3 trial, and like many things in the law, ladies and gentlemen
4 of the jury, we have names for those types of evidence. We
5 call the two types of evidence, direct evidence and
6 circumstantial evidence.

7 Direct evidence is the testimony of a person who claims
8 to have actual knowledge of a fact, such as an eyewitness to
9 an event. It is evidence which immediately establishes the
10 main fact to be proved.

11 Circumstantial evidence, as contrasted with direct
12 evidence, is proof of a chain of facts and circumstances
13 indicating the existence of a fact. Circumstantial evidence
14 is evidence which establishes collateral facts, from which
15 the main fact may or may not be inferred. Circumstantial
16 evidence is based on inference and not on personal knowledge
17 or personal observation.

18 The law makes absolutely no distinction between the
19 weight or value to be given to either direct or
20 circumstantial evidence, nor is a greater degree of
21 certainty required of circumstantial evidence than of direct
22 evidence. You, as a jury, should weigh all of the evidence
23 in this case, both direct and circumstantial. After
24 weighing all of the evidence, if you are not convinced of
25 the guilt of the defendant beyond a reasonable doubt, you

1 must find the defendant not guilty.

2 On the other hand, after weighing all of the evidence
3 in this case, both direct and circumstantial, if you are
4 convinced of the guilt of the defendant beyond a reasonable
5 doubt, you must find the defendant guilty.

6 Now, ladies and gentlemen, I remind you that the
7 burden of proof in the trial of this case, and as I told
8 you, is on the State of South Carolina. This burden of
9 proof which I have described as beyond a reasonable doubt
10 extends to every element of the crimes charged and it
11 specifically includes the burden of proving beyond a
12 reasonable doubt the identity of the defendant as the person
13 who committed the crime. Identification testimony, ladies
14 and gentlemen, is an expression of belief or impression by a
15 witness. You as a jury must determine the accuracy of the
16 identification of the defendant. You must determine the
17 believability, which I told you we call the credibility of
18 each identification witness in the same way as you would any
19 other witness. You must be satisfied, ladies and gentlemen
20 of the jury, beyond a reasonable doubt of the accuracy of
21 the identification of the defendant before you may find the
22 defendant guilty.

23 On the other hand, if after examining the testimony,
24 you have a reasonable doubt as to the accuracy of the
25 identification, you must find the defendant not guilty.

1 Necessarily, ladies and gentlemen, as I've told you in the
2 beginning and I'll repeat again, you're going to have to
3 determine the credibility or the believability of the
4 witnesses who have testified from that witness stand during
5 this trial.

6 It becomes your duty by listening to analyze, it
7 becomes your duty to evaluate the evidence and decide and
8 determine which evidence convinces you of its truth. In
9 determining the believability of the witnesses who have
10 testified during this trial, you may believe one witness
11 over several, or several witnesses over one. You may
12 believe part of a testimony of a witness and reject the
13 remaining part of a testimony of that same witness. You may
14 believe the testimony of a witness in its entirety, or you
15 may reject the testimony of a witness in its entirety. You
16 may consider whether any witness has exhibited to you any
17 interest, bias, prejudice or any other motive in the case,
18 and as I told you at the outset of the trial, you may even
19 consider what we call the demeanor of the witness, the
20 appearance and manner of the witness while the witness is on
21 the witness stand. Anything that is in evidence, ladies and
22 gentlemen of the jury, you , as a jury, have the right to
23 consider in determining the credibility or the believability
24 of the witnesses who have testified during the trial of this
25 case.

1 Now, I charged you during the trial, and I repeat, the
2 rules of evidence ordinarily do not allow a witness to get
3 on the witness stand and take the oath and say, "Let me tell
4 you my opinion." Because opinion testimony is normally
5 inadmissible, or conclusions. An exception to our opinion
6 rule in the rules of evidence exist for witnesses who I told
7 you we call expert witnesses. A witness who claims by
8 education, training, or experience, to become an expert in
9 some art, science, or profession may, if qualified, by the
10 Court as a matter of law, give an opinion as to the subject
11 a witness claims to be an expert in and may also give the
12 reasons for his or her opinion. You should consider any
13 expert opinion given by any witness, and like any other
14 evidence in this case, you give it the weight you think it
15 deserves as a jury. If you decide that an expert witness's
16 opinion is not based on sufficient education and experience,
17 or if you decide that the reasons given in support of the
18 opinion are not sound, or that the opinion is outweighed by
19 other evidence, you may disregard the opinion entirely. An
20 expert witness's testimony is to be given no greater weight
21 than that of any other witness simply because the witness is
22 an expert.

23 Now, ladies and gentlemen, in order to establish
24 criminal liability in the law, criminal intent is required.
25 Now, let me explain to you a little bit about criminal

1 intent. I'm going to give you some examples; it's the
2 mental state that may be required for any crime, and let me
3 show you some examples of criminal intent. It may be
4 purpose, intent, knowledge, recklessness, criminal
5 negligence; those are examples of criminal intent. Criminal
6 intent must be proven by the State beyond a reasonable
7 doubt. Criminal intent is always a matter that must be
8 determined by the jury from the circumstances surrounding
9 the situation based on evidence introduced during the trial
10 of the case.

11 Now, ladies and gentlemen, there is no way to prove
12 intent to a mathematical certainty. There is no way that
13 medical science can dissect a person's brain and tell you
14 what that person had in mind. So the law says, ladies and
15 gentlemen, that criminal intent may be inferred from the
16 circumstances shown to have existed based on evidence
17 introduced during the trial of the case. This, ladies and
18 gentlemen, is how you as a jury make a determination of
19 whether or not any element in any crime requiring intent was
20 present. It is not necessary to establish criminal intent
21 by direct evidence, but intent may be established by
22 inference in the same way as any other fact taking into
23 consideration the acts of the parties and the facts and
24 circumstances of the case based on evidence introduced
25 during the trial of this case.

1 Criminal intent is a mental state. It is a conscious
2 wrongdoing. It is up to you, as a jury, to determine what
3 the defendant intended to do, based on the circumstances
4 shown to have existed, from evidence introduced during the
5 trial of the case.

6 I charge you, ladies and gentlemen in this case, the
7 defendant is charged with murder. For the offense of
8 murder, the State must prove beyond a reasonable doubt that
9 the defendant killed another person with malice
10 aforethought. Malice is hatred, ill-will, hostility towards
11 another person. It is the intentional doing of a wrongful
12 act without just cause or excuse, and with an intent to
13 inflict harm or injury. Malice aforethought does not
14 require that malice exist for any particular time before the
15 act is committed, but malice must exist in the mind of the
16 defendant just before and at the time the act is committed.
17 Therefore, there must be a combination of the previous evil
18 intent or hostility towards another and the act itself.

19 Malice aforethought may be expressed or inferred.
20 These terms, express or inferred, do not mean different
21 kinds of malice. Malice is still hatred, ill-will, or
22 hostility toward another person. These terms, express or
23 inferred are simply the manner in which malice may be shown
24 to exist from evidence introduced during the trial of the
25 case. That is either by direct evidence or by inference

1 from the facts or circumstances which are proved.

2 Express malice is shown when a person speaks words
3 which express hatred or ill-will or hostility for another.
4 Or when a person prepared beforehand to do the act, which
5 was later accomplished. For example, lying in wait for a
6 person or any other act of preparation going to show that
7 the deed was within the defendant's mind would be examples
8 of express malice. Malice may also be inferred from conduct
9 which shows a total disregard for human life.

10 I charge you, ladies and gentlemen, the defendant is
11 also charged in this case with the offense of possession of
12 a weapon during the commission of a violent crime or attempt
13 to commit a violent crime is the way the statute is worded.
14 The State for this offense must prove beyond a reasonable
15 doubt that the defendant used a weapon during the commission
16 or attempted commission of a violent crime. The statute
17 actually says a firearm. A firearm means any machine gun,
18 automatic rifle, revolver, pistol, or any weapon which will,
19 or is designed to or may be converted to expel a projectile.

20 In order to find a defendant guilty of possession of a
21 weapon during the commission of a violent crime, you must
22 first find the defendant guilty of committing a violent
23 crime or attempting to commit a violent crime. I charge
24 you, ladies and gentlemen, that under the laws of the State
25 of South Carolina, the offense of murder is a violent crime.

1 Now, ladies and gentlemen, if you find the defendant in
2 this case not guilty of murder, you must find the defendant
3 not guilty of possession of a weapon during the commission
4 of a violent crime, because you must be guilty of a violent
5 crime in order to be guilty of the offense of possession of
6 a weapon during the commission of a violent crime. The
7 State must prove beyond a reasonable doubt that the weapon
8 furthered, advanced, or helped in the commission of the
9 violent crime.

10 Now, Madame Foreperson, I told you I would prepare a
11 verdict form for you and I have done so. The first thing I
12 want to tell everyone on the jury: pay absolutely no
13 attention to the order in which I wrote the forms of
14 verdict. The order has no significance whatsoever. I
15 obviously had to write one before the other. I've placed
16 the title of the case on the first page of your verdict
17 form; it's two pages. It says State of South Carolina v.
18 Quoteas Nesbitt, defendant. It has the indictment numbers
19 and it has the word verdict. Question one is we, the jury,
20 by unanimous consent, find the defendant, Quoteas Nesbitt,
21 in indictment 2012-GS-15-00663, and the first verdict form
22 under Question One is guilty of murder.

23 Madame Foreperson, if that be the jury's verdict, you
24 would check on the line beside that form of verdict. The
25 second form of verdict under Question One is not guilty of

1 murder. If that be the form of verdict for the entire jury,
2 you would check on the line beside not guilty of murder.
3 You must find one form of verdict or the other under
4 Question One, you cannot find both.

5 If you find the defendant not guilty of murder, you
6 must find the defendant not guilty in Question Two, which is
7 possession of a weapon during the commission of a violent
8 crime. If you find the defendant guilty in Question One,
9 then you must decide Question Two.

10 Question Two says, we, the jury, by unanimous consent,
11 find the defendant, Quoteas Nesbitt, in indictment 2012-GS-
12 15-00664, and the first form of verdict under Question Two
13 is guilty of possession of a weapon during the commission of
14 a violent crime. If that be your form of verdict, you would
15 check on the line beside that form of verdict. Second form
16 of verdict under Question Two is not guilty of possession of
17 a weapon during the commission of a violent crime. If that
18 be your form of verdict, you would check on the line beside
19 that form of verdict; consistent with my instructions
20 concerning the relationship of Question One and Question
21 Two.

22 When you have completed your verdict form, Madame
23 Foreperson, you will sign your name as foreperson. I've
24 already put in today's date for you. Of course, you'll have
25 the verdict form with you. Now, Madame Foreperson, you

1 can't go anywhere because you know I'm handing these
2 indictments to Thomas and he's going to be looking for you,
3 because whatever you write on the verdict form, he's going
4 to want you to write the exact same words on the indictments
5 before you leave the courtroom today. He will come to you.

6 Ladies and gentlemen of the jury, your verdict must be
7 unanimous. That is, it must be the verdict of each and
8 every one of you. All twelve of you must agree on a
9 verdict. Now, ladies and gentlemen of the jury, I've now
10 charged you on the law. In order to help guide you to a
11 fair and a just result in this case. You're the judges of
12 the facts in this case, and based on your determination of
13 the facts in this case and the law as I've explained it to
14 you, you will soon begin your deliberations.

15 You have been selected as fair and impartial jurors.
16 You took an oath to fairly and impartially try and determine
17 the facts in this case. And when you comply with that oath,
18 no one can criticize your verdict. You are to decide this
19 case based solely on the testimony from the witness stand,
20 any exhibits which have been introduced into evidence in
21 this case, and if there were any stipulations between
22 counsel of the parties in this case. You must decide the
23 issues in this case, ladies and gentlemen, without any bias
24 or prejudice, for or against either party. You cannot allow
25 yourself to be governed by prejudice for or against any

1 person. You can't allow yourself to be governed by public
2 opinion, what you think others might do, or by any other
3 arbitrary factor such as emotion. You must base your
4 decision only and solely on the evidence which has been
5 presented during the trial of this case. Both the defendant
6 and the State of South Carolina have the absolute right to
7 expect that each of you on the jury will carefully and each
8 of you will impartially consider all of the evidence in this
9 case and that you will follow the law as I have instructed
10 you to be in reaching your verdict in this case.

11 Now, ladies and gentlemen of the jury, I'm going to
12 send you to your jury room. I want you to understand that
13 when it's time for you to begin your deliberations, I will
14 send your verdict form in, along with most of the exhibits.
15 The ones that you cannot view without equipment out here --
16 and we have one exhibit that you have only video and not
17 audio; so I will keep those out here. If the jury wants to
18 see them, we will bring you out here and show you anything;
19 there's just no reason for you to take it back in your jury
20 room because you don't have the equipment to utilize it.

21 Please do not begin your deliberations until I send the
22 verdict form in, along with all of the other exhibits which
23 do not require equipment, and I will have the bailiff
24 instruct you that you may then commence your deliberations.
25 When you have reached the verdict, you've filled out the

1 verdict form, knock on the jury room door and inform the
2 bailiff that you've reached a verdict. We will then bring
3 you back into the courtroom to publish your verdict when the
4 time comes.

5 Please retire to your jury room, now. My alternate
6 jurors, please remain with me in the courtroom.

7 (2:16 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM AND
8 THE FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: First of all, on behalf of Colleton County
10 and this Court, all a judge can ask is that you listen. I
11 watched both of you and you did. Thank you for that. This
12 completes your service. Not only for this case, but for the
13 week. You are now exempt from jury duty if you choose to
14 claim your exemption for three years. If either one of you
15 need a work excuse from serving on the jury, all you need to
16 do is go down stairs to General Sessions. We will be happy
17 to provide you one. We will be sending you that exorbitant
18 check that we pay jurors, \$20 a day. We realize it's
19 inadequate, but we appreciate so much your service. Thank
20 you for taking the time to serve on the jury. The Coach
21 will see to it that you get served your lunch in either to-
22 go plates or you can have it here, but I can't let you go
23 back into the jury room. You're welcome to come back and
24 have a seat in the courtroom if you would like to stay and
25 see what happens in the case. I realize you've listened to

1 all of the evidence. I thank you for your service, or
2 you're excused for the balance of the week.

3 Now, one last thing, sometimes people want to talk to
4 you about how you felt, what you thought, that's entirely up
5 to you. If you want to talk to a person about that, you
6 can. If you don't, you say no. If a person persists in
7 wanting to talk to you, you give me their name and I will
8 handle that problem for you. You are now excused.

9 (WHEREUPON, 2:20, THE ALTERNATE JURORS ARE RELEASED
10 FROM THE COURTROOM.)

11 THE COURT: Any exceptions or additions to the Court's
12 charge, from the State?

13 ASST. SOL. LEGETTE: None from the State.

14 THE COURT: From the defendant?

15 MR. WALKER: No, Your Honor.

16 THE COURT: I'd ask that counsel come forward with
17 Becky and certify to me that you're satisfied with the
18 exception of Exhibit's One, Two, Three, forty-five and
19 Seventy-one. That she has all of the exhibits and you're
20 willing to keep those five in the courtroom and that you
21 have no objection to me sending the exhibits and the verdict
22 form into the jury by the bailiff and telling the bailiff to
23 inform the jury that they may now commence their
24 deliberations. Counsel, please come forward.

25 THE COURT: Is the State satisfied the court reporter

1 has all the exhibits?

2 ASST. SOL. LEGETTE: The State is satisfied.

3 THE COURT: Does the State agree that exhibits one,
4 two, three, forty-five, and seventy-one should remain in the
5 courtroom?

6 ASST. SOL. LEGETTE: That's correct.

7 THE COURT: Do you have any objection to the bailiff
8 taking the verdict form and the remaining exhibits other
9 than the ones we are leaving in the courtroom into the jury
10 and the bailiff informing the jury they may now commence
11 their deliberations?

12 ASST. SOL. LEGETTE: No objection from the State.

13 THE COURT: Is the defendant satisfied that the court
14 reporter has all the exhibits?

15 MR. WALKER: Yes, sir.

16 THE COURT: Does the defendant agree that exhibits one,
17 two, three, forty-five and seventy-one should remain in the
18 courtroom?

19 MR. WALKER: Yes, sir.

20 THE COURT: Does the defendant have any objections to
21 the bailiff taking the verdict form and the remaining
22 exhibits other than the ones you agree will remain in the
23 courtroom into the jury and having the bailiff tell the jury
24 they may now commence their deliberation?

25 MR. WALKER: No objection.

1 THE COURT: Very well. We will be at ease while we
2 await the jury's verdict.

3 (WHEREUPON, AT 2:25 P.M., THE EXHIBITS AND VERDICT FORM
4 ARE TAKEN INTO THE JURY.)

5 THE COURT: Counsel, I have received a note that the
6 jury would like to see the video and listen to the 9-1-1
7 calls; signed by the foreperson. Any objection from the
8 State to making the jury's note a court exhibit?

9 ASST. SOL. LEGETTE: No, Your Honor.

10 THE COURT: From the defendant?

11 MR. WALKER: No, Your Honor.

12 THE COURT: This will be Court's Exhibit Number Three,
13 without exception.

14 (WHEREUPON, COURT EXHIBIT NUMBER THREE, JURY NOTE
15 REQUESTING TO VIEW VIDEO EXHIBITS, IS RECEIVED INTO
16 EVIDENCE.)

17 THE COURT: This is my practice, counsel, I assume that
18 Exhibit 45 is longer than the 9-1-1?

19 ASST. SOL. LEGETTE: That's correct. That exhibit has
20 three parts.

21 THE COURT: All right. I'm going to tell the
22 foreperson that when she feels that the jury has seen enough
23 to raise her hand for me, so if they don't want to watch the
24 entire thing, it's entirely up to them and not us. If they
25 want to see the whole thing, that's fine. Anything else

1 before I bring the jury, Mr. Walker?

2 MR. WALKER: No, sir.

3 THE COURT: Solicitor?

4 ASST. SOL. LEGETTE: No, Your Honor.

5 THE COURT: Bring us the jury.

6 (3:22 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM

7 AND THE FOLLOWING IS HELD ON THE RECORD.)

8 THE COURT: Ladies and gentlemen of the jury, I've
9 received your note that you would like to see the video and
10 listen to the 9-1-1 calls. Just so I'm clear, I'm assuming
11 the video you're referring to is State's Exhibit 45, the
12 Chase Lounge?

13 FORELADY: Yes, sir.

14 THE COURT: All right. Listen to me carefully. I'm
15 going to begin playing the 9-1-1, Exhibit One, and at the
16 point you feel the jury has seen enough, if you want you can
17 see the whole thing, but if you want to stop, you raise your
18 hand, because I'll be watching you. You're the spokesperson
19 for the jury. All right, let's play State's Exhibit Number
20 One, please.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE BEGINS PLAYING
22 AND IS PLAYED IN ITS ENTIRETY. THEREAFTER, THE FORELADY
23 ASKS THE COURT FOR IT TO REPLAYED.)

24 THE COURT: Replay the CD that you just played one more
25 time, please, at the request of the foreperson.

1 (WHEREUPON, STATE EXHIBIT NUMBER ONE IS REPLAYED FROM
2 BEGINNING TO END OF FIRST CALL.)

3 THE COURT: The forelady says they jury is satisfied.

4 FORELADY: Yes, sir.

5 THE COURT: You also wanted to watch Exhibit 45?

6 FORELADY: Yes, sir.

7 THE COURT: All right. Now, we will play Exhibit 45 at
8 the request of the Foreperson.

9 FORELADY: Judge, we were wondering if we could move
10 closer to the screen?

11 THE COURT: Absolutely. We would have to put up chairs
12 for you.

13 FORELADY: We can stand.

14 THE COURT: You absolutely can stand up, but if you
15 stand up, I don't want you to block somebody's view. Try
16 standing up closer to the screen; we're going to dim the
17 lights. Exhibit 45, please.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER 45, VIDEO ONLY - NO
19 AUDIO, BEGINS PLAYING TO THE END.)

20 FORELADY: Your Honor, can we see it from the beginning
21 one more time?

22 THE COURT: Yes. Angela, back it up to the beginning.

23 (VIDEO IS REPLAYED FOR THE JURY TO THE END.)

24 FORELADY: Your Honor, could you back it up to the
25 19:50 mark. We would like to see it from the 19:50

1 mark again.

2 THE COURT: Angela?

3 MS. STALLINGS: Yes, Your Honor. I can back it up.

4 (VIDEO IS BACKED UP TO THE 19:50 MARK AND PLAYED FOR
5 THREE MINUTES WHEN THE FORELADY SIGNALS TO CUT IT OFF.)

6 FORELADY: Okay, Your Honor. We've seen enough.

7 THE COURT: All right. Stop the tape. You've seen all
8 that you want to see?

9 FORELADY: Yes, sir.

10 THE COURT: The forelady has indicated they have seen
11 enough. There are two more 9-1-1 discs in evidence. Would
12 you like to hear those as well?

13 FORELADY: No, Your Honor.

14 THE COURT: Very well. Have we answered all of the
15 jury's questions?

16 FORELADY: Thank you very much. You may retire to your
17 jury room and continue your deliberations.

18 (3:30 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM AND
19 THE FOLLOWING IS HELD ON THE RECORD.)

20 THE COURT: Any exceptions or additions to the Court's
21 comments to the jury, from the State?

22 ASST. SOL. LEGETTE: None from the State.

23 THE COURT: From the defendant?

24 MR. WALKER: No, Your Honor.

25 THE COURT: All right. Court's Exhibit Number Three is

1 part of the record without objection. We will continue to
2 be at ease while we await the jury's verdict.

3 (WHEREUPON, THE COURT IS IN RECESS WHILE AWAITING THE
4 JURY'S VERDICT. THEREAFTER, AT 4:28 P.M., THE COURT
5 RECEIVES WORD THAT THE JURY HAS REACHED A VERDICT IN THIS
6 CASE AND THE FOLLOWING IS HELD ON THE RECORD.)

7 THE COURT: All right. Ladies and gentlemen, I
8 understand that the jury has reached a verdict. If you
9 can't control your emotions, you need to leave, because I'm
10 going to deal with you if there is any emotional outburst.
11 I don't want one word spoken in this courtroom in the
12 presence of the jury. They are not interested in your
13 opinion, which they shouldn't be, as to whether you favor or
14 disfavor the verdict. If you can't control your emotions,
15 I'm going to ask you to please step out at this time. I can
16 assure you I will enforce that. Anybody wish to leave?

17 (NO RESPONSE.)

18 THE COURT: All right. Is the State ready?

19 ASST. SOL. LEGETTE: Yes, Your Honor.

20 THE COURT: Is the defendant ready?

21 MR. WALKER: Yes, Your Honor.

22 BAILIFF: Judge, we have some people waiting to come
23 in.

24 THE COURT: All right. Let the people in that are on
25 your side.

1 (SEVERAL PEOPLE ENTER THE GALLERY.)

2 THE COURT: All right. For those of you who just came
3 in, I realize there are feelings and emotions about any
4 case. I will not tolerate any type of emotional outburst.
5 If you cannot control your emotions, you need to leave now.
6 If I hear any kind of noise of any kind, I'm directing my
7 security, you will be held in contempt of Court. So now is
8 the time for you, if you can't control yourself, to leave
9 the courtroom. Do I have anyone who wishes to leave?

10 (NO RESPONSE.)

11 THE COURT: Then, I'll expect you to act with some
12 decorum and behave. Bring us the jury.

13 (4:30 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
14 AND THE FOLLOWING IS HELD ON THE RECORD.)

15 THE COURT: Will the defendant and counsel please rise?
16 Madame Clerk, you may publish the verdict.

17 MADAME CLERK: Indictment number 2012-GS-15-663 and
18 2012-644, the State of South Carolina v. Quoteas Nesbitt.
19 We, the jury, by unanimous consent find the defendant
20 Quoteas Nesbitt in indictment number 2012-GS-15-663, guilty
21 of murder. We, the jury, by unanimous consent find the
22 defendant, Quoteas Nesbitt, in indictment number 2012-GS-15-
23 664, guilty of possession of a weapon during the commission
24 of a violent crime, signed by Jeniece F. Massalon. If this
25 is your verdict, please raise your right hand.

1 THE COURT: Let the record reflect, 12 hands were
2 raised.

3 Mr. Walker, anything concerning the jury by the
4 defendant before I excuse the jury?

5 MR. WALKER: No, Your Honor.

6 THE COURT: Madame Foreperson, ladies and gentlemen of
7 the jury, please be seated. Ladies and gentlemen of the
8 jury, on behalf of Colleton County and this Court, I want to
9 thank you for your service on the jury this week. This
10 concludes your service for the week and if you listened to
11 me, you know you're exempt from jury service for three years
12 as a result of your service. All a judge can do is ask for
13 jurors to listen, and I watched you during this trial and
14 that's exactly what you did. I want to thank you for that
15 service.

16 Now, if anyone needs a work excuse for serving on the
17 jury, all you have to do is walk downstairs and there is a
18 door that is marked General Sessions. If you walk in that
19 door, we'll provide you with a work excuse to show your
20 employer that you've been on the jury this week. We will be
21 mailing you that exorbitant \$20 fee per day that we pay for
22 our jurors. That will come to the address that we sent your
23 subpoena to. Sometimes, people like to talk to jurors.
24 They want to find out how you felt, what impressed you.
25 It's entirely up to you if you want to talk to anybody. If

1 somebody comes up to you and wants to discuss anything, if
2 you don't want to talk to them, just tell them no. If they
3 persist, you get their name, give it to me, and I'll handle
4 that problem for you.

5 Now, I want you to be aware that sentencing in this
6 case is going to occur in just a moment. I invite you if
7 you would like to, you can stay right in your jury box and
8 watch the sentencing proceedings. However, if you would
9 like to leave, you may do so. Those of you who would like
10 to leave, you can stand up and leave at this time. Everyone
11 else remain seated while those that are leaving leave.

12 (WHEREUPON, A FEW JURORS LEAVE.)

13 THE COURT: Are there any post-verdict motions from the
14 defendant?

15 MR. WALKER: At this time, we would move for a new --
16 based on the identification testimony ---

17 THE COURT: On the same grounds that you moved for a
18 directed verdict; is that correct, Mr. Walker?

19 MR. WALKER: As well as the identification objections
20 that we had.

21 THE COURT: And for the reasons I enunciated at trial
22 at the close of the State's case, your motion for directed
23 verdict is respectfully denied. Both on the grounds you
24 stated at the close of the State's case, and on the issue
25 that you raised in the Neil v. Biggers hearing prior to

1 trial in which I denied your asking me to exclude the
2 testimony of the officer. That motion is denied. You and
3 your client come around. Solicitor, please come around for
4 sentencing.

5 All right, Solicitor, I'm having my law clerk get the
6 foreperson to sign the indictments consistent with the
7 verdict form that was published by the Clerk of Court.
8 Solicitor, I've heard all the evidence in this case. But
9 what the jury hasn't heard, nor have I, other than the fact
10 that I was made aware by you and Mr. Walker, because you
11 have his criminal history, I do not have the criminal
12 history of the defendant. I would ask you to publish that
13 at this time so that I'll have some idea of his prior
14 record.

15 ASST. SOL. LEGETTE: Yes, Your Honor. Your Honor, in
16 preparation for this particular hearing, we had his juvenile
17 records released by Judge Smoak and we have a signed Order.
18 Your Honor, in 2000, he was an incorrigible juvenile and he
19 went to R&E and he was quoted as having said that he would
20 secretly love to kill his father. He also indicated that he
21 hated his father.

22 Thereafter, an adult record, in 2001, breach of peace
23 in Colleton County, he got a 30-day sentence. In 2003, he
24 got an assault and battery in Colleton County at the
25 Colleton County Detention Center where he grabbed a

1 correctional officer by the waist and tried to throw him to
2 the floor without his consent and got a time served sentence
3 for that. In 2004, he was driving without a license. In
4 '04, also, he was hindering officers.

5 In 2004, he again had a public disorderly conduct. He
6 got a 30-day sentence. In 2004, he again had a public
7 disorderly conduct. He got a 30 day sentence. In 2004, he
8 had a possession of beer by a minor and in 2005, he had a
9 public disorderly conduct. He got a time served sentence.
10 In 2008, he had a driving under suspension. In 2011, he had
11 an unlawful carrying of a pistol. He was in unlawful
12 possession of a .45 caliber American Classic Government
13 model. He received a one-year sentence of credit for 319
14 days jail time. Along with that sentence, he got a
15 possession with intent to distribute cocaine base, or crack
16 cocaine; that also occurred in Colleton County. He got a
17 one-year sentence with credit for 319 days jail time. In
18 2011, he got assault and battery in the second degree where
19 he committed a moderate bodily injury upon a victim, Daqwan
20 Lawton, while at the Colleton County Detention Center. He
21 got a one-year sentence for that, as well, to run concurrent
22 with the pistol and crack cocaine charge.

23 In 2012, in connection with the State Grand Jury case
24 that was here in Colleton County, part of a triple homicide,
25 he got assault and battery of a high and aggravated nature

1 conviction for which he received time served, sentence of 22
2 months. Additionally, Your Honor, he is known by law
3 enforcement -- law enforcement knows him to be an alleged
4 criminal gang member of the Dooley Hill Gang.

5 Additionally, Your Honor, the victim's wife, Ms.
6 Renatta Holmes, would like to address the Court at the
7 appropriate time, along with Mr. Holmes's brother, I believe
8 his name is Stephen Sanders.

9 THE COURT: Be happy to hear from them. Ask them to
10 come forward and identify themselves, and use the
11 microphone.

12 MR. SANDERS: How you doing, Judge. I'm Steve Sanders.

13 THE COURT: And that's S-A-N-D-E-R-S?

14 MR. SANDERS: Yes, sir.

15 THE COURT: Mr. Sanders, what is your relationship to
16 the victim in this case?

17 MR. SANDERS: My brother.

18 THE COURT: Happy to hear from you.

19 Yes, sir. I'm not gonna waste too much time. I just
20 want to say, you know, the Sanders family, all my brothers,
21 they help me run this company and we have 18 employees, you
22 know, so I look at that as 18 families and Bobo helped
23 provide for those 18 families, and when we lost him, we kind
24 of lost the strength of the company. That's what I want to
25 say, you know. You know, I don't feel any malice in my

1 heart towards 'Teas, but you know, I just want to be here
2 and see that justice is done.

3 THE COURT: Thank you for taking the time to be here.

4 ASST. SOL. LEGETTE: I believe his wife, Ms. Renatta
5 Holmes, wants to speak, Your Honor.

6 THE COURT: Ms. Holmes, if you'll come forward to the
7 microphone for me, please, ma'am. State your name for the
8 record so the court reporter knows.

9 MS. HOLMES: Renatta Holmes. I just want to thank
10 everybody for their time. And taking the time out to do
11 this, but I prepared a statement I would like to read.

12 THE COURT: Yes, ma'am. Happy to hear from you.

13 MS. HOLMES: I've known Quoteas my entire life. I can
14 still remember playing him when we were both children.
15 Walking down McDaniel Street to Ms. Earline's house. I can
16 recall thinking that he was the cutest little curly-haired
17 little boy. I never thought 25 years later we would be in
18 this scenario.

19 As follows, from McDaniel Street to Mincey Street, I
20 consider him to be almost like family, to where your
21 children were my family and I were on a first name basis. I
22 recall the time where I was informed of Ms. Earline's
23 passing and I was thinking, "I know 'Teas is hurting. I
24 know how much he loved her. I even embraced him and told him
25 that everything was going to be alright. At that moment, I

1 knew his heart just left him. Subsequently, never thinking
2 that years to come, you would make feel the same emptiness
3 that you felt years prior when you lost your heart. You
4 took my heart from me on September 6th, 2012, as well as a
5 father, a son, a brother, et cetera. That's just to name a
6 few of my husband's attributes. So I don't hate you,
7 Quoteas, because I was taught not to hate; but Moray's
8 entire family, including friends, as well as myself, are
9 deeply saddened and hurt by our loss.

10 THE COURT: Thank you for being here, Ms. Holmes.

11 MS. HOLMES: Thank you. You're welcome.

12 THE COURT: Solicitor, anything else from the State?

13 ASST. SOL. LEGETTE: No, Your Honor.

14 THE COURT: Mr. Walker, I'll be happy to hear from you.

15 MR. WALKER: Thank you, Your Honor. Quoteas is 30
16 years of age. He completed the 9th grade -- went through
17 school to the 9th grade. He's a carpenter. He's a good
18 worker; his boss is here showing support. Also here with
19 him are cousins, brothers, his mother was here the first two
20 days of the trial, but she was unable to be here with him
21 today because she had to work, but he certainly has a
22 supportive, loving family. He has four children, three boys
23 and a girl. Their ages are 13, 11, 9 and 6. The Solicitor
24 went through Quoteas's prior record, and really the only
25 serious things are three pleas that went together in 2011.

1 And the Solicitor mentioned the State Grand Jury and alluded
2 to a connection of triple homicide. And as I represented
3 one of the people who actually did that, there's no
4 allegation that he was involved in that triple homicide.

5 THE COURT: I understand he has not been convicted of
6 any prior murder.

7 MR. WALKER: There is no allegation that he was
8 involved in that at all. Again, I represented one of the
9 people who was.

10 THE COURT: I understand; however, he was tried
11 previously involving violence; is that correct?

12 MR. WALKER: That is correct; one time.

13 THE COURT: And that was for the offense of?

14 MR. WALKER: I believe murder.

15 THE COURT: And that was a hung jury?

16 MR. WALKER: It was a not guilty on self-defense, Your
17 Honor.

18 THE COURT: All right.

19 MR. WALKER: Someone came to his home and he defended
20 himself. During the break, while the jury's been
21 deliberating, I looked up the life expectancy of a black
22 male, 71.8 years. If the Court were to give Quoteas a 30-
23 year sentence, that would, perhaps, give Quoteas a decade of
24 life left, although we can expect less than that of an
25 inmate. So Your Honor, we would ask the Court to impose a

1 30-year sentence with the other sentence concurrent. I have
2 advised Quoteas not to make any statements in light of
3 pending Appellate appeals.

4 THE COURT: Mr. Nesbitt, I understand what your lawyer
5 has told me, is there anything that you want to tell me
6 prior to sentencing?

7 MR. WALKER: No, sir.

8 THE COURT: Solicitor, is there anything else you want
9 to tell me?

10 ASST. SOL. LEGETTE: Your Honor, I just want to, in
11 light of the life expectancy of a black man, Moray Holmes
12 was a black man and he was 34 years old when he was killed
13 by Quoteas Nesbitt. And Your Honor, I don't take this
14 lightly, but it's time to stop Quoteas Nesbitt. I would ask
15 you to sentence him accordingly and I don't think 30 years
16 is enough. I think we need to send a message that the life
17 expectancy of a black man should be more than 34 years. I
18 would ask you to sentence Quoteas Nesbitt for the balance of
19 his life in prison. And send a message to this community,
20 send a message to Quoteas Nesbitt, that a black man's life
21 should be more than 34 years.

22 THE COURT: Mr. Walker, I've listened to you carefully,
23 asking me to impose the minimum sentence for murder, which
24 is 30 years. Solicitor, I've listened to you carefully and
25 I've listened to the evidence in this case. I, first of

1 all, want to tell my jurors that I certainly think there was
2 ample evidence to support your verdict in this case on the
3 issue of guilt. Sentencing however, is the Court's
4 province. Sentencing for murder ranges from 30 years to
5 life in prison. I take into consideration, Mr. Nesbitt,
6 your prior record. I take into consideration the facts and
7 circumstances that the evidence show me that I listened to
8 during this trial in reaching my decision on your sentence.

9 On Indictment 2012-GS-15-00663, the State v. Quoteas
10 Nesbitt, indictment for murder, the sentence of the Court is
11 defendant is committed to the State Department of
12 Corrections for a term of 45 years. On Indictment 2012-GS-
13 15-00664, possession of a weapon during the commission of a
14 violent crime, the sentence of the Court is defendant is
15 committed to the State Department of Corrections for a term
16 of five years. Those sentenced will run consecutive to each
17 other for a total of 50 years. The defendant is to be given
18 credit for time served, pursuant to South Carolina Code
19 Section 24.13.40. That is to be calculated and applied by
20 the State Department of Corrections. Thank you, Solicitor,
21 and thank you, Mr. Walker. The defendant is in custody.
22 Take him out. Ladies and gentlemen, stay right where you
23 are.

24 I want to thank you again for your service. On behalf
25 of Colleton County and this Court, justice can't be done

1 unless I have people in the community willing to give of
2 their time to serve on the jury. I tell jurors this all the
3 time, ladies and gentlemen, if you had a case pending in
4 this court, wouldn't you want someone like yourself to have
5 been willing to give of their time if you were a party to a
6 case in Court? so I very much appreciate your service.
7 This concludes your service, not only for today and this
8 trial, but for this week. This also means you're exempt for
9 three years. I thank you very much for that service. I
10 hope this has been an educational experience for you and I
11 hope you've learned something from him. We appreciate you
12 leaving your family, leaving your jobs and taking the time
13 to be with us. Thank you very much. You are now excused
14 from the courtroom.

15 (5:05 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM AND
16 THE FOLLOWING IS HELD ON THE RECORD.)

17 THE COURT: I want to say before I adjourn the record
18 that I appreciate the courtesies that the lawyers have shown
19 each other during the trial of this case, as well as the
20 preparation that each of the lawyers showed as advocates for
21 the State and for the defendant. I appreciate hard work.
22 This Court now stands adjourned.

23

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 25th - 28th day of August 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 11, 2014

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Colleton)

16-CP-15-1483

Quotras Naskitt)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

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 each particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

2016 SEP 26 PM 3:19
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 the 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 applicant was convicted.

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence General Sessions,
Colleton County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2012-GS-15-663 (Murder)

(b) 2012-GS-15-664 (possession of weapon during violent crime)

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) August 28, 2014 (50 years incarceration)

(b) _____

(c) _____

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. 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. March 2, 2016 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2016-UP-098 _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel _____
- (b) Prosecutor Misconduct _____
- (c) Judge Abused his discretion _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) For not properly investigating evidence before trial,
not objecting at several critical stages at trial and not properly
preparing a defense strategy.

(b) prosecutor misconduct on behalf of solicitor at trial

(c) trial judge abused his discretion at trial
by allowing errors to occur.

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
 already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Trial Judge abused his discretion and erred.
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Court of Appeals
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Ineffective assistance of counsel because it
- (b) was not up for appellate review
- (c) Prosecutor misconduct, wasn't up for appellate review

16. 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?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. (Trial) Matthew Walker - Public Defender
- ii. (Direct Appeal) Susan B. Hackett
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Sentence vacated, reverse and remanded
for a New Trial.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

COUNTY OF Colleton)

VERIFICATION

I, Quateas Nesbitt, 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.

Quateas Nesbitt

Sworn to and subscribed before me

This 25 day of Aug, 2016.

Debra Eastudal L.S.

Notary Public for South Carolina

My Commission Expires 3/3/2024

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Quateas Nesbitt, 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 proceeding or give security therefor.

Quateas Nesbitt
Applicant

Sworn to and subscribed before me

This 25 day of Aug, 2016.

Debra Eastudal L.S.

Notary Public for South Carolina

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Quoteas Nesbitt, #361169,	)	Case No.: 2016-CP-15-1433
	)	
Applicant,	)	
	)	RETURN, PARTIAL MOTION TO
v.	)	DISMISS, AND MOTION FOR MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on September 28, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In March 2013, the Colleton County Grand Jury indicted Applicant for murder (2012-GS-15-0663) and possession of a weapon during a violent crime (2012-GS-15-0664). The charges resulted from a September 2012 incident in which Applicant fatally shot the victim multiple times in the back at the Chase Lounge in Colleton County. ROA p. 115, ll. 12-17; p. 507, l. 3. Matthew L. Walker, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Assistant Solicitor Tameaka A. Legette prosecuted the case. On August 25, 2014, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. On August 28, 2014, Judge Buckner sentenced Applicant to imprisonment of forty-five years for murder and five years for possession of a weapon during a violent crime, to be served consecutively.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967).

Applicant subsequently filed a pro se brief. The South Carolina Court of Appeals affirmed Applicant's conviction and granted counsel's motion to be relieved on March 2, 2016. State v. Nesbitt, Op. No. 2016-UP-098 (Ct. App. 2016). The remittitur was returned to the circuit court on May 18, 2016.

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "For not properly investigating evidence before trial."
 - b. "Not objecting at several critical stages at trial."
 - c. "Not properly preparing a defense strategy."
2. "Prosecutorial Misconduct"
 - a. "Prosecutor misconduct on behalf of solicitor at trial."
3. "Judge abused his discretion."
 - a. "Trial judge abused his discretion at trial by allowing errors to occur."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, 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, Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges the trial judge abused his discretion at trial. This allegation raises a direct

appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, this allegation should be dismissed with prejudice.

V.

Respondent also hereby moves for a more definite statement as to Applicant's allegation of "prosecutorial misconduct." Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claim are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized

to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Signature block on following page]

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

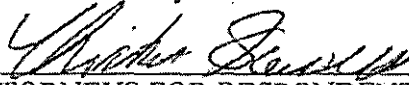
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10/23, 2018

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

2016-CP-15-1433

QUOTEAS NESBITT, #361169,
Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

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, Partial Motion to Dismiss, and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, South Carolina 29402

DATED this the 23rd day of October, 2018.



Carson Kirk, Legal Assistant
For Respondent

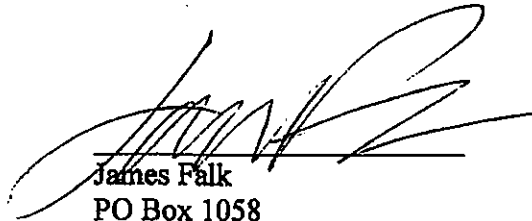
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF COLLETON	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Quoteas Nesbitt 361169	)	
Applicant	)	2016-CP-15-01433
Vs.	)	
State of South Carolina	)	AMENDED PCR APPLICATION
Respondent,	)	
	)	

Applicant Quoteas Nesbitt by and through undersigned counsel hereby amends his PCR application to include the following facts supporting his allegation of ineffective assistance of counsel.

1. Trial counsel failed to object when State's witness Dorothea Gathers-Grant testified that: *I've known Quoteas for some years, working at the jail.* (Transcript page 160 line 21). Trial counsel should have objected under SCRE 403. The witness testified that she had worked at the Colleton County jail for 11 years in several capacities. Her statement that she knew Applicant from jail was prejudicial because it allowed the jury to infer that Applicant had a long criminal record.
2. Trial counsel failed to object when State's witness Detective James Dusty testified that Kelvin Mitchell stated that he did not want to give the police any more information because he feared for his safety. (Transcript page 311, lines 20-23). Detective Dusty's statement was hearsay and highly prejudicial to Applicant because it allowed the jury to infer that Applicant had a reputation for violence in the community.
3. Trial counsel failed to object when State's witness Detective James Dusty testified that Donald Odom stated that he did not want to come forward with information because he feared retaliation and feared for his safety. (Transcript page 313, lines 11-13). Detective Dusty's statement was hearsay and highly prejudicial to client because it allowed the jury to infer that Applicant had a reputation for violence in the community.
4. Trial counsel failed to move for a mistrial when State's witness Detective James Davey testified that one of the witnesses picked Applicant out from a photo lineup. The State offered no proof that any of the State's identification witnesses identified Applicant through a line up. The identity of the individual who shot Moray Holmes was the central issue in Applicant's trial. Therefore any testimony regarding a positive identification through a phot line up was highly

prejudicial. Further, trial counsel provided ineffective assistance by not objecting to the adequacy of the curative instruction offered by the court. (Transcript page 314 line 2 – page 315 line 3).

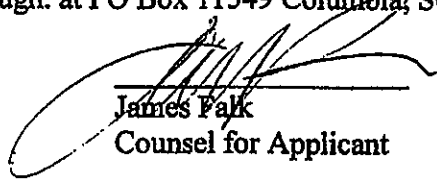
Respectfully Submitted,



James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on August 19, 2019 a copy of the above was both mailed and emailed to Benjamin Limbaugh. at PO Box 11549 Columbia, SC 29211; blimbaugh@scag.gov



James Falk
Counsel for Applicant

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WALTERBORO, SOUTH CAROLINA

A P P E A R A N C E S:

Attorney for the Plaintiff

Attorney for the Defendants

OFFICIAL COURT REPORTER

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
----------------	---------------	--------------	-----------------	----------------

MATTHEW WALKER

Mr. Falk	6			
----------	---	--	--	--

Mr. Limbaugh		16		
--------------	--	----	--	--

QUOTEAS NESBITT

Mr. Falk	21			
----------	----	--	--	--

Mr. Limbaugh		28		
--------------	--	----	--	--

CLOSING REMARKS

Mr. Falk	30			
----------	----	--	--	--

Mr. Limbaugh	33			
--------------	----	--	--	--

Ruling of the Court		34		
---------------------	--	----	--	--

Certificate of Reporter		35		
-------------------------	--	----	--	--

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX.</u>
------------	--------------------	-----------	------------

(NO EXHIBITS)

1 THE COURT: All right. Good morning, Mr. Limbaugh,
2 how are you?

3 MR. LIMBAUGH: Doing well, Your Honor. How about
4 yourself?

5 THE COURT: I'm fine. I understand we have a PCR
6 this morning in the matter of Quoteas Sylvester Nesbitt;
7 is that correct?

8 MR. LIMBAUGH: That's correct, Your Honor.

9 THE COURT: All right.

10 MR. LIMBAUGH: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. LIMBAUGH: This is in the matter of Quoteas
13 Nesbitt, Case Number 2016-CP-15-1433. Applicant is
14 presently confined in the South Carolina Department of
15 Corrections pursuant to orders of commitment in the
16 Colleton County Clerk of Court.

17 In March of 2013, the Colleton County Grand Jury
18 indicted the Applicant for murder and possession of a
19 weapon during a violent crime.

20 Matthew L. Walker of the Fourteenth Circuit Public
21 Defender's office represented Applicant at trial.
22 Assistant Solicitor Tameaka Legette prosecuted the case
23 on August 25, 2014. Applicant proceeded to a jury trial
24 in front of the Honorable Perry M. Buckner, III. The
25 jury found Applicant guilty as indicted on all counts.

1 On March 28, 2014, Judge Buckner sentenced Applicant
2 to imprisonment for 45 years for murder and five years
3 for possession of a weapon during the commission of a
4 violent crime. Both to be served concurrent -- or
5 consecutively. My apologies.

6 Applicant timely filed a notice of appeal. Susan
7 Hackett of the Office of the Appellate Defense conducted
8 the appeal pursuant to Anders in California. Applicant
9 subsequently filed a pro se. The South Carolina Court
10 of Appeals confirmed Applicant's conviction and granted
11 counsel's motion to be relieved on March 2, 2016. The
12 remittitur was returned to the Circuit Court on May 18th
13 of 2016.

14 Applicant filed this application of post-conviction
15 relief on September 28, 2016. Alleging again
16 ineffective assistance of counsel for not properly
17 investigating the evidence before trial and not
18 objecting at several critical stages at trial. Not
19 properly preparing a defense strategy. Alleges
20 prosecutorial misconduct. Prosecutor misconduct on
21 behalf of Solicitor at trial. Judge used his
22 discretion. Trial judge abused his discretion at trial
23 by allowing errors to occur.

24 And he's represented by Mr. Falk and I'll hand it
25 over to Mr. Falk at this time.

1 THE COURT: Sure. Mr. Falk, I'm happy to hear from
2 you.

3 MR. FALK: Your Honor, I also filed an amended PCR
4 application. I've got -- and let me just read the -- as
5 grounds for a PCR relief we amend as the following: One
6 is that trial counsel failed to object when the State's
7 witness who was a Colleton County jail employee
8 testified that I have known Quoteas for some time
9 working at the jail. We think that that's testimony
10 that should have been objected to.

11 Trial counsel failed to object when State's witness
12 James, and I put his name wrong here, but it's James
13 Davis (sic). Officer Davis testified that one of the
14 witnesses didn't want to talk to the police at the scene
15 because they were worried about her own safety. The
16 witness reported and we think that that is something
17 that could have been objected to.

18 James Davis testified that the same thing regarding
19 a witness named Donald Odom did not want to come forward
20 for the same reasons and we think that testimony is
21 prejudicial.

22 There was also testimony that one of the -- that the
23 Applicant was picked out of a photo lineup and there's
24 no record in this -- and this is an identification case
25 and part of the testimony was that, you know, he said --

1 and this is hearsay, also, he says that one of the
2 witnesses said that they picked out Mr. Nesbitt out of a
3 photo pack lineup and there was a photo pack lineup that
4 was never mentioned as part of the *Bigger's* hearing at
5 the beginning and we believe that that is again the case
6 is going to rely heavily on identification that's
7 prejudicial.

8 THE COURT: Okay. Do you have any witnesses you
9 would like to call today?

10 MR. FALK: Yes. I would call trial counsel.

11 THE COURT: Mr. Walker.

12 MATTHEW L. WALKER,
13 being first duly sworn, was examined and testified as
14 follows:

15 THE COURT: Thank you, Mr. Walker. Have a seat.
16 State your full name and spell your last.

17 MR. WALKER: Matthew Lee Walker, W-A-L-K-E-R.

18 DIRECT EXAMINATION BY MR. FALK:

19 Q Mr. Walker, can you tell something about the facts
20 of this case? Just sort of summarize what they are.

21 A There was a shooting in a nightclub parking lot
22 which was on video. While you can see the shooting, you
23 cannot identify from the video who the shooter was. And
24 shooting -- the victim died. There were a number of
25 witnesses that were there in the parking lot that

1 identified Mr. Nesbitt as the shooter.

2 Q Okay. But there were lots of people in the parking
3 lot --

4 A There were.

5 Q -- is that correct? This was like a Saturday night
6 kind of thing?

7 A Correct. Full parking lot, a lot of people.
8 Nobody that wasn't really kind of related to the victim
9 stuck around and talked to the police from my
10 recollection.

11 Q Are you familiar with Dorothea Gathers-Grant?

12 A I haven't looked at this case in --

13 Q I know, I'm just saying. You practice law in
14 Colleton County, don't you?

15 A Yes, I do, but I don't live there.

16 Q Okay. Well, anyway's, do you have your copy of
17 your transcript with you?

18 A I do.

19 Q If you could look at page 154.

20 A All right. I'm there.

21 Q Okay. So that's when they're calling Dorothea
22 Gathers-Grant?

23 A Okay.

24 Q Okay. It says that she worked as a long time
25 employee of the Colleton County Sheriff's office; is

1 that correct? Down at the bottom of the page and going
2 on to the next page.

3 A Yes.

4 Q So she worked there 11 or 12 years?

5 A Yes.

6 Q All right. And then if you move to page 160, she
7 identified Mr. Nesbitt. And if you could look at line
8 17 through 21.

9 A Yes.

10 Q Okay. So the jury heard that this was a long time
11 employee of the jail. And when asked how did she know
12 Mr. Nesbitt, says I've known Quoteas for some time --
13 for some years while working at the jail. Did you
14 consider whether or not that could possibly be
15 prejudicial comment?

16 A I think I might have. I don't recall correctly.
17 But I feel like in the context I probably would have let
18 that go just to not call further attention to it.

19 Q Okay.

20 A And because I believe testimony was that he had
21 been arrested and then they already knew he had been in
22 jail because of the arrest originally so they could have
23 kind of referred to him there.

24 Q But that wouldn't be accurate because she's saying
25 she knows him from the jail. So when he noticed that

1 she would have after his arrest isn't a basis for how
2 she would have known him. If she's known him from being
3 in the jail prior to --

4 A May have. I would agree.

5 Q Okay. And you could have made an objection after
6 possibly 404(b) or, you know, that's indication of a
7 prior bad acts --

8 A Yes. I mean, I could have objected.

9 Q Okay.

10 A If I didn't just miss it, I would have said let's
11 not call anymore attention to it. Let's just keep
12 rolling.

13 Q So your testimony is you might have caught it and
14 you might have objected or you might have sort of
15 decided not to hit the heck, you know, ring the bell
16 again?

17 A Right.

18 Q Okay. But at this point you're not sure which one
19 it was?

20 A Correct.

21 Q Okay. Now there was a James Russell Davis, he was
22 one of the investigators in this case?

23 A (No response)

24 Q If you look at page 311. And if you can look at
25 the paragraph that starts on line 17 through 23.

1 A Yes. I've read it.

2 Q Did you have any concerns when Mr. Mitchell --
3 first of all, I guess that is -- is that not a hearsay
4 statement that Mr. Mitchell told Officer Davis that --
5 Mr. Mitchell told Officer Davis that he was scared of
6 Mr. Nesbitt?

7 A Yes.

8 Q Did you consider whether or not to object based on
9 hearsay there?

10 A No.

11 Q Again, is that the same before is that whether you
12 missed it or whether or not you didn't want to ring the
13 bell again?

14 A On that one it's not applicable to Mr. Nesbitt
15 because he wasn't the one that shot the person, so they
16 would have no cause to fear Mr. Nesbitt.

17 Q Oh, I see what you're saying. You're saying that
18 your defense was it wasn't him?

19 A Correct.

20 Q But does that still not prejudicial that the jury
21 would think that Mr. Mitchell had some reason to fear
22 Mr. Nesbitt?

23 A Well, I didn't say they were afraid of Mr. Nesbitt.
24 It says you're afraid of cooperating with the police and
25 by assumption would be the person that shot them. And,

1 of course, Mr. Nesbitt was saying it wasn't him.

2 Q Okay. If you could look at 313.

3 A Which line?

4 Q That paragraph 8 through 15. Again, so this is the
5 female telling Captain Johnson and this is Davis
6 testifying what the female told Captain Johnson about
7 fear -- fearing for her safety. And the reason why --
8 and, again, I think that's hearsay testimony. And it's
9 your reason for not objecting to that what you're saying
10 the same reason was the last time?

11 A That's correct.

12 Q Okay. So in your mind it was consistent with your
13 trial strategy?

14 A Correct. And I think also in Walterboro that
15 there's kind of a generalized don't cooperate with the
16 police it just gets stitches, even though some of them,
17 certain portions of the community, that isn't really
18 necessarily directed at any particular defendant.

19 Q Okay. And if you could look at page 314.

20 A 14?

21 Q 314.

22 A All right.

23 Q And I may be mistaken here, but was there a photo
24 pack lineup? If you look at the beginning of the page,
25 lines 2 through 8.

1 A I do not recall. If you bear with me, I have the
2 case file, I can see if there is one in there. You
3 probably read the transcript more thoroughly and more
4 recently than I.

5 Q I'm just saying, I went through the *Bigger's*
6 hearing and I didn't see it.

7 A Well, and, again, I'm not saying I did because I
8 haven't read the whole thing. But it would be my
9 general motion practice when there is a photo lineup to
10 stipulate the identification of moved to have the actual
11 lineup excluded as prejudicial because of the mugshots.
12 And I don't know if that's what happened here or not.

13 THE COURT: Do you know, Mr. Falk? Are you aware or
14 --

15 MR. FALK: I can't point to any place where they
16 talk about the photo lineup. And actually if I could --

17 Q If you could go back. It looks as though there's a
18 bench conference on the middle part of that page on 314.

19 A 314?

20 Q Yeah.

21 A And I'm just saying this after a quick flip through
22 the file, I don't see a lineup in there. But there are
23 some discs in there that I don't know if it's on that.

24 Q So line 12 says that there's a bench conference.

25 A I see that there and I don't have any independent

1 recollection of what that bench conference was about.

2 Q Okay. But then there was a curative instruction at
3 the bottom of the page.

4 A There you go. Looks like I objected to it.

5 Q Right. And at that point though you could have
6 moved for a mistrial, could you not?

7 A I could have.

8 Q Or you could have objected to whether or not that
9 curative instruction was sufficient?

10 A I could have.

11 Q And what was your decision regarding that?

12 A Well, obviously, I didn't do those things.

13 Q No, I know. I mean, I was just -- you know, was it
14 a trial strategy decision that you were making?

15 A I would -- and, again, I'm kind of going backwards
16 because I don't have a direct recollection. My thought
17 is based on, again, the multiple people that are calling
18 him out as direct eyewitnesses it's one of those
19 cumulative things that just call further attention to it
20 if I hammered on it. And he wasn't going to grant a
21 mistrial.

22 Q Okay. What -- while you objected to it so you
23 would admit that it's prejudicial?

24 A Yes.

25 Q You're assuming you objected to it because the

1 judge sort of out of the blue in this transcript issues
2 a curative instruction?

3 A Right.

4 Q So you would agree that there's prejudicial
5 information?

6 A Yes.

7 Q Can you go over what was the -- what type of
8 forensic evidence was there in this case; do you recall?

9 A Maybe the bullets from the body. There wasn't any
10 -- it was all in ID.

11 Q Yeah. I mean, was there any type of DNA evidence
12 taken off of any of the casings or --

13 A Nothing -- there was nothing that would either tie
14 Mr. Nesbitt to the scene or that would indicate -- I
15 mean, there were some like crushed beer cans, cigarette
16 butts, and stuff off the parking lot. But there's not a
17 bullet casing with a fingerprint or DNA or anything like
18 that that would be -- we can say, hey, no, there's
19 another person here that we can tie to the actual
20 shooting. And, of course, nothing that tied Mr. Nesbitt
21 to the shooting other than the identifications.

22 Q There was a *Bigger's* hearing regarding Mr.
23 Chapman's testimony; is that not correct? That's page
24 50.

25 A There was.

1 Q If you could just sort of skim through that sort of
2 what the issues were you had.

3 A I remember that. That was the thing -- the only
4 thing in the trial that I -- that stands out because
5 they sprung that testimony on me about a week and a half
6 before the trial. And I objected to it luciferously
7 because if some lay witness had come in there with that
8 story, I would hope a judge would have excluded it. But
9 it's different for the cops, I guess, so it came in.

10 But the issue was that, you know, he had --
11 according to him just happened to walk into the
12 investigations room where they were preparing this case
13 for trial and lo and behold -- and he knew it was this
14 case they were preparing and lo and behold they say,
15 hey, come watch this video of this shooting. And he
16 was, you know, amazingly able to identify Quoteas on
17 that video when nobody else could because of his
18 experience with Quoteas.

19 Q And was a part that he recognized his walk?

20 A Yes.

21 Q Okay. So then Mr. Chapman testified and identified
22 Mr. Nesbitt; is that correct?

23 A Correct.

24 Q Did you reserve your objection to his testimony?

25 A I'm pretty sure I did. I was jumping up and down

1 on both feet.

2 Q Is that -- if you could look at page 352.

3 A Line 12; yes.

4 Q Yeah. Again, that sometimes happens in Colleton
5 County they don't always put those bench conferences on
6 the record, so --

7 A Yeah.

8 Q I'm assuming that they were referring back to the
9 arguments you made at the *Bigger's* hearing?

10 A That's correct. That's what that was about. And
11 it may even be at the break Judge Buckner may have
12 noticed -- he'll take breaks and kind of go back and put
13 some of those bench things on the record and he may have
14 done that, I don't recall. But that is what that was
15 about. I was renewing that objection. I'm not going to
16 flip through the whole thing.

17 MR. FALK: I have no further questions.

18 THE COURT: Okay. All right. Any cross?

19 MR. LIMBAUGH: May it please the Court, Your Honor?

20 THE COURT: Sure.

21 CROSS EXAMINATION BY MR. LIMBAUGH:

22 Q Good morning, Mr. Walker?

23 A Good morning.

24 Q So how long have you been practicing law?

25 A I was admitted in '04, so, 15 years.

1 Q And has the majority if not all that time been
2 spent doing criminal defense work?

3 A I've been -- finished law school, worked for Judge
4 Lockemy and I've been in this office since then.

5 Q Okay. I know we talked a little bit about the
6 identifications, is that the main form of evidence
7 against the Applicant in this case?

8 A Correct.

9 Q Okay. And were there multiple eyewitness
10 identifications of the Applicant?

11 A There were.

12 Q Okay. If I could get you to turn back to page 160.

13 A All right.

14 Q And this might just be me here, but the way that
15 question was phrased, "Let me ask this, do you know
16 Quoteas Nesbitt and if you're testifying in a trial
17 about Quoteas Nesbitt, would the defendant sitting there
18 not be the person you are identifying." So my question
19 is are you not really identifying the person it's just
20 the person sitting at the table?

21 A She would have been. I mean, it's certainly --

22 Q I can rephrase.

23 A She would have been. But, you know, I think the
24 issue that Mr. Falk has is her referencing how she knows
25 him.

1 Q I understand. And what was your strategy again in
2 this case?

3 A To discredit the identification witnesses which I
4 feel we were able very much to do with the -- we were
5 able to, I believe, show bias or prejudice for each of
6 the lay identification witnesses. And then, of course,
7 that's why I was jumping up and do so hard about the
8 officer coming in to reinforce their testimony.

9 Q And you went into the statements about people being
10 afraid of the shooter weren't really prejudicial to your
11 defense because your defense was that it wasn't
12 Mr. Nesbitt?

13 A Correct.

14 Q Okay. And --

15 A I would say also that it's not that -- the
16 transcript's not that they're afraid of the shooter,
17 they're afraid of something happening and they weren't
18 just a general appearing and I would -- obviously, that
19 the shooter would be encompassed in that, but also -- I
20 mean, just second chair to trial where someone was
21 allegedly shot for calling the police on somebody else.
22 So it was just the community not wanting to cooperate
23 with the police.

24 Q And when you were talking about earlier that you
25 objected but you didn't move for a mistrial, can you go

1 through that thought process again?

2 A It probably wasn't a thought process, it was a very
3 good chance I just got what I want, you know, I
4 objected, preserved it. Got, you know, had a conference
5 or whatever and it wasn't going to be mentioned anymore.
6 I think I probably was objecting at that point to head
7 off any further discussion and/or entry of a photo
8 lineup.

9 And so once I got that conference, the Solicitor
10 said we're going to go into another topic and the judge
11 cured it, and, you know. Plus there's been a break
12 where the lineup hasn't been mentioned after the bench
13 conference so then to come back and do all that, you
14 know, I certainly could have done it. I don't know that
15 it would have been granted. But I feel strongly it
16 would not have been granted.

17 MR. LIMBAUGH: Court's indulgence, Your Honor.

18 THE COURT: Uh-huh.

19 Q And you do feel you preserved your objection to the
20 officer's testimony about the identification?

21 A I do. That is absolutely what that was about.

22 Q And did you do a thorough investigation of this
23 case?

24 A We did. As I said, we -- the evidence was the
25 eyewitnesses and we were able, you know, through

1 Mr. Nesbitt and my investigator and finding out, we got
2 -- we had some strong, what I felt to be fairly strong
3 reasons to cast doubt as to each of these witnesses
4 either they're related to the victim or, I mean, one
5 gentleman took the stand and said -- kind of cast
6 himself as an impartial observer, but then turns out
7 that Mr. Nesbitt had had an affair with his wife and we
8 brought that on the stand and the jury actually gasped
9 when that question was asked. Because, I mean, he kind
10 of had to backtrack about how he was impartial under the
11 pretense of Quoteas.

12 That's why it was so damaging to have it come in.
13 Because all these people had issues and you got kind of
14 death by a thousand cuts because there was like four or
15 five of them, but still they all had issues. And then I
16 feel like Chapman kind of came in there and shortened
17 them up.

18 Q And, again, you vehemently objected to Chapman's
19 testimony?

20 A Yes.

21 MR. LIMBAUGH: That's all I have of this witness,
22 Your Honor.

23 THE COURT: Any redirect?

24 MR. FALK: No redirect.

25 THE COURT: Okay. You can step down. Any other

1 witnesses that you would like to call?

2 MR. FALK: Mr. Nesbitt.

3 THE COURT: All right. Mr. Nesbitt, come take the
4 stand, please.

5 QUOTEAS NESBITT,
6 being first duly sworn, was examined and testified as
7 follows:

8 THE COURT: Please state your full name and spell
9 your last.

10 MR. NESBITT: Quoteas Nesbitt, N-E-S-B-I-T-T.

11 THE COURT: Yes, sir, Mr. Falk.

12 DIRECT EXAMINATION BY MR. FALK:

13 Q Mr. Nesbitt, can you go over your dealings with
14 your lawyer in this case? How many times he met with
15 you in the jail? Were you in custody the whole time?

16 A Yes, sir.

17 Q Okay. How many times do you think he came and
18 talked to you at the jail?

19 A He came and talked to me one time when I was in
20 Hampton County and that was about, um, really when I
21 went about the bond reduction. And end up being a DNA
22 hearing though. They ain't even do a bond reduction.
23 And then the weekend that I went to trial. That's
24 weekend following the trial.

25 Q Okay. What did he go over with you as far as his

1 strategy for the case?

2 A He platened (phonetic) me with just getting like
3 new statements that week, you know. So, you know. You
4 know, like a few statements I ain't seen until like
5 Monday -- Monday and Tuesday. Like that was only like,
6 he showed me like two or three new statements that was
7 changed, you know. He really didn't have no strategy,
8 you know. He just, you know, I mean, try to get the
9 statements dismissed because the way they was, you know
10 what I'm saying, the prosecutor had got them, you know
11 what I'm saying, and they was like trying to change
12 statements. So the only thing argue, he was trying to
13 get the statement dismissed. Like the Chapman
14 statement, I think it was Odom statement, and Nick
15 Williams' statement. And he was trying to get them
16 practically thrown out, you know what I'm saying, not be
17 able to testify their statements.

18 Q In your PCR application you had indicated that --
19 you said ineffective assistance of counsel because it
20 was not up for coming up review. Do you know what you
21 were -- what were you referring to there?

22 A Like had -- the lawyer I had.

23 Q It's -- the question that if any grounds left, you
24 know, it says, "State concisely the reasons why such
25 grounds were not previously presented."

1 THE COURT: It might help if you show him what your
2 looking at.

3 MR. FALK: Okay. I'm sorry.

4 Q This is your PCR application. What I'm taking
5 about is your answer right there. Can you read that?
6 Do you need glasses?

7 A No. I was really talking about like, you know,
8 Chapman, Chapman statement, you know, that he didn't
9 argue it. He didn't push the issue. And like the DNA
10 is like a video, he allowed them -- he didn't never
11 mention about like there really is a third party -- it
12 did come up to a third party. Like DNA, you know what
13 I'm saying, that had a third party.

14 And at the video, he really let them only single me
15 out where they're supposed to be singling me out, you
16 know, like one person on the video cutting to show 20
17 vision walks to the car. And he allowed them not to
18 even mention the other person.

19 Where on one statement Renata Holmes had given a
20 statement the next day identifying somebody else and
21 only saying I was out there. But she had give
22 identification of somebody else and he didn't like
23 really push the issue on the third party, you know, like
24 there is somebody involved like the video, you know, the
25 inconsistent statements.

1 Like you got a statement by Brian Manigo where he
2 testified that he was driving the car and he was by
3 himself, his first statement. And he was like -- and he
4 give a statement after he was like, I think, months
5 later where he had caught a charge, a robbery charge,
6 where a guy got shot in that. And when he came to jail
7 he give a statement saying he was driving the car by
8 himself and it didn't add up to the video.

9 And then five days before my trial, he changed his
10 statement and said now he was in the passenger side and
11 the guy that was driving the car end up being Kevin
12 Mitchell, you know. And when Kevin Mitchell first
13 statement was given, he was telling, he said he ain't
14 seen nothing. He just came out there.

15 And this is a statement that I had in my motion
16 discovery and the new statements came like for, like I
17 said, five days before my trial where they had went over
18 -- everything was done off of video. And like he didn't
19 argue. He didn't even bring up Brian Manigo first
20 statement. He didn't even bring up Kevin Mitchell first
21 statement.

22 I mean, he mentioned about what Renata had wrote,
23 but he didn't argue as it could possibly be a third
24 party where the video show two people walk away from a
25 car. And they only made it seem like it was just one,

1 like this, like the guy when he was there or whatever,
2 you know. It just made it seem like I was the only one
3 in the parking lot.

4 Like in one statement she said I was under the
5 light. And I was just like, just light up like I was
6 just standing in the light and it just shining on me
7 that she could see me from when they wasn't even turning
8 in the parking lot. And, you know, I felt like he
9 didn't argue them points, you know what I'm saying,
10 full.

11 Q And what were you saying about the DNA though?

12 A DNA, well, he said he said that they wasn't no
13 fingerprints. But if you look at when Jeff Scott
14 testified, too, he said it was shells, you know, like
15 fingerprints found the shells. Well, he was like in the
16 budget of like a money budget, he said they didn't --
17 did the fingerprint, they did a DNA, I guess. The DNA
18 or whatever, you know what I'm saying, that part.
19 Something like the DNA or whatever because they was in a
20 budget.

21 So the way they did that, he said there's nothing
22 came back. He didn't, like I said, he didn't argue
23 nothing about third party or nothing, you know what I'm
24 saying, that it could possibly be a third party where it
25 was statements, you know, given from the eyewitness

1 that, you know, possibly be a third party. Everybody
2 had give a statement changed their statement up to the
3 point of five days to my trial where they went over a
4 video.

5 Q But Agent Scott testified about the DNA evidence?

6 A Yes, sir.

7 Q Or the fingerprint evidence?

8 A Yeah. He was talking about a DNA like fingerprint
9 of the spine of shell and some cigarette butts.

10 Q You said that you don't think he did a very good
11 job investigating this case. What do you -- do you have
12 anything else to add other than what you're saying with
13 the inconsistent statements?

14 A Because the witness -- the State had two witnesses.
15 All right. I think it was Paris, I can't really
16 remember the name and Kendra Jackson. All right.
17 During while I'll was going to trial some like, you know
18 like, they didn't testify. I don't know why or whatever
19 was going on with that.

20 But Kendra Jackson approached, you know what I'm
21 saying, Mr. Walker, and how I found out that, Mr. Walker
22 told me Kendra Jackson approached him, you know what I'm
23 saying, and telling him that he had something to tell
24 him, whatever, you know what I'm saying, to help me in
25 my case.

1 So Mr. Walker asked me do I know where he got the
2 statement, but I've been in county jail, you know, I
3 ain't got no phone to call nobody or nothing. And I
4 don't know what Kendra Jackson had to tell him. So he
5 asked me, I said I don't know. And he was planning --
6 he didn't investigate to see what this guy had to say
7 involving helping me. And he did not call him to the
8 stand or question him to find out what he had to say and
9 just let it go like, you know what I'm saying.

10 He ain't did nothing, you know. He investigate --
11 I felt like he ain't talked to no witnesses, you know.
12 He allowed Renata Holmes, like he didn't argue the point
13 like she's an eyewitness, you know what I'm saying. She
14 sat in the court. Ms. Gathers, she was involved in my
15 case, they allowed her to sit in the court and had to
16 hear other testimony, so whatever, I felt like that
17 helped them in their testimony, you know, when they came
18 up to testify in my case, you know.

19 So he didn't even argue about them being in the
20 courtroom and they part of my case, seeing through the
21 case. And then he did nothing. You know, he ain't had
22 no strategy. He ain't did no strategy, you know. And
23 when we talked, the only thing he talked about getting
24 the statements having thrown out because they was, what
25 the word is, inconsistent statements. Because they were

1 changing, you know what I'm saying, by the time and they
2 was written statements, you know what I mean. And they
3 allowed it.

4 Like I say, he didn't -- he ain't plan to do
5 nothing, you know what I'm saying. As I feel, he didn't
6 do nothing. Like I said, no objections, no nothing. He
7 ain't did nothing. He just let it go.

8 MR. FALK: I have no further questions at this time.

9 MR. LIMBAUGH: Briefly, Your Honor.

10 CROSS EXAMINATION BY MR. LIMBAUGH:

11 Q Good morning, Mr. Nesbitt?

12 A Good morning, sir.

13 Q How many times did you say that you and Mr. Walker
14 met?

15 A He came one time at the county and then that
16 weekend before my trial.

17 Q Okay. Did you go over your defense strategy or
18 what you planned on doing at trial?

19 A Really we ain't had no time. Because like I said,
20 he showed me three statements and then -- and like I
21 said, it was like Renata -- like on Kevin Mitchell's
22 statement, I didn't see Kevin Mitchell's statement until
23 that Monday and that's when he received. But this was
24 his -- when I asked him about it, he said he probably
25 had it, he probably just left it at the thing. And

1 Brian Manigo, they knew mistakes. I ain't seen them
2 until Monday and Tuesday, you know.

3 But the only statements, the new statement that he
4 showed me was, like he said, the big statement he was
5 really arguing about was Jason Chapman and Odom, you
6 know what I'm saying. Those are the statements that he
7 showed me I think it was Wednesday.

8 It was really like he was arguing that he was going
9 to get the statements dismissed. But he wasn't argue
10 about the trial like at hand like he was going on like
11 no strategy how he was going to try to eliminate me from
12 the shooter or being the shooter or anything like that,
13 you know. Or how the video, how he was going, you know
14 what I'm saying, it was nothing like that that was
15 spoken.

16 MR. LIMBAUGH: That's all I have of this witness,
17 Your Honor.

18 THE COURT: Anything else?

19 MR. FALK: No further witnesses, Your Honor.

20 THE COURT: All right. You can have a seat back in
21 the jury box.

22 All right. Mr. Limbaugh does the State wish to call
23 any witnesses?

24 MR. LIMBAUGH: The State does not, Your Honor. The
25 State rests.

1 THE COURT: Mr. Falk, I'll be happy to hear from
2 you. Summarize.

3 MR. FALK: Your Honor, we believe that the issues
4 that are raised in the amended postconviction relief
5 application, we heard counsel testify that he doesn't
6 have a present recollection whether or not reasons like
7 why he didn't object to this testimony. And I'm
8 specifically referring to the testimony by
9 Ms. Gathers-Grant saying that he was -- she knows him
10 from the jail.

11 We think that that testimony was highly prejudicial
12 and that unless the jury -- I mean, how else would a
13 jury would have known something by sight saying they
14 noticed him from the jail. I think that is something
15 that is prejudicial and it's an indication that the jury
16 has that this person is, as I said, a frequent flier in
17 the Colleton County jail. That Appellant counsel is not
18 able to raise that issue on appeal because that issue
19 was not preserved in the record.

20 Going forward, the issues regarding -- in spite of
21 what defense counsel said, we still think that it's
22 prejudicial for these witnesses to keep talking that
23 they were afraid of being hurt and being harmed. And
24 that's why they didn't want to cooperate with the police
25 officers.

1 First of all, both of those statements come in and
2 they're both hearsay statements that are coming in.
3 And, again, I think they're highly prejudicial because
4 now, you know, if you tie that with Ms. Gathers'
5 testimony that he's a frequent visitor to the jail and
6 that they're now worried and that's why they're not
7 coming forward to cooperate with police that's -- I
8 certainly think that the jury, it could easily lead to
9 them an inference that they had some reason to be
10 worried about my client.

11 This testimony was not objected to at trial and,
12 therefore, those issues could not have been raised on
13 review. We think that in an identification case like
14 this, you know, there is no forensic evidence really
15 tying him to the scene. You've got testimony from
16 witnesses who have changed their statements numerous
17 times. That in total that combined with some of these
18 problems with concerns that the jury's led to believe
19 that he's a dangerous person and is frequent in the
20 jail, that was highly prejudicial of these facts.

21 THE COURT: Okay. As to his claim regarding the --
22 Officer Chapman's testimony, would you diver that that
23 was clearly an issue for the Court of Appeals to take up
24 verses a PCR?

25 MR. FALK: It was an issue -- it was -- actually the

1 Court of Appeals could not have taken that up. Because
2 there was a curative instruction. The only way for the
3 Court of Appeals to have taken that up would have been
4 that he would have had to of moved to either object to
5 the curative instruction or ask for a mistrial. By
6 failing to do that, this testimony regarding the photo
7 lineup is not preserved for a review. I mean, that's
8 the case law.

9 You know, that's the problem sometimes when the
10 Court grants your objection is that then you got to
11 decide what to do next. And, you know, so the Court
12 made the curative instruction cutting off being able to
13 use his objection as a basis for preserving the record.
14 So now we're going forward and although this was a
15 significant issue and he testified that he was jumping
16 up and down on his hands and feet complaining about it,
17 the appellate court had no opportunity to review that
18 issue because his failure to ask for -- to object to the
19 curative instruction and/or asking for the mistrial.

20 The case law says that if he doesn't object to the
21 curative instruction you're accepting it as being no
22 harm. I paraphrased, but that's what the law is.

23 THE COURT: Okay.

24 MR. FALK: So, again, in a case where you're -- now
25 you're talking about a photo pack lineup which I think

1 are -- case where you've got witnesses changing their
2 testimony, doesn't it say it identified them out of a
3 photo pack, I think that's highly prejudicial.

4 THE COURT: All right. Mr. Limbaugh, I'll hear from
5 you.

6 MR. LIMBAUGH: Yes, Your Honor. As it relates to
7 Ms. Gathers' testimony, I believe at the bottom of that
8 page of 160, it's lines 22 and 23, the Solicitor
9 actually corrects Ms. Gathers and says, you know him
10 from the community and what she responds, yes.
11 Correcting her earlier comment as to knowing him from
12 the jail. So I believe that was actually not
13 prejudicial to his case.

14 As it relates to Mr. Chapman's testimony, I believe
15 that was objected to by counsel properly. And any other
16 discussion about his other identifications and things of
17 that nature is not prejudicial to Applicant because of
18 all the other witnesses who did identify him at the
19 trial.

20 The photo lineup was objected to by counsel and
21 sustained and a curative instruction was given by the
22 Court; therefore, I do not believe that was deficient or
23 prejudicial to Applicant to have that information
24 redacted. Therefore, the State thinks that Applicant
25 don't meet it's burden of, you know, deficiency or

1 prejudice in this case and should be dismissed. Thank
2 you, Your Honor.

3 THE COURT: All right. I will take a look at this
4 and ask for one of you to submit a proposed order in the
5 next 30 days. Okay. All right.

6 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Fourteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Colleton County, South Carolina, on the 27th of August, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

(This transcript was transcribed from the record taken by Rebecca M. Hill)

March 15, 2020

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Quoteas Nesbitt, #361169,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-15-1433

ORDER OF DISMISSAL

2020 JAN 14 AM 9:15

COLLETON COUNTY
COMMON PLEAS COURT

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In March 2013, the Colleton County Grand Jury indicted Applicant for murder (2012-GS-15-0663) and possession of a weapon during a violent crime (2012-GS-15-0664). The charges resulted from a September 2012 incident in which Applicant fatally shot the victim multiple times in the back at the Chase Lounge in Colleton County. ROA p. 115, ll. 12-17; p. 507, l. 3. Matthew L. Walker, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant at trial. Assistant Solicitor Tameaka A. Legette prosecuted the case. On August 25, 2014, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. On August 28, 2014, Judge Buckner sentenced Applicant to imprisonment of forty-five years for murder and five years for possession of a weapon during a violent crime, to be served consecutively.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant subsequently filed a pro se brief. The South Carolina Court of Appeals affirmed Applicant's conviction and granted counsel's motion to be relieved on March 2, 2016. State v. Nesbitt, Op. No. 2016-UP-098 (Ct. App. 2016). The remittitur was returned to the circuit court

on May 18, 2016.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "For not properly investigating evidence before trial."
 - b. "Not objecting at several critical stages at trial."
 - c. "Not properly preparing a defense strategy."
2. "Prosecutorial Misconduct"
 - a. "Prosecutor misconduct on behalf of solicitor at trial."
3. "Judge abused his discretion."
 - a. "Trial judge abused his discretion at trial by allowing errors to occur."

Applicant amended his application on August 21, 2019 to include the following allegations:

1. Trial counsel failed to object when State's witness Dorothea Gathers-Grant testified that: I've known Quoteas for some years, working at the jail (Transcript page 160 line 21). Trial counsel should have objected under SCRE 403. The witness testified that she had worked at the Colleton County jail for 11 years in several capacities. Her statement that she knew Applicant from jail was prejudicial because it allowed the jury to infer that Applicant had a long criminal record.
2. Trial counsel failed to object when State's witness Detective James Dusty testified that Kelvin Mitchell stated that he did not want to give the police any more information because he feared for his safety. (Transcript page 311, lines 20-23). Detective Dusty's statement was hearsay and highly prejudicial to Applicant because it allowed the jury to infer that Applicant had a reputation for violence in the community.
3. Trial counsel failed to object when State's witness Detective James Dusty testified that Donald Odom stated that he did not want to come forward with information because he feared retaliation and feared for his safety. (Transcript page 313, lines 11-13). Detective Dusty's statement was hearsay and highly prejudicial to client because it allowed the jury to infer that Applicant had a reputation for violence in the community.
4. Trial counsel failed to move for a mistrial when State's witness Detective James Davey testified that one of the witnesses picked Applicant out from a photo lineup. The State offered no proof that any of the State's identification witnesses identified Applicant through a line up. The identity of the individual who shot Moray Holmes was the central issue in Applicant's trial. Therefore any testimony regarding a positive identification through a phot line up was highly prejudicial. Further, trial counsel

JBM/2

provided ineffective assistance by not objecting to the adequacy of the curative instruction offered by the court. (Transcript page 314 line 2 - page 315 line 3).

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985). The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's

performance, not counsel's subjective state of mind. Strickland, 466 U.S. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689-690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt

might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant’s allegation is addressed fully below:

Failure to Object to Dorothea Gathers-Grant’s Testimony

Applicant alleges trial counsel was ineffective for failing to object to State’s witness Dorothea Gathers-Gant testifying that “I’ve known Quoteas for some years, working at the jail” after testifying that she had worked at the jail for eleven years. Applicant has failed to show any deficiency by trial counsel in failing to object to the testimony and any prejudice resulting from the alleged deficiency.

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Gentry, 540 U.S. at 8 (quoting Massaro, 538 U.S. at 505). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith, 386 S.C. at 567, 689 S.E.2d at 632. *See also*

Ingle, 348 S.C. at 470, 560 S.E.2d at 402 (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead, 308 S.C. at 122, 417 S.E.2d at 531.

Here, trial counsel testified at the evidentiary hearing that he believes his strategy for not objecting was to not bring further attention to the testimony, but that he could not recall if that was specifically why he did not object. Counsel enumerated a strategy for not objecting to the testimony that is valid, he did not want to put in the jury's minds that this information was more important than it actually was to the case. Further, per *Gentry*, this court is to strongly presume that counsel's decisions were based in strategy rather than in neglect. Counsel's slight uncertainty can certainly be attributed to the trial having taken place five years prior to the evidentiary hearing, however, counsel was still able to enumerate the strategy he believes he utilized for not objecting to the testimony. Further, Ms. Gather's testimony that she knew Applicant from her years working at the jail was immediately corrected by the Solicitor with the very next question.

Solicitor: Now, Ms. Gathers, you said you know him. How long would you say you've know him?

Gathers: I've known Quoteas for some years, working at the jail.

Solicitor: You just know him from the community?

Gathers: I just know him from the community, yes.

Any potential improper inference or prejudicial testimony from Ms. Gathers was immediately cured by her testifying that she did not in fact know Applicant from the jail, but rather that she just knew him from the community. Counsel enumerated a valid trial strategy for not objecting to

the testimony and Applicant was not prejudiced because the testimony was immediately corrected to the fact that Ms. Gathers actually knew Applicant from the community. Applicant has failed to meet his burden in showing deficiency on the part of counsel or any resulting prejudice from the alleged deficiency. Therefore, this allegation is dismissed with prejudice.

Failure to Object to Testimony Concerning Witnesses Fearing for Their Safety

Petitioner alleges trial counsel was deficient for failing to object when State's witness Detective James Dusty testified that Kelvin Mitchell stated that he did not want to give the police any more information because he feared for his safety. (Transcript page 3 1 1, lines 20-23). Applicant argues Detective Dusty's statement was hearsay and highly prejudicial to Applicant because it allowed the jury to infer that Applicant had a reputation for violence in the community. Applicant, however, has failed to show deficiency on the part of counsel for failing to object to the testimony and any prejudice resulting from the alleged deficiency.

As stated above, this Court must strongly presume counsel's decisions were made using reasonable professional judgement and were based on trial strategy. If counsel articulates a valid trial strategy, as counsel did in this case for not objecting to the testimony, this Court must hold that such conduct was not ineffective assistance of counsel. Here, trial counsel testified at the evidentiary that he did not object because it did not fit within their defense strategy that Applicant was not the shooter. Counsel testified that he agreed that the testimony from the law enforcement officer about witnesses of the incident telling him they were scared to cooperate was hearsay and that he did not consider objecting on that ground. Counsel further testified that the testimony was not applicable to Applicant, per their defense theory, because Applicant was not the shooter as well as the fear more pertaining to cooperating with law enforcement generally. Counsel further elaborated that the fear was related to the community at large being

JBM/8

afraid of cooperating with law enforcement, as he had just been on a case where someone was alleged shot for calling the police. This Court finds counsel's testimony concerning his strategy for not objecting and the inferences drawn from the testimony about fear are credible. Applicant has failed to meet his burden in regards to showing any deficiency on the part of counsel for failing to object to the testimony or any prejudice resulting from the alleged deficiency. Counsel enumerated a valid trial strategy for not objecting, namely that the testimony did not apply to Applicant per their defense theory. Therefore, this allegation is dismissed with prejudice.

Failure to Move for a Mistrial and Failure to Object to Curative Instruction

Applicant alleges counsel was deficient for failing to move for a mistrial when State's witness Detective James Davey testified that one of the witnesses picked Applicant out from a photo lineup. Applicant also alleges counsel was deficient for failing to object to the curative instruction given by the trial court. Applicant has failed to show deficiency on the part of counsel for failing to move for a mistrial or object to the curative instruction, as well as showing any prejudice resulting from the alleged deficiency.

"The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (citation and internal quotation marks omitted). "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." Id. at 585-86, 698 S.E.2d at 865. "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." Id. at 586, 698 S.E.2d at 865 (citation and internal quotation marks omitted).

Counsel testified at the evidentiary hearing that he immediately objected to the testimony concerning the photo-lineup. Counsel testified that he agreed that he could have moved for a mistrial at that point and that he could have objected to the sufficiency of the curative instruction. Counsel testified that the testimony was cumulative to the testimony of the other direct eyewitnesses, he did not want to call further attention to the testimony, and that the trial court was not going to grant a mistrial motion if made. Counsel testified further that he did not move for a mistrial because he got the curative instruction he wanted from his objection and the jury had time during the bench conference to let the testimony pass without further attention.

As well as counsel's testimony concerning his strategy for not moving for a mistrial, the trial court's curative instruction to the jury concerning the photo lineup cured any potential prejudice to Applicant. After the bench conference, the Solicitor asked the trial court that any "statements regarding any identification of Mr. Nesbitt in a photo lineup be stricken from the record." (Tr. P. 314, ln 18-21.) The trial court then instructed the jury to "disregard any comment made in this case concerning the photo lineup. That is not evidence in this case, and the parties agree that it should not be a part of your decision." (Tr. P. 314, ln 24-25; P. 315, ln 1-2.) The trial court's curative instruction properly informed the jury that they are not to consider the testimony concerning the photo-lineup. Applicant can show no deficiency by counsel in failing to move for a mistrial where counsel got the result he wanted by objecting and getting a curative instruction. Further, Applicant has failed to show that the trial court would have granted the mistrial motion where a mistrial was not absolutely necessary. Applicant has also failed to show how counsel was deficient for failing to object to the curative instruction or any resulting prejudice. This Court finds that Applicant has failed to meet his burden in showing counsel was deficient for failing to move for a mistrial, failing to object to the curative instruction, and showing any

resulting prejudice from the alleged deficiencies. Therefore, this Court dismisses this allegation with prejudice.

Failure to Exclude Officer Chapman's Testimony

Applicant alleges trial counsel was deficient for failing to exclude Officer Chapman's identification of him at trial. Applicant has failed to show deficiency by counsel for failing to exclude the testimony and the allegation is precluded as being inappropriate for this forum.

Counsel attempted to exclude the testimony pre-trial hearing and made a proper contemporaneous objection to the testimony during the trial. The trial court denied counsel's objection on the record based on the arguments made previously on the record. This Court finds this allegation is a direct appeal issue and is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 420 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief, and the allegation is dismissed.

Conclusion

Based on all the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief.

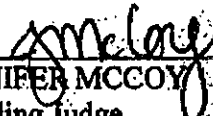
JBW/h

Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 17th day of January 2020.


JENNIFER MCCOY
Presiding Judge
Tenth Judicial Circuit

Charleston, South Carolina

DOCKET NO. 2012-GS15-00863

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

vs.

Quoteas Nesbitt

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

WITNESSES

Jodi Taylor, CCSO

ARREST WARRANT NUMBER

2012A1510100207

Arrest Date: September 14, 2012

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date: 3/28/13

VERDICT

Bulley

Denise J. Manselton

Foreperson of Petit Jury

Date: 8/28/14

INDICT

COLLETON COUNTY
GENERAL SESSIONS COURT
2013 MAR 28 PM 12: 32

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2012-GS15-00663

At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County, South Carolina, on or about September 6, 2012, with malice aforethought, Quoteas Nesbitt did kill and murder Moray Dupree Holmes by means of shooting him with a gun, and that Moray Dupree Holmes did die in Colleton County as a proximate result thereof on September 6, 2012; in violation of Section 16-3-10 of the 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.



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

DOCKET NO. 2012-GS15-00664

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

vs.

Quontas Nesbitt

Indictment for

Weapons / Poss. weapon during violent crime,
if not also seen

SC Code: 16-23-0490
CDR Code: 0549

WITNESSES

Jodi Taylor, CCSO

ARREST WARRANT NUMBER

2012A1510100208

Arrest Date: September 14, 2012

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date: 3/28/13

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8/28/14

INDICT

COLLETON COUNTY
GENERAL SESSIONS COURT
2013 MAR 28 PM 12:32

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

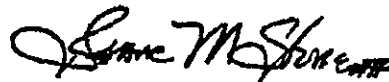
INDICTMENT
2012-GS15-00664

At a Court of General Sessions, convened on March 28, 2013, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That in Colleton County, South Carolina, on or about September 6, 2012, the Defendant, Quoteas Nesbitt, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: murder, a violent crime for which he is convicted of committing or attempting to commit; in violation of Section 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.



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

FILED
JUN 11 2013