

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable R. Knox McMahon, Circuit Court Judge
Honorable G.D. Morgan, Jr., Post-Conviction Relief Judge

BRANDON DASHUN ADAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000436

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2013-GS-23-05553
	)	2013-GS-23-05554
	)	2013-GS-23-05556
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BRANDON DASHUN ADAMS,	)	
DEFENDANT.	)	
_____	)	

January 4, 5, and 6, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE; and a jury.

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

LUCAS C. MARCHANT, ESQ.
Assistant Deputy Solicitor
W. RYAN HOLLOWAY, ESQ.
Assistant Solicitor

IVAN J. TONEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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(WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 were marked for identification only.)

THE COURT: This is State v. Brandon Dashun Adams.

Did I pronounce that correctly?

MR. TONEY: Yes, Your Honor.

THE COURT: All right. Thank you.

And let's see. You are Mr. Toney?

MR. TONEY: Yes, sir, I am.

THE COURT: And you represent Mr. Adams, and he's present.

MR. TONEY: I do, Your Honor.

THE COURT: All right. He's present. And I understand he needs additional items of clothing.

MR. TONEY: Well, he, actually, looks pretty good. But it might be good for me to see if they have any shoes downstairs for him.

THE COURT: What size does he wear? I don't know if I've got any in the trunk or not.

MR. TONEY: Size 11.

THE COURT: I, actually, do have 11's, but I'd have to walk about three blocks to get them.

1 MR. TONEY: Maybe the Public Defender's Office has
2 some. I can probably be back up in about three or four
3 minutes.

4 THE COURT: Perhaps, they do.

5 And then this is Assistant Solicitors Marchant --

6 MR. MARCHANT: Yes, sir.

7 THE COURT: Mr. Marchant.

8 All right. And Mr. Holloway?

9 MR. HOLLOWAY: Yes, sir.

10 THE COURT: All right. Are y'all going to have any
11 pre-trial matters?

12 MR. TONEY: We do, a Denno and Biggers.

13 THE COURT: All right. What is y'all's pleasure, to
14 select a jury, send them to lunch, do the motions? Y'all
15 tell me. I'm --

16 MR. MARCHANT: Yes, sir. That sounds great.

17 MR. TONEY: It's good for me, Your Honor.

18 THE COURT: All right. That sounds fine.

19 Well, let me know when you're ready with his clothing
20 and we'll get underway.

21 MR. TONEY: I'll be right back, sir.

22 THE COURT: All right.

23 MR. TONEY: Thank you, sir.

24 THE COURT: Thank you.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Mr. Toney.

2 MR. TONEY: Your Honor, his family is going to get
3 him his shoes. The jury won't be able to see his feet
4 between now and then. They really can't see his feet
5 until he walks up and testifies.

6 THE COURT: All right.

7 MR. TONEY: So I think adequately right now he's
8 okay.

9 THE COURT: All right. Well, anything before we call
10 for our jury panel from the State?

11 MR. MARCHANT: The only thing I have from the State,
12 there were several charges docketed that were indicted as
13 part of this incident. I've informed Madam Clerk that
14 we're not going to be going forward on all of them. We're
15 going forward on armed robbery, which is possession of a
16 weapon during a violent crime, burglary first, as well as
17 murder.

18 We're not going forward on the kidnapping or the
19 conspiracy.

20 THE COURT: All right. Anything further?

21 MR. MARCHANT: That would be it from the State, Your
22 Honor.

23 THE COURT: Anything from the Defense before we call
24 for our jury?

25 MR. TONEY: Not until we have our motions, obviously,

1 Biggers and --

2 THE COURT: I'm not sure I can track him [phonetic],
3 not until we have our motions --

4 MR. TONEY: Yes, sir.

5 How many strikes do we get, sir?

6 THE COURT: Well, I always ask that so the attorneys
7 are on record telling me. I don't know how many.

8 How many strikes, Solicitor?

9 MR. MARCHANT: I believe the State gets five, and the
10 Defense gets 10, Your Honor.

11 THE COURT: I believe that is correct.

12 Do you agree with that, Mr. Toney?

13 MR. TONEY: Yes, sir.

14 THE COURT: 10 for the Defense, and five for the
15 State.

16 MR. TONEY: Yes, Your Honor.

17 THE COURT: All right. If you would get us a jury
18 panel, please, Madam Clerk.

19 THE CLERK: Yes, sir.

20 THE COURT: Any voir dire from the State or the Defense?

21 MR. MARCHANT: No, Your Honor.

22 MR. TONEY: Not at this time, sir.

23 THE COURT: All right. Thank you.

24 (WHEREUPON, State's Exhibit No. 40 was marked for
25 identification only.)

1 (Pause.)

2 (WHEREUPON, the jury panel entered the courtroom.)

3 THE COURT: Solicitor, if you'd call your first case
4 for trial, please.

5 MR. MARCHANT: May it please the Court.

6 This is the State of South Carolina v. Brandon Dashun
7 Adams.

8 Representing the State, myself, Lucas Marchant, as
9 well as my colleague, Ryan Holloway.

10 THE COURT: All right. And is Mr. Adams present?

11 MR. TONEY: Yes. He's present, Your Honor.

12 THE COURT: All right. And you represent him?

13 MR. TONEY: Yes, I do, Your Honor.

14 THE COURT: And he's ready for trial?

15 MR. TONEY: He is, Your Honor.

16 THE COURT: All right. Thank you very much.

17 Good morning, ladies and gentlemen of the jury panel.

18 My name is Knox McMahan. I'm a circuit court judge.

19 I'm from the Eleventh Judicial Circuit of South Carolina,
20 which includes Lexington, Edgefield, Saluda, and McCormick
21 counties. I'm assigned to a week of General Sessions or
22 criminal court in Greenville County this week. To my
23 right is my law clerk, Mr. Todd Lyle, who is, also, a
24 member of the South Carolina Bar and, also, a resident of
25 Lexington County.

1 We're going to go through a procedure whereby we
2 select a trial jury for the first case that has been
3 called for trial by the State this week in Greenville
4 County. Please consider yourselves still under oath.

5 I assume, Madam Clerk, the jury panel was placed
6 under oath --

7 THE CLERK: Yes, sir.

8 THE COURT: -- during the general qualification
9 process.

10 If you would, please, continue to consider yourself
11 under oath for purposes of this proceeding. I will ask
12 you certain questions concerning your qualification and
13 your eligibility to serve as a fair and impartial juror in
14 the trial of this specific case.

15 Momentarily, I'm going to read to you the
16 indictments, the charges that have been brought against
17 the Defendant, Mr. Adams, in this case. The indictments,
18 ladies and gentlemen, are not evidence.

19 The indictments are the formal charging documents by
20 which an individual is placed on notice of the charges
21 that have been brought against him or her. It is the
22 formal document that brings -- or documents that brings
23 the case before the Court for trial. It contains mere
24 allegations. They contain mere alleges. And in no way
25 are they evidence of the allegations contained therein. I

1 will read or publish these indictments to you because of
2 certain questions I'll ask to determine your
3 qualifications and eligibility to serve.

4 The first indictment, 2013-GS-23-005553, reads that
5 Brandon Dashun Adams did in Greenville County on or about
6 the 11th day of December, 2012, unlawfully and with malice
7 aforethought kill Joseph Crite by means of shooting him
8 with a firearm, and that Joseph Crite died as a proximate
9 result thereof. This is a violation of 16-3-10 of the
10 South Carolina Code of Laws, South Carolina, 1976, as
11 amended. That is an indictment for murder.

12 The next indictment, 2013-GS-23-005554, reads that
13 Brandon Dashun Adams did in Greenville County on or about
14 that same date, the 11th day of December, 2012, willfully
15 and unlawfully enter the dwelling of Joseph Crite located
16 at ■ Landford Drive, Greenville, South Carolina, without
17 consent and with the intent to commit a crime therein.

18 And the burglary was accompanied by circumstances of
19 aggravation, to wit, the entering or remaining occurred
20 during the nighttime hours, and/or the Defendant was armed
21 with a deadly weapon, and/or did cause physical injury to
22 a person who was not a participant in the crime. This in
23 violation of 16-11-311 of the South Carolina Code of Laws,
24 1976, as amended. That is an indictment for burglary in
25 the first degree.

1 The next indictment, 2013-GS-23-005556, reads, count
2 one, that Brandon Dashun Adams did in Greenville County on
3 or about the 11th day of December, 2012, while armed with
4 a deadly weapon or while alleging either by action or
5 words that he was armed while using the representation of
6 a deadly weapon or any object which a person present
7 during the commission of the robbery would reasonably
8 believe to be a deadly weapon did take by means of force
9 or intimidation goods or monies described as liquor from
10 the presence or person of Joseph Crite. This in violation
11 of 16-11-330 of the South Carolina Code of Laws, 1976, as
12 amended. That is an indictment, count one, for armed
13 robbery.

14 Count two, that Brandon Dashun Adams did in
15 Greenville County on or about the 11th day of December,
16 2012, possess or visibly display a handgun during the
17 commission or attempted commission of a violent crime, to
18 wit, armed robbery. This is in violation of 16-23-490 of
19 the South Carolina Code of Laws, 1976, as amended. That
20 is a charge of possession of a weapon during the
21 commission of a violent crime.

22 The State is represented by Assistant Solicitors
23 Marchant and Holloway.

24 If you would, please, stand and introduce yourselves
25 to the jury panel and any other member of the Solicitor's

1 Office that may assist you in the Prosecution of this
2 case.

3 MR. MARCHANT: Good morning.

4 Again, I'm Lucas Marchant for the Prosecution. This
5 is my colleague, Ryan Holloway. Also seated at counsel
6 table is our paralegal, Melita Graham.

7 Thank you.

8 THE COURT: Thank you, Solicitor Marchant and
9 Solicitor Holloway.

10 Mr. Adams is represented by Mr. Toney.

11 Again, Mr. Toney, if you'd, please, stand, introduce
12 yourself to the jury panel and your client.

13 MR. TONEY: Yes, sir.

14 My name is Ivan Toney. I live here in Greenville
15 County. I practice law here in Greenville County. And
16 I'm pleased to meet you.

17 THE COURT: And your client for me, please.

18 MR. TONEY: This is my client. His name is
19 Brandon --

20 THE COURT: Stand for me, please, Mr. Adams.

21 MR. TONEY: His name is Brandon Dashun Adams. He's
22 lived here in Greenville his entire life.

23 THE COURT: Thank you, Mr. Toney.

24 Thank you, Mr. Adams.

25 MR. TONEY: Yes, sir.

JURY QUALIFICATION

THE COURT: And you heard the name of the alleged victim in the case, Joseph Crite.

Starting with the parties. Is any member of the jury panel related by blood or marriage, close personal friends, have any social, business, or professional relationship with either Mr. Adams, who has been introduced to you by Mr. Toney, or with the late Joseph Crite? That's C-R-I-T-E. If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Is any member of the jury panel related by blood or marriage, close personal friends, have any social, business, professional relationship with any of the attorneys involved in the -- either the Prosecution or the Defense of the case being, Assistant Solicitor Marchant, Assistant Solicitor Holloway, or Mr. Toney? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Is there any member of the jury panel who's ever been a witness or a party to a lawsuit in which either Mr. Toney represented a party or the opposing party in the case, or Mr. Marchant, or Mr. Holloway? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: The indictments charge murder, burglary

1 in the first degree, armed robbery, and possession of a
2 firearm during the commission of a violent crime that
3 allegedly occurred on or about the 11th day of December,
4 2012, at ■■■ Landford Drive, Greenville, South Carolina.
5 Does any member of the jury panel have any knowledge about
6 the case from any source whatsoever? If so, please,
7 stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Does any member of the jury panel have
10 any bias or prejudice towards the parties, that being
11 either Mr. Adams, or the State, or towards the subject
12 matter involved in the case? If so, please, stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Has any member of the jury panel heard or
15 know anything about the case from any source whatsoever,
16 hearsay, newspaper, radio, television, Internet, if there
17 was such coverage, or any other source? If so, please,
18 stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: I'm going to momentarily call a list of
21 names of potential witnesses in the trial of the case once
22 I locate said list.

23 Here we go. It can't go too far because this is my
24 whole world right here, so it just takes a moment for me.

25 The question, of course, ladies and gentlemen, is any

1 member of the jury panel related by blood or marriage,
2 close personal friends, have any social, business, or
3 professional relationship with any of these individuals
4 whose names I call? If so, please, stand. Detective
5 Wayne Campbell, Greenville County Sheriff's Office; Deputy
6 Wes Arflin.

7 Did I pronounce that correct, Solicitor?

8 MR. HOLLOWAY: Yes, sir.

9 THE COURT: And you spelled it correct?

10 MR. HOLLOWAY: Yes, sir.

11 THE COURT: Greenville County Sheriff's Office;
12 Dr. Michael Ward, Greenville County Medical Examiner's
13 Office; Kara Bennick, Greenville County Department of
14 Public Safety; Matthew Voight, V-O-I-G-H-T, Anderson
15 County Sheriff's Office; Lona -- Iona Ooten, Greenville
16 County Department of Public Safety; Ron Lendway,
17 Greenville County Department of Public Safety; Dar Shaw,
18 Greenville County Department of Public Safety; Cassandra
19 Bilyeu, Greenville County Department of Public Safety;
20 James Armstrong, Greenville County Department of Public
21 Safety.

22 Again, ladies and gentlemen, the question is, is any
23 member of the jury panel related by blood or marriage,
24 close personal friends, have any social, business, or
25 professional relationship with any of those individuals

1 whose names I just called? If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: The next 10 names: Brandon O'Neal; Jimmy
4 Cobb; Sanchez Allman; Mercedes Adams; Kendrick Waller;
5 Joseph Waller; Michael Anderson; Muniashia Harper; Antwan
6 Brown; Matt Canady.

7 Again, ladies and gentlemen, any member of the jury
8 panel related by blood or marriage, close personal
9 friends, have any social, business, or professional
10 relationship with any of those individuals whose names
11 I've just called? If so, please, stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Any additional requests for voir dire
14 from the State, Solicitor?

15 MR. MARCHANT: None from the State, Your Honor.

16 THE COURT: From the Defense, Mr. Toney?

17 MR. TONEY: None from the Defense, Your Honor.

18 THE COURT: All right. And, finally, ladies and
19 gentlemen, you know yourselves best. You've been
20 introduced to the attorneys, you've been introduced to
21 Mr. Adams, the name of the alleged victim, the date -- the
22 alleged date, the location. You've been called a list of
23 names of potential witnesses in the trial of the case.
24 Again, as I say, you know yourselves best.

25 Is there any member of the jury panel that knows any

1 reason whatsoever why you feel like you could not be a
2 fair and impartial juror in the trial of this case for
3 both Mr. Adams and the State of South Carolina? If so,
4 please, stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Thank you.

7 No one stands.

8 Madam Clerk, if you would instruct our -- do you have
9 them stand or come forward in Greenville County?

10 THE CLERK: We usually in this courtroom have them
11 stand in place.

12 THE COURT: Stand in place?

13 THE CLERK: Yes.

14 Is that okay?

15 THE COURT: Certainly. I'm delighted to do it the
16 way y'all do it in Greenville County, of course.

17 THE CLERK: All right. Thank you.

18 THE COURT: And then if you will give them their
19 instructions.

20 The strikes are 10 for the Defense, and five for the
21 State.

22 THE CLERK: Thank you, sir.

23 THE COURT: Thank you very much.

24 JURY SELECTION

25 THE CLERK: When I call your name, if you'll, please,

1 stand in place and then await for further instructions.

2 Juror #160, Kelly Pitman.

3 (WHEREUPON, Kelly Pitman, a white female, stood.)

4 THE CLERK: What says the State?

5 MR. MARCHANT: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. TONEY: Please swear the lady.

8 THE CLERK: Ms. Pitman, if you'll, please, come,
9 bring your things with you, and have a seat in the jury
10 box.

11 Juror #204, John Valeriano.

12 (WHEREUPON, John Valeriano, a white male, stood.)

13 THE CLERK: What says the State?

14 MR. MARCHANT: Present the juror.

15 THE CLERK: What says the Defendant?

16 MR. TONEY: Please excuse the gentleman.

17 THE CLERK: Please be seated. You have been excused
18 from this case.

19 Juror #129, Silvana Messmer.

20 (WHEREUPON, Silvana Messmer, a white female, stood.)

21 THE CLERK: What says the State?

22 MR. MARCHANT: Please excuse the juror from the trial
23 of this case.

24 THE CLERK: All right. Please be seated. You have
25 been excused from this case.

1 Juror #145, Mary O'Connor.

2 (WHEREUPON, Mary O'Connor, a white female, stood.)

3 THE CLERK: What says the State?

4 MR. MARCHANT: Present the juror.

5 THE CLERK: What says the Defendant?

6 MR. TONEY: Please swear the lady.

7 THE CLERK: Ma'am, please, come, bring your things.

8 Have a seat in the jury box.

9 Juror #181, Dawn Schluetz.

10 (WHEREUPON, Dawn Schluetz, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. MARCHANT: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. TONEY: Please swear the lady.

15 THE CLERK: Ma'am, please, bring your things. Come
16 have a seat in the jury box.

17 Juror #77, Peyton Gray.

18 (WHEREUPON, Peyton Gray, a white female, stood.)

19 THE CLERK: What says the State?

20 MR. MARCHANT: Present the juror.

21 THE CLERK: What says the Defendant?

22 MR. TONEY: Please swear her, please.

23 THE CLERK: Ma'am, please, come have a seat in the
24 jury box.

25 Juror #127, Elizabeth Meller.

1 (WHEREUPON, Elizabeth Meller, a white female, stood.)

2 THE CLERK: What says the State?

3 MR. MARCHANT: Present the juror.

4 THE CLERK: What says the Defendant?

5 MR. TONEY: Please excuse the lady.

6 THE CLERK: All right. Please be seated. You have
7 been excused from this case.

8 Juror #28, Linda Carter.

9 (WHEREUPON, Linda Carter, a white female, stood.)

10 THE CLERK: What says the State?

11 MR. MARCHANT: Present the juror.

12 THE CLERK: What says the Defendant?

13 MR. TONEY: Please excuse the lady.

14 THE CLERK: All right. Please be seated. You have
15 been excused from this case.

16 Juror #207, Gail Warth.

17 (WHEREUPON, Gail Warth, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. MARCHANT: Present the juror.

20 THE CLERK: What says the Defendant?

21 MR. TONEY: Please swear the lady.

22 THE CLERK: Ma'am, please, come, bring your things.
23 Have a seat in the jury box.

24 Juror #84, Thomas Hamilton.

25 (WHEREUPON, Thomas Hamilton, a white male, stood.)

1 THE CLERK: What says the State?

2 MR. MARCHANT: Present the juror.

3 MR. TONEY: Please excuse him.

4 THE CLERK: All right, sir. Please be seated.

5 Juror #148, George Oxner.

6 (WHEREUPON, George Oxner, a white male, stood.)

7 THE CLERK: What says the State?

8 MR. MARCHANT: Present the juror.

9 THE CLERK: What says the Defendant?

10 MR. TONEY: Respectfully, out of all the jurors,
11 there were two that I didn't know their employment. I
12 couldn't hear it. And he was one of them. I would ask
13 the Court to inquire about his employment, if it's
14 possible.

15 THE COURT: Your employment, Mr. Oxner?

16 JUROR #148, GEORGE OXNER: Landscaper.

17 THE COURT: Thank you.

18 MR. TONEY: Please excuse him.

19 THE CLERK: All right, sir. Please be seated.

20 Juror #178, Brittani Sadowski.

21 (WHEREUPON, Brittani Sadowski, a white female,
22 stood.)

23 THE CLERK: What says the State?

24 MR. MARCHANT: Present the juror.

25 THE CLERK: What says the Defendant?

1 MR. TONEY: Swear the lady.

2 THE CLERK: All right. Ma'am, please, bring your
3 things. Come have a seat in the jury box.

4 Juror #48, Patrick Dipierro.

5 (WHEREUPON, Patrick Dipierro, a white male, stood.)

6 THE CLERK: What says the State?

7 MR. MARCHANT: Present the juror.

8 THE CLERK: What says the Defendant?

9 MR. TONEY: Please swear him.

10 THE CLERK: All right, sir. Please bring your
11 things. Have a seat in the jury box.

12 Juror #180, Michelle Santamaria.

13 (WHEREUPON, Michelle Santamaria, a white female,
14 stood.)

15 THE CLERK: What says the State?

16 MR. MARCHANT: Present the juror.

17 MR. TONEY: Please swear her.

18 THE CLERK: All right. Ma'am, please, come have a
19 seat in the jury box.

20 Juror #159, Ricky Phillips.

21 (WHEREUPON, Ricky Phillips, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. MARCHANT: Present the juror.

24 THE CLERK: What says the Defendant?

25 MR. TONEY: Please swear him.

1 THE CLERK: All right, sir. Please come have a seat
2 in the jury box.

3 Juror #156, Duke Perez.

4 (WHEREUPON, Duke Perez, a Hispanic male, stood.)

5 THE CLERK: What says the State?

6 MR. MARCHANT: Present the juror.

7 THE CLERK: What says the Defendant?

8 MR. TONEY: Swear him.

9 THE CLERK: Please, sir, have a seat in the jury box.
10 Juror #50, Cindy Dodd.

11 (WHEREUPON, Cindy Dodd, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. MARCHANT: Please excuse the juror from the trial
14 of this case.

15 THE CLERK: All right. Ma'am, please, be seated.
16 You have been excused from this case.

17 Juror #32, Stanley Coker.

18 (WHEREUPON, Stanley Coker, a white male, stood.)

19 THE CLERK: What says the State?

20 MR. MARCHANT: Present the juror.

21 THE CLERK: Thank you.

22 What says the Defendant?

23 MR. TONEY: Please excuse him.

24 THE CLERK: All right, sir. Please be seated. You
25 have been excused from this case.

1 Juror #34, Bruce Collins.

2 (WHEREUPON, Bruce Collins, a white male, stood.)

3 THE CLERK: What says the State?

4 MR. MARCHANT: Present the juror.

5 MR. TONEY: Please excuse him.

6 THE CLERK: All right. Sir, please, be seated. You
7 have been excused from this case.

8 Juror #210, Whitney Wellmaker-Green.

9 (WHEREUPON, Whitney Wellmaker-Green, a black female,
10 stood.)

11 THE CLERK: What says the State?

12 MR. MARCHANT: Present the juror.

13 MR. TONEY: Swear her, please.

14 THE CLERK: All right. Ma'am, please, come have a
15 seat in the jury box.

16 Juror #16, Grace Blaszak.

17 (WHEREUPON, Grace Blaszak, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. MARCHANT: Present the juror.

20 THE CLERK: What says the Defendant?

21 MR. TONEY: Swear her.

22 THE CLERK: All right. Ma'am, please, come have a
23 seat in the jury box.

24 For alternate one, Juror #22, Pamela Brown.

25 (WHEREUPON, Pamela Brown, a white female, stood.)

1 THE CLERK: What says the State?

2 MR. MARCHANT: Present the juror.

3 THE CLERK: What says the Defendant?

4 MR. TONEY: Please excuse her.

5 THE CLERK: All right. Please be seated. You have
6 been excused from this case.

7 Juror #63, Phillip Flynn.

8 (WHEREUPON, Phillip Flynn, a white male, stood.)

9 THE CLERK: What says the State?

10 MR. MARCHANT: Present the juror.

11 THE CLERK: What says the Defendant?

12 MR. TONEY: Please swear him.

13 THE CLERK: All right, sir. Please come have a seat
14 in the jury box.

15 For alternate two, Juror #194, Angela Staton.

16 (WHEREUPON, Angela Staton, a white female, stood.)

17 THE CLERK: What says the Sate?

18 MR. MARCHANT: Present the juror.

19 THE CLERK: What says the Defendant?

20 MR. TONEY: Please swear her.

21 THE CLERK: All right. Ma'am, please, come have a
22 seat in the jury box.

23 THE COURT: Any motions regarding the jury selection
24 process from the State?

25 MR. MARCHANT: None from the State, Your Honor.

1 THE COURT: From the Defense?

2 MR. TONEY: None from the Defense, Your Honor.

3 THE COURT: All right. Thank you very much.

4 Madam Clerk, those that have not -- that were not
5 selected as members of the trial jury --

6 THE CLERK: They can be excused for the day to call
7 back after 6:00. They've been given a number on the back
8 of their badge.

9 THE COURT: All right. So they do not have to report
10 back to the jury --

11 THE CLERK: Assembly room.

12 THE COURT: -- assembly room?

13 THE CLERK: No, sir.

14 THE COURT: All right. Those of you who were not
15 fortunate enough to be selected as members of the trial
16 jury for the trial of this case, don't give up hope. The
17 week is young. There are many cases to be tried.

18 Momentarily, I'm going to release you from your jury
19 service for the remainder of the day. You need to call
20 back after --

21 What time? 18:00 hours? 6:00?

22 THE CLERK: 6:00, yes, sir.

23 THE COURT: If you'd call back after 18:00, after
24 6:00 tonight. They tell me you have that number on the
25 back of your badge --

1 THE CLERK: On the back of their badge -- name
2 badges.

3 THE COURT: How do they get that number? What
4 happens if -- I don't know.

5 But, anyway, you have that number on the back of your
6 badge. If you would, call back after 6:00 tonight, after
7 6:00 tonight. It will prompt you and give you
8 instructions concerning your jury service for the
9 remainder of the week.

10 It's been my pleasure and privilege to be with you
11 this morning.

12 Thank you very much.

13 You're excused for the remainder of the day.

14 (WHEREUPON, the remaining jury panel members exited
15 the courtroom.)

16 THE COURT: All right. Ladies and gentlemen,
17 momentarily, I'm going to ask you to step to your new
18 temporary home, your jury room.

19 Let me see where we're at administratively, given the
20 hour that it is now. Once I make a determination, I'll
21 have you right back out here.

22 I will advise you now that I'll give you further
23 instructions -- further additional instructions for your
24 responsibilities during your jury service. But I remind
25 you, you're not to discuss this case with anyone. That

1 includes your fellow jurors, family, friends, or anyone
2 else.

3 You would not be authorized to discuss this case with
4 anyone until you've heard all the evidence, all the
5 testimony, the closing arguments by the attorneys, the
6 instruction on the law by the Court, and then directed by
7 the Court to begin your deliberations with your fellow
8 jurors in your jury room.

9 So, please, during this brief recess and throughout
10 the trial of the case, remember, you're not to discuss
11 this case with anyone until you are authorized to do so by
12 the Court, and then and only then with your fellow jurors
13 in your jury room.

14 If you would, please, go with your bailiff. I will
15 find out where we're at administratively. And I'll have
16 you back shortly.

17 Thank you.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 12:25 p.m.)

20 THE COURT: All right. Give me an idea, Solicitor,
21 and, Mr. Toney, how long you think the motions will take,
22 when you want me to have the jury back.

23 MR. TONEY: Maybe an hour, max.

24 MR. MARCHANT: I would think no more than an hour.

25 THE COURT: For the motions?

1 MR. MARCHANT: Yes, sir.

2 MR. TONEY: Maybe -- max. I mean, I'm just
3 speculating.

4 THE COURT: So do you want me to tell them to be back
5 at 2:30 or 3:00?

6 MR. TONEY: 2:30 -- 3:00.

7 MR. MARCHANT: The State is fine either way, Judge.
8 We're ready.

9 MR. TONEY: Maybe 3:00, just to be on the safe side
10 so they're not sitting here waiting. But maybe -- 2:30
11 may be appropriate, but it's just to be on the safe side.

12 THE COURT: All right.

13 MR. TONEY: I'm fine either way, though.

14 THE COURT: Thank you very much.

15 MR. TONEY: Yes, sir.

16 THE COURT: You can bring them back out.

17 I'm going to release them.

18 (WHEREUPON, the jury came into open court at
19 approximately 12:27 p.m.)

20 THE COURT: All right. Welcome back, ladies and
21 gentlemen of the jury panel. Momentarily, I'm going to
22 release you for your luncheon, a somewhat extended
23 luncheon recess.

24 This case is no different from any other cases.
25 There's certain pre-trial matters I must hear before we

1 begin the testimony, in other words, the presentation of
2 witnesses in the trial of this case. And rather than hold
3 you captive while I hear these matters, I'm going to give
4 you, as I say, somewhat of an extended luncheon recess.
5 And, hopefully, upon your return, the decks will be
6 cleared and we'll then be able to begin the trial of the
7 case.

8 I notice as far as seating and such -- again, I'm
9 going to give you your first assignment as a jury. I'm
10 going to ask you to, please, upon your return after your
11 luncheon recess to select one among your number to serve
12 as the Foreperson of this jury panel.

13 Now, it can be anyone of the primary 12, anyone.
14 Whatever criteria you want to use to select that
15 individual -- I'm sure anyone of you would make a fine
16 jury foreperson. It could be prior jury service. It
17 could be your particular occupation, training, and
18 education. It could be the last one that gets back from
19 lunch. It's whatever factors you decide. You are each
20 and everyone qualified to serve as the Foreperson of the
21 jury panel.

22 So, please, upon your return, make that selection.
23 Write the name down once you've made that selection and
24 the juror number. Knock on the jury room door. Give it
25 to your fine bailiff. He will deliver it to me. We'll

1 have you right back in the courtroom.

2 I will tell you this. I'm sure both Mr. -- let's
3 see -- Flynn and Ms. Staton. I'm sure either one of them
4 would make fine jury forepersons, also. But they are,
5 right now, in the status of alternate jurors and would not
6 be qualified -- clearly qualified, but would not because
7 of their status have the right to serve as the Foreperson
8 of the jury.

9 When you return and you've made that selection, that
10 jury foreperson is going to sit closest to the bench on
11 this first row. Our two alternates always maintain those
12 two seats for me, please. I need to keep up with 14
13 people. I want the Foreperson in one seat. I want the
14 alternates in the other. The other -- the other
15 individuals, the other 11, can sit anywhere they would
16 like within the jury box.

17 I have observed over the course of my courtroom
18 attendance that jurors tend to be very territorial. They
19 like to sit in the same seat, same place, same time, and
20 have the same view of the witness chair and the courtroom
21 itself. I like it. I like sitting up here. I'm used to
22 it. I get to see y'all. I get to see the witnesses, and
23 such.

24 However, those of you, besides the Foreperson and the
25 alternates, may sit anywhere you would like in the jury

1 box.

2 Finally, ladies and gentlemen, before we take our
3 luncheon recess, again, I'll remind you -- you'll be able
4 to repeat this back to me. You may not discuss this case
5 with anyone. That includes your fellow jurors, lunch
6 mates, family, friends, or anyone else.

7 You may not read, listen, or watch any news accounts
8 about the case should there be any. You may not use your
9 computer, cellular phone, or any other electronic device
10 with communication capabilities while in attendance at
11 trial or during deliberations. You may, certainly, use
12 these devices during luncheon breaks. But you may not use
13 them to obtain or disclose information which is
14 prohibited.

15 Information which is prohibited is information about
16 a party, a witness, an attorney, or a court officer, news
17 accounts about the case present or in the past, should
18 there have been any, information collected through juror
19 research on any other topic raised or testimony offered by
20 any witness or information collected through juror
21 research on any other topic a juror might think would be
22 helpful in deciding the case.

23 You decide the case based on the evidence, the
24 testimony of the sworn witnesses testifying before you
25 under oath from this witness stand, and any physical items

1 of evidence that are offered into evidence. You decide it
2 within the walls of this courthouse uninfluenced by
3 anything outside of that, except for your good judgment
4 and your common sense.

5 With that being said, any questions?

6 I'm going to ask you to, please, be back at 3:00. If
7 you'll, please, be back promptly at 3:00. And we,
8 hopefully, will be in a position to begin the trial and
9 the taking of testimony at that time.

10 Any questions?

11 (WHEREUPON, there was no response.)

12 THE COURT: Thank you very much.

13 You're now excused for your luncheon recess. See you
14 at 3:00.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:34 p.m.)

17 THE COURT: All right. Solicitor, what order would
18 y'all like, you and Mr. Toney, for me to hear these
19 matters?

20 MR. MARCHANT: Your Honor, I would suggest that we
21 start with the Denno hearing --

22 THE COURT: All right.

23 MR. MARCHANT: -- and move to the Biggers hearing.
24 It's with the two witnesses.

25 One of the two Biggers hearing witnesses is, perhaps,

1 having trouble getting a ride. We've gone -- we have
2 served him formally last week, or the week before. And
3 the sheriff's office is presently seeking his attendance.

4 THE COURT: All right.

5 MR. MARCHANT: That said, it may be after lunch
6 before we're able to question him.

7 THE COURT: All right. Well, you may call your first
8 witness, Solicitor.

9 MR. MARCHANT: May it please the Court.

10 I would call Investigator Wayne Campbell.

11 THE CLERK: Sir, if you'll, please, place your left
12 hand on the Bible, and raise your right hand.

13 WHEREUPON,

14 WAYNE TAYLOR CAMPBELL,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 And, please, state your name for the record.

19 THE WITNESS: Wayne Taylor Campbell.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. MARCHANT:

23 Q Investigator Campbell, where are you employed?

24 A The Greenville County Sheriff's Office.

25 Q And how long have you been employed with the

1 sheriff's office?

2 A I've been with the sheriff's office since February of
3 2002.

4 Q And what is your capacity with the sheriff's office
5 today, as well as through the involvement of this case?

6 A I am what we commonly refer to as a homicide
7 investigator.

8 Q And have you been in that role since 2002 or --

9 A Since August of 2009.

10 Q All right. In this case with the homicide that
11 occurred on Landford Drive, did you have the opportunity
12 to interview the Defendant in this case, Brandon Adams?

13 A I did.

14 Q And do you recall the first date that you interviewed
15 him?

16 A That would have been February the 11th of 2013, I
17 believe.

18 Q And on February the 11th of 2013, was Mr. Adams under
19 arrest?

20 A He was at the Greenville County Detention Center
21 under arrest for other unrelated charges.

22 Q And when you had the occasion to interview him with
23 respect to these -- this incident and these charges, was
24 he under arrest at that time for the murder, burglary, and
25 armed robbery?

1 A No, he was not.

2 Q Where did you interview Mr. Adams?

3 A I interviewed him in the Greenville Police Department
4 CID interview room.

5 Q What does "CID" stand for?

6 A Criminal investigative division.

7 Q And would you explain to the Court roughly the
8 dimensions of that room and the furniture that is situated
9 in the room?

10 A It's probably more like a 10 by 10, no more than 12
11 by 12 room with a round table and, at least, two chairs in
12 it.

13 Q And was he handcuffed at the time you interviewed
14 him?

15 A I believe he was. Because it was just he and I in
16 the room.

17 Q Was anybody else in the room with you during this
18 particular interview with Mr. Adams?

19 A It was just the two of us.

20 Q Prior to asking Mr. Adams any questions, did you go
21 over his Miranda warnings?

22 A Yes, I did.

23 Q And how is it that you went over those warnings with
24 Mr. Adams?

25 A I put in the date and time of the interview. And I

1 read his Miranda from this form right here, the top part
2 of the form. And I reiterated the part where it says, If
3 you decide to answer questions now without a lawyer
4 present, you still have the right to stop answering at any
5 time. You, also, have the right to stop answering at any
6 time until you talk with a lawyer.

7 I made sure that he was aware that that was there.
8 Because he kept inquiring about who had talked, who had
9 implicated him in this murder.

10 Q So before any questioning, actually, occurred, he was
11 asking you questions about what he was doing there?

12 A Yes. After I informed him that I was a homicide
13 investigator investigating the murder of Joseph Crite, he
14 started -- and that he had been mentioned or implicated in
15 this murder, he started wanting to know who had made that
16 implication.

17 Q Do you know how long he had been in the detention
18 center prior to you pulling him out? And what I'm asking
19 is, were you able to determine whether or not he was under
20 the influence of drugs or alcohol at that time?

21 A No. He had been in there long enough for that to be
22 out of his system.

23 Q Did you inquire with him about his education?

24 A Well, once I came to the waiver part, I asked him to
25 read it so that I would be aware that he could read. And

1 he told me he had problems or difficulties reading.

2 So, at that point in time, I asked him what grade in
3 school had he gone.

4 He said, Eleventh grade.

5 I said, Where?

6 He said, Carolina High School.

7 And I, basically, looked at him and said, Now, did
8 you complete the tenth grade and you were in the eleventh
9 grade when you quit?

10 And he said, Yes.

11 So I read the waiver part to him. And I explained
12 that no promises, no threats, no pressure, or coercion to
13 him. And I asked him again, Do you understand?

14 He said, Yes.

15 I told him before we could talk, he would have to
16 sign the waiver form, which he did.

17 Q Well, considering that he informed you that he had
18 not graduated high school, did -- that conversation that
19 existed prior to the execution of the waiver form, your
20 interaction with him, the back and forth of the
21 questioning, did it leave you with any doubt, hesitation,
22 reservation that he understood what was going on?

23 A I had no doubt that he was understanding what was
24 being said.

25 Q And did he, in fact, sign the waiver?

1 A Yes, he did.

2 Q Okay. And that's what's referred to as State's
3 Exhibit No. 1?

4 A That's correct.

5 Q And was it -- again, was anybody else present in the
6 interview room when you interviewed Mr. Adams on February
7 the 11th of 2013?

8 A No. It was video recorded.

9 Q Okay. And, speaking of the video recording, is that
10 what is marked as State's Exhibit No. 40?

11 A Yes, it is.

12 Q And you reviewed this and is it a true and accurate
13 depiction of what occurred that day?

14 A It is.

15 Q And are these your initials down here indicating
16 such?

17 A It is.

18 Q Do you recall roughly how long the interview with
19 Mr. Adams took on February the 11th? How long were y'all
20 in that first session?

21 A Probably not long at all. He denied everything
22 during that particular interview.

23 Q Did he ever ask for an attorney at any point in time?

24 A No, he did not.

25 Q Did he ever ask to go to the bathroom, and did you

1 deny him that ability?

2 A No.

3 Q Did he ever ask for any water and you deny him?

4 A No.

5 Q What did -- following the execution of waiver, what
6 did he tell you? I know you, generally, said he denied
7 everything. But, specifically, did you inquire with him
8 if he knew where Landford Drive was?

9 A I had asked him that. He stated he did not know
10 where that was.

11 I had asked him about a firearm that we had located
12 while executing a search warrant in Anderson County at the
13 Executive Inn. He said his brother had been charged with
14 that. I asked him more about a firearm. He looked at me
15 and said, I don't have a firearm. I've never had a
16 firearm. I don't own a firearm. Basically, point blank,
17 I don't have a gun.

18 I asked him about a gray car. He said, I don't know
19 what you're talking about a gray car.

20 Then I just asked him point blank, Have you ever been
21 or know anything about Landford Drive?

22 I don't know where you're talking about.

23 And then right before we were ready to get up to
24 leave, he made the remark, I heard Tab did it. And --

25 Q Did he indicate to you who Tab was?

1 A No. I knew who Tab was. And I, basically, looked at
2 him and said, I don't think so. And we left the room.

3 Q And did he ask to end the interview, or did you?

4 A Sir?

5 Q Did he ask to end the interview, or did you say we're
6 done?

7 A I told him we were done. Because it was getting to a
8 point where nothing good was coming out of it. It was
9 about to be argumentative to the fact that he was denying
10 everything and he was wanting to, basically, know who
11 implicated him.

12 So it -- I wasn't making any headway. So we just
13 went ahead and ended it.

14 Q All right. I'm going to move forward from this
15 February 11, 2013, interview to September 18th of 2014.
16 Did you have the occasion to interview the Defendant
17 again?

18 A Yes, I did.

19 Q And tell the Court where that interview took place,
20 and who was present during that interview.

21 A I had gone to the detention -- Greenville County
22 Detention Center and escorted Mr. Adams over to the law
23 enforcement center to the Greenville County homicide
24 interview room. His attorney, Matt Canady, was present,
25 as well as Solicitor -- Assistant Solicitor Lucas

1 Marchant, and myself.

2 He was given an opportunity to speak with his
3 attorney in private. And after they finished, his
4 attorney, Mr. Canady, stated that he was willing to talk
5 to Marchant and myself.

6 Q And, at that time, were any promises made to the
7 Defendant?

8 A No.

9 Q Any threats or coercion to get him to speak to us
10 that day?

11 A No.

12 Q Was he denied use of the restroom or water, if he so
13 asked?

14 A He never asked.

15 Q And in the sheriff's office interview room, please,
16 describe the dimensions of that room.

17 A It's a larger room than the other. It's probably
18 more like a 14 by 14, roughly. It had on that particular
19 day four chairs and a narrow table against a wall.

20 Q Okay. Was this particular interview video recorded?

21 A No, it was not.

22 Q At any point in time during the period of discussions
23 with Mr. Adams and his lawyer, Mr. Canady, did they
24 indicate that they no longer wanted to talk, or he wasn't
25 going to discuss the matters any further?

1 A No.

2 Q And do you recall roughly how long that interview
3 lasted?

4 A 30, 45 minutes.

5 Q And just the gist of the interview, the high points
6 that you got out of it that are significant with respect
7 to this case, what is it that he told us that day with
8 Mr. Canady present?

9 A He was, basically, asked just to tell us what had
10 happened. He stated that he was driving and Mercedes
11 Adams, his sister, and a black male named Michael, whose
12 last name was unknown to him, went over to Landford Drive.
13 Their purpose for going there was to obtain or purchase
14 \$40 worth of marijuana.

15 And when they arrived, he noticed that Sweet Pea and
16 Tab were in the parking lot. They went inside the
17 apartment of Joseph Crite, who is the victim in this case,
18 and he purchased \$40 worth of marijuana.

19 At that point in time, he asked -- or went to the
20 bathroom. While being there, he heard multiple gunshots.
21 He then started running from the apartment with a firearm
22 in his left hand, which accidentally discharged as he was
23 leaving the apartment. He ran and got into the car, which
24 Mercedes was now driving.

25 And a short time later, Michael came out of the

1 apartment and got into the back seat, and they drove off.
2 Mercedes dropped Michael off at the upper end of Boulder
3 Creek. And then they went down to their mother's
4 apartment on the back end of Boulder Creek.

5 Q Did Mr. Adams inform us of what the discussion was in
6 the car on the way home that day?

7 A He stated that there was no discussion. Basically,
8 it was just music -- listening to music and real quiet as
9 they went.

10 Q Did he inform us of where the car came from that was
11 used to drive over to Landford Drive that day?

12 A He has a sister named Porchae Adams. He stated that
13 it was one of Porchae's rented cars.

14 Q Did he tell you -- the gun that was located in the
15 air conditioning unit in the motel room, did he tell you
16 whose gun that was?

17 A He stated that was his gun. And that was the one he
18 had that accidentally discharged in the apartment.

19 Q What did he tell you about who he talked with in the
20 parking lot that day prior to going into Mr. Crite's
21 apartment?

22 A He had already mentioned that Tab and Sweet Pea were
23 there. So I asked him about a cigarette. And, at first,
24 he stated that he had half a pack of cigarettes. And I
25 said, No, tell me about the cigarettes. And he, finally,

1 admitted that he had asked Sweet Pea -- he had given him
2 50 cents and asked Sweet Pea to go to the victim's
3 apartment, obtain a cigarette, which Sweet Pea did, and
4 gave him the cigarette before they even approached the
5 apartment.

6 Q What did he inform you about any money that y'all
7 found in the apartment, specifically, what he told you
8 about the \$40 that he purchased the marijuana?

9 A He was informed that there was no firearm, no money
10 that was located in the apartment. And what had happened
11 to the \$40, he, basically, couldn't give a -- well, he
12 didn't give an answer to it.

13 Q What was his explanation about a bottle of liquor
14 that was taken from the home?

15 A He, basically, didn't know anything about it and
16 wanted to avoid it.

17 Q Did he tell you who he spoke with back at Boulder
18 Creek about what had occurred that day?

19 A He had spoke with Michael Anderson, who was at his
20 mother's apartment. He had woke him up. And they had
21 smoked a blunt together.

22 Q And what is it that he told Michael Anderson happened
23 out at Landford Drive?

24 A He said something had gone horribly wrong, that they
25 had gone there to do a lick, or a robbery. And that while

1 there, the old guy wouldn't stay still and went for the
2 gun. He was shot. And, basically, he ran out of the
3 apartment. The only thing they got was a bottle of liquor.

4 Q Now, the other person that he informed you was
5 involved with him that day, what is the name and
6 description of that individual that he gave to you on
7 September the 18th, 2014?

8 A He said Michael. And he said that he knew him
9 through his sister, Mercedes, and Michael Anderson. He
10 was referring to a Michael Todd, who lived with his
11 grandmother in Boulder Creek, who is about the same
12 stature as the Defendant.

13 Q And, on this particular date, did he tell you what
14 Michael Todd Evans -- is that the individual you're
15 referring to?

16 A Yes.

17 Q Did he tell you his last name, or did he tell you he
18 did not know his last name?

19 A He didn't know his last name. But that was one of
20 the first things when he rode over, we asked him about
21 that. And that's when he told us he knew him through his
22 sister, Mercedes, and Michael Anderson, that he really
23 didn't know him.

24 Q And throughout the course of this entire session on
25 September 18th of 2014, his prior lawyer before Mr. Toney

1 got involved and was present with you during the entire
2 interview?

3 A His attorney was sitting next to him. You were
4 sitting to my left. And I was sitting in front of them at
5 that time.

6 Q On either one of the interviews on February the 11th
7 of 2013, or September the 18th, of 2014, were either of
8 those reduced to writing?

9 A No.

10 Q And did you prepare a supplemental of the
11 September 18th, 2014 -- supplemental report of the
12 interview that occurred that day that Mr. Adams informed
13 you of --

14 A That's the way it was documented, yes, through a
15 supplemental report.

16 MR. MARCHANT: All right. Thank you.

17 Please answer any questions Mr. Toney may have.

18 THE COURT: Thank you, Solicitor.

19 Mr. Toney.

20 MR. TONEY: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. TONEY:

23 Q I watched the video of the first interview, Officer.
24 And I heard you ask him many times if he understood what
25 his rights were. But I never once heard him say, yes, I

1 understand, or, yes, any time in that interview. Please
2 correct me if I'm wrong.

3 A He, basically, used the phrase "uh-huh."

4 Q And that's on the video?

5 A It should be.

6 Q Can we play the video and see if you can --

7 A As far as --

8 Q -- identify it?

9 THE WITNESS: Your Honor, am I in your way?

10 THE COURT: I can't see that far anyway.

11 BY MR. TONEY:

12 Q Sir, since they can easily scroll back and stop, I
13 would ask that you ask Mr. Marchant to stop the video the
14 first time you hear him say "yes," or "uh-huh," or
15 anything like that, respectfully.

16 (WHEREUPON, a portion of State's Exhibit No. 40 was
17 played in open court.)

18 THE WITNESS: "Uh-huh."

19 MR. MARCHANT: I'm sorry. I couldn't hear you,
20 Investigator Campbell.

21 THE WITNESS: I said -- he said he wanted to know
22 when he said "uh-huh" or "yes." He said "uh-huh" right
23 when I made that remark.

24 (WHEREUPON, State's Exhibit No. 40 continued to be
25 played in open court.)

1 THE COURT: I think the officer has answered the
2 question as to what was on the tape, unless there's a
3 different question.

4 MR. MARCHANT: I don't believe that there's any other
5 discussion, other than Mr. Adams signing the waiver
6 following that.

7 I don't know if Mr. Toney had any other questions
8 for --

9 MR. TONEY: I believe he asked him several more times
10 if he understood.

11 THE COURT: The question on the table was, tell me
12 the first time he said that. Now, the officer has
13 answered that question. If you have another question, ask
14 him the question.

15 I just can't float along without a question. This is
16 a question and answer process. If you want the video
17 published, make a motion to have it published. And I will
18 be delighted to rule on that motion.

19 MR. TONEY: Well, I would like the Court to look at
20 the video because --

21 THE COURT: I intend to. I intend to look at the
22 video from the beginning to the end. And so if you want
23 me to do it now, I will.

24 MR. TONEY: Yes, I do. Yes, sir.

25 THE COURT: That won't be the last time I will,

1 but --

2 MR. TONEY: Sure.

3 THE COURT: -- go ahead with the publication --

4 MR. TONEY: Yes, Your Honor.

5 THE COURT: -- of the video.

6 MR. MARCHANT: And, for Your Honor's information, the
7 State does not intend to publish the video.

8 MR. TONEY: I'm not agreeing to publish it to the
9 jury, just as part of this hearing, if the Court would
10 review this video.

11 THE COURT: I'll be glad to.

12 (WHEREUPON, State's Exhibit 40 continued to be played
13 in open court.)

14 MR. TONEY: Your Honor --

15 THE COURT: Yes, sir.

16 MR. TONEY: -- for purposes of this hearing, that's,
17 actually, the entire segment that I wanted you to hear.

18 THE COURT: All right.

19 MR. TONEY: I mean, what was said may become relevant
20 later on. But for purposes of my motion, he said what
21 I -- the part that I needed to be heard has been played.

22 THE COURT: All right.

23 MR. TONEY: If the State wants to play the rest of
24 it, that's fine with me, Your Honor. And the Court may
25 want to hear it, too. Yes, sir.

1 MR. MARCHANT: I mean, he summarized, essentially,
2 what was said throughout the course of this. I don't know
3 if it's necessary to watch the other 10 minutes. But if
4 Your Honor wants it, I --

5 THE COURT: No. Just mark down where we stopped it.

6 MR. MARCHANT: Yes, sir.

7 THE COURT: And I'll look at it again.

8 Because I can look at it on my computer; right,
9 Solicitor?

10 MR. MARCHANT: Yes, sir.

11 THE COURT: Thank you.

12 BY MR. TONEY:

13 Q Officer, all I heard -- Investigator Campbell, I
14 heard him say -- all I heard him say was "uh-huh" several
15 times. Is that a fair --

16 A Yeah. He said, "uh-huh." That's showing
17 agreement --

18 Q Uh-huh?

19 A -- or understanding.

20 Q The words "uh-huh" is not English, though, is it?

21 A I'm not an English major. So I'm sorry. I couldn't
22 tell you.

23 Q But it's fair to characterize it as more in the
24 nature of grunts, which are non-specific; correct?

25 A I don't know about that. Because I've been told "no"

1 in various ways, too.

2 Q But it's not very clear, is it?

3 A It was clear enough that day. Plus, he put a
4 signature on the waiver form.

5 Q He, in fact, told you that he doesn't read English.
6 He said he barely reads English; correct?

7 A He said he had difficulty reading.

8 Q Okay. In fact, he said he barely reads. And you
9 knew he hadn't completed high school; correct?

10 A He said he had completed the tenth grade.

11 Q Okay. And, yet, he barely reads?

12 A That's what he was saying.

13 Q And you don't know if he was in some kind of special
14 education classes, or was just promoted, you know, they
15 pass them along sometimes?

16 A I don't know what classes he took in school or how
17 well he did there. No, I don't.

18 Q So after he did affirmatively answer you with a "yes"
19 or a "no," you still continued to engage him in
20 conversation; correct?

21 A Yes. After he signed the waiver, we continued to
22 talk.

23 Q Now, he was handcuffed; correct?

24 A Yes.

25 Q He did not have a lawyer in that instance; correct?

1 A If you listened, I kept telling him he could stop at
2 any time and talk with a lawyer. I mentioned it more than
3 five times. And he never asked for an attorney. So, no,
4 there was no lawyer, or the conversation was not stopped.

5 Q And he was scared; correct?

6 A I couldn't answer that.

7 Q How old was he at the time? 18? 19?

8 A Somewhere like that.

9 Q And he was meeting a homicide detective?

10 A Yeah.

11 Q In the sheriff's office?

12 A That's correct.

13 Q I mean, a normal 17, 18, 19-year-old would be scared
14 under those circumstances?

15 A He's not the normal 18, 19-year-old young man.

16 Q All right. So you don't think he was scared?

17 A He would have to answer that question. I'm just
18 telling you he's not the normal kid right off the street.
19 He's been in trouble before.

20 Q Okay. At the end of the video, you said -- you
21 seemed to get impatient with him. You said, If you want
22 to talk, sign here.

23 A I asked him if he wanted to sign there. He kept
24 wanting to know who was implicating him.

25 Q That doesn't indicate necessarily that he understood

1 his rights, does it?

2 A He signed the form.

3 Q But it doesn't necessarily --

4 (WHEREUPON, there was an interruption in the
5 courtroom.)

6 THE COURT: Whatever child there is in the courtroom
7 needs to be escorted out with a guardian, or whoever that
8 may be.

9 MR. TONEY: The baby needs to probably wait outside.
10 The child -- there's, actually, another little child
11 back there. I just noticed.

12 THE COURT: I don't mind children in the courtroom
13 whatsoever. But when it's disruptive to the proceedings,
14 I don't allow it at all.

15 MR. TONEY: I had no idea they were there, sir.

16 THE COURT: I didn't either until I heard it.

17 MR. TONEY: I didn't realize they were all back
18 there.

19 THE COURT: That wasn't a complaint. That was just
20 an observation.

21 MR. TONEY: Yes, sir.

22 THE COURT: Thank you.

23 You may continue.

24 BY MR. TONEY:

25 Q The fact is that he did not give a recorded

1 statement -- he did not give a written statement, I mean?

2 A No. He did not give a written. It was recorded.

3 Q And you summarized what you were saying that form
4 meant when you said if you want to talk, sign here?

5 A That's correct. If you want to waive your rights,
6 sign here.

7 Q But you said if you want to talk, sign here?

8 A Yeah. He knew that was the waiver part. Because I
9 had told him it was the waiver part when I asked him to
10 read it.

11 Q But saying, do you want to talk is not the same as
12 saying, do you want to waive your rights?

13 A Listen, we can sit and mix words. Because he
14 understood what I was saying. If he hadn't, he would have
15 told me he didn't want to talk.

16 Q Well, I'm just asking you questions, sir. I'm not
17 trying to mix words --

18 A I understand. But the -- you just keep changing the
19 wordage is what I'm saying.

20 Q Okay.

21 A And every way I can answer it, you're going to change
22 to try to get me to answer some other way. And I'm sorry.
23 When he signed the form, he consented, in my opinion, to
24 want to talk with me or, at least, ask me questions.

25 Q So it's clear that, in your view, as soon as someone

1 signs that form, they understand their rights?

2 A He didn't bring up anything as far as question-wise.

3 Q Okay. I'm --

4 A So I asked him to sign --

5 Q I'm asking you, if someone signs that form, does that
6 mean that they understand their rights?

7 A Usually, if they don't ask a question first, that
8 means they understand their rights and they've waived
9 them.

10 Q So sometimes then when they sign the form, it means
11 they don't understand their rights; correct?

12 A Well, I'm not calling your client ignorant because
13 he's not. He understood what was going on. And he signed
14 the form knowing what it [sic] was signing for.

15 Q Absent -- absent the fact that you say he understood
16 what was going on, absent the fact that you have the
17 opinion -- the evident opinion that he's been in trouble
18 and he knows what's going on, you don't know if he
19 understood what his rights were; correct?

20 A You can watch the video and get your own opinion from
21 it. That's why it was recorded. I'm telling you, we
22 could sit here all afternoon mixing words. It's not going
23 to change anything. He didn't bring a question up. He
24 signed the form and we talked a while. Basically, he
25 denied everything.

1 Q There was another interview in 2014; correct?

2 A September 18th of 2014, correct.

3 Q Did he sign a form at that time waiving his rights?

4 A No form was ever presented.

5 Q Okay. So in none of these interviews did he sign a
6 form where it's clear that he understood he was waiving
7 his rights?

8 A The first one.

9 MR. TONEY: That's all the questions I have for this
10 witness.

11 THE COURT: Any redirect, Solicitor?

12 MR. MARCHANT: No, Your Honor.

13 THE COURT: Thank you very much, Investigator.

14 THE WITNESS: Yes, sir, Your Honor.

15 THE COURT: You may step down.

16 Solicitor, you may call your next witness.

17 MR. MARCHANT: Your Honor, that would be the extent
18 of the State's -- that would be the extent of the State's
19 questioning as it relates to Jackson v. Denno.

20 I do have the prior attorney, Matt Canady, available
21 for questioning, if the Court sees fit that we need to go
22 that far. But Mr. Canady was present. He was
23 representing him at the time.

24 I've got all the documentation from the Clerk of
25 Court's Office and indigent defense showing his

1 representation. But, frankly, the State doesn't see the
2 need to call him as a witness. But if Your Honor has some
3 concerns about the information given during the second
4 interview, Mr. Canady is ready to come up here and
5 testify.

6 THE COURT: All right. Thank you.

7 MR. MARCHANT: With that, I'd be ready for arguments
8 about why both are admissible.

9 THE COURT: Mr. Toney.

10 MR. TONEY: I, certainly, move to suppress both
11 statements, in particular the first statement. My client
12 was given a document and he said he could barely read.

13 Now, he's had -- he's gone to the tenth grade. So,
14 presumed, he's had a ninth grade education. And he
15 could barely read, which is often a way of saying they
16 can't read. But, at the very least, reading is a
17 prerequisite to understanding a waiver of your rights.
18 These rights while they're not -- they don't require
19 formal training to understand rights, they do require the
20 ability to read. And, in this case, he said he didn't
21 read -- didn't read -- barely -- could barely read.

22 The sole assent that he gave when asked about these
23 various rights was a few grunts here and there. And it's
24 hard to tell what those grunts mean.

25 The fact is, at the very end of the interview, the

1 officer summarized what the rights meant for him. He said
2 if you want to talk, sign here. This hearing is not about
3 whether he wanted to talk. It's about whether he made a
4 knowing and intelligent waiver of his rights. And I think
5 it's clear there was absolutely no knowing and intelligent
6 waiver of his rights.

7 As to the second interview in 2014, once again, they
8 failed to obtain a waiver of rights. There's no
9 indication they Mirandized him. None of that was present.

10 So, based on that, I move to suppress both
11 statements.

12 THE COURT: Well, let me ask you something. His
13 lawyer was there; correct, Mr. Canady?

14 MR. MARCHANT: Yes, Your Honor.

15 THE COURT: Was he Mirandized?

16 MR. MARCHANT: Was Mr. Canady Mirandized or the
17 client --

18 THE COURT: No. Was the client Mirandized?

19 MR. MARCHANT: I don't believe we Mirandized him at
20 the time. We discussed -- and I don't want to put words
21 in Investigator Campbell's mouth. But we discussed the
22 nature of why we were there, that he was under arrest,
23 that his lawyer was present, that if he had any questions
24 or didn't want to talk at any further time, we would stop
25 the questioning.

1 But he had already been placed under arrest and had
2 been in the detention center for roughly 18 months. And
3 Mr. Canady had the opportunity to speak with him prior to
4 any conversation occurring in September of 2014.

5 We did not go over a form -- the formal -- or the
6 standard waiver of rights form. And I'd have to ask
7 Investigator Campbell. But it was clear to me that he
8 knew what we were doing there, and that anything he
9 said could be used against him if we got this far
10 throughout the course of this case.

11 MR. TONEY: See, Your Honor. And they even have
12 admitted that they didn't go through the formal waiver of
13 rights at the second hearing.

14 THE COURT: Well, first off, let me ask you this
15 question. Are you telling me there's a case out there
16 that says if an individual cannot read, he can't waive his
17 Miranda rights? Is there such a case?

18 MR. TONEY: I'm not so sure that's exactly what I'm
19 saying. The officer's contention, in my opinion, is that
20 the written waiver of his Miranda rights constitutes proof
21 that he understood his rights. Under the totality of the
22 circumstances in this case, since he couldn't read those
23 rights and since the officer just, basically, summarized
24 them and said if you want to talk, sign here, at that
25 point, the Court would probably have to do a totality of

1 the circumstances.

2 THE COURT: I think I always have to do that.

3 MR. TONEY: Yes, sir.

4 THE COURT: It's always the totality of the
5 circumstances.

6 MR. TONEY: Yes, sir. That's my understanding of the
7 law, sir, under Jackson v. Denno.

8 And, in this case, since -- at most, there was a few
9 unintelligible grunts to indicate when asked if he
10 understood these rights and very little pursuing of it.
11 And then in the second hearing, he was never even
12 presented with a form. There's no waiver. There's no
13 knowledge as to whether or not he understood his rights or
14 intelligently waived them.

15 THE COURT: Well, there surely is indicia of
16 intelligence on the tape just from what -- from what
17 little bit I saw.

18 MR. TONEY: Well, the --

19 THE COURT: He's able to respond to -- well, he's
20 able to ask questions that are focused, attentive,
21 legitimate, subject oriented. I don't see where you just
22 say from just reading -- I know of no case such as that.

23 I mean, I know I balance the totality of the
24 circumstances. And, sometimes, this one may weigh more
25 balance and have more weight than that one, depending on

1 the situation.

2 If you have an individual that may have an IQ of 70,
3 65, or below, I mean, that weight may weigh more than if
4 you have an individual that has a higher intellectual
5 level. And, of course, you can have individuals with very
6 high intellectual levels and very low educational levels.
7 You know, the educational level doesn't measure
8 intellectual ability.

9 MR. TONEY: It seems to me, Your Honor, that the
10 questions he asked -- he asked -- he said -- I think he
11 may have said he heard something on the streets are the
12 kind of questions that anyone might ask. But they have
13 absolutely no relevance whatsoever to a determination of
14 whether or not he understood his rights or waived them.

15 THE COURT: It's tracking. It's the ability to
16 track. It's what's between this ear and that ear. If you
17 can track that, then you can track the person in front of
18 you speaking to you in the English language.

19 You may not know how to write words. I can't
20 pronounce half of the witnesses names, even when they
21 aren't misspelled. But he's tracking. And tracking is an
22 indication that he has that cognitive ability to
23 understand.

24 MR. TONEY: Whether he possessed the ability to
25 understand or not, I would respectfully submit it's not

1 determinative at all as to whether or not he understood
2 what his rights were. And he was asked, specifically,
3 about that. And he did not really answer. And he didn't
4 sign any form with an intelligent waiver, in my opinion,
5 because he couldn't read.

6 So this is my respectful submission, sir.

7 THE COURT: All right. Could I -- whatever part of
8 the tape you played, let's play it again --

9 MR. MARCHANT: Yes, sir.

10 THE COURT: -- please. And if I tell you to stop it,
11 would you do that for me?

12 MR. MARCHANT: Yes, sir.

13 THE COURT: And wait until I get back down there so I
14 can track it.

15 MR. MARCHANT: Your Honor, do you want me to start it
16 back from the beginning?

17 THE COURT: Yes, sir, back from the beginning.

18 (WHEREUPON, a portion of State's Exhibit No. 40 was
19 played in open court.)

20 THE COURT: All right. Stop right there.

21 What was that response there?

22 MR. MARCHANT: Do you want me to play it again, Your
23 Honor?

24 THE COURT: Yes, sir.

25 You can cut it up, if you want. And that's way

1 before -- that's right at the beginning of the tape right
2 after the officer has advised him of his rights.

3 (WHEREUPON, State's Exhibit No. 40 continued to be
4 played in open court.)

5 THE COURT: That wasn't a grunt. That was a "yes."
6 You can hear it, and you can see it.

7 So, also, I thought it was interesting, as far as
8 cognitive ability, when the officer mentions Landford
9 Drive while he's there, he questions him about it. And
10 later on in the tape, he, actually, remembers that name
11 and asked him again about it. "He" is Mr. Adams.

12 So under the totality of the circumstances, there's
13 no threats. There's, obviously, no coercion. There are
14 no promises. His will has not been overborne in any way.
15 He was properly advised of his rights. Under Miranda, he
16 had the intellectual ability to waive those rights, which
17 he did.

18 Actually, that statement is, quite frankly, no more
19 than self-serving hearsay under State v. Sweet and State
20 v. Terry, and that line of cases. But it's, clearly, not
21 inadmissible because of a violation of Miranda, nor with
22 his attorney being present on the -- 9/14 -- 9/14
23 conversation -- 9/18/14 conversation.

24 So based on the totality of the circumstances and the
25 preponderate of the standard that I look at now, it is --

1 both the 2/11/13 and 9/18/14 are admissible.

2 All right. How about your next motion, Solicitor?

3 MR. MARCHANT: Thank you, Your Honor.

4 MR. TONEY: May I use the restroom just for a minute?

5 THE COURT: Sure.

6 We'll take about a 10-minute recess.

7 MR. TONEY: I've been going steady since about 9:30.

8 THE COURT: Sir?

9 MR. TONEY: I said I haven't had a break for quite a
10 few hours. I'll just be a minute.

11 THE COURT: We'll take a 10-minute recess.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Solicitor.

14 MR. HOLLOWAY: Your Honor, the State will -- if the
15 Court is ready will call James Cobb to the stand, Jimmy
16 Cobb.

17 THE COURT: All right. Come around and be sworn,
18 please.

19 THE CLERK: Mr. Cobb, if you'll, please, come forward.

20 And if you'll pause at the end of the bench.

21 Please place your left hand on the Bible and raise
22 your right hand.

23 WHEREUPON,

24 JIMMY COBB,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 And, sir, would you state your name for the record?

4 THE WITNESS: Jimmy Cobb.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. HOLLOWAY:

8 Q Mr. Cobb, can you tell the Court how you know the
9 Adams family -- or the person who's sitting right over
10 here at the table over here?

11 A Just from the same community, living in the same
12 community.

13 Q Okay. And can you describe how you know his family?

14 A Just being around the same places.

15 Q Okay. Now, I'm going to take you back to December of
16 2012. And can you tell the Court when you were first
17 questioned about this case?

18 A Yeah. When I -- I don't know the dates, or nothing
19 like that.

20 Q Okay.

21 A But it's been like, what, three years? I don't know
22 the dates, not right off.

23 Q Okay.

24 A I don't even remember a lot of the stuff that
25 happened, you know.

1 Q Okay. Do you recall who asked you questions about
2 this case?

3 A Yeah. Mr. -- what's his -- Campbell.

4 Q Campbell?

5 A Yes, sir.

6 Q Okay. And do you recall if he approached you, or if
7 you approached him about --

8 A He approached me when I got arrested.

9 Q Okay. And you were arrested for what?

10 A I had like grand larcenies, and shopliftings, and
11 charges like that, things of that nature, property crimes.

12 Q Okay. But those charges that you were brought in on
13 had nothing to do with the --

14 A No, sir.

15 Q -- shooting of Joseph Crite?

16 A No, sir.

17 Q Okay. Do you recall where you were questioned?

18 A County jail.

19 Q Okay. Was it, actually, in the jail behind bars or
20 in an office?

21 A In the office.

22 Q Okay. And when you were questioned, were you in
23 handcuffs or shackles?

24 A I don't remember.

25 Q Okay.

1 A Like I told you, it's been three years ago. And I'm
2 just going to say this so we can get right to it. I don't
3 remember a lot of stuff that went on. I mean, when I got
4 arrested, y'all questioned me. And the reason why I gave
5 my statement -- I had other charges. I felt like it was
6 right for me to get out to my family by telling the
7 officers what they needed to know for my release, so.

8 Q Okay. Do you -- now, at the time you were
9 questioned, there was a camera that was turned on; is that
10 right?

11 A There was a camera. I was being recorded. And I
12 understand that, you know. He told me earlier I was being
13 recorded.

14 Q Okay. Well, this is a pre-trial matter.

15 A Right.

16 Q We're going to focus on the matter the Court has to
17 decide upon on the pre-trial matter. Okay. I'm going to
18 focus on that.

19 Now, I'm going to hand you what's been pre-marked as
20 State's Exhibit Nos. 4 and 5, and have you take a look at
21 them. Can you identify these for the record for the
22 Court?

23 A Identify all the pictures or the one I know?

24 Q Just what these items are. What is this item? Can
25 you tell the Court?

1 A It's an affidavit. That's what it says.

2 Q What is this area here? Affidavit of?

3 A Photograph identification.

4 Q Okay. And just kind of, in general, describe what
5 State's Exhibit No. 5 is.

6 A Say what now?

7 Q Just what do you see on this exhibit? It's State's
8 Exhibit No. 5. What do you see on this item?

9 A I see a picture.

10 Q How many pictures do you see?

11 A Six.

12 Q Okay. Six photographs?

13 A Yes.

14 Q Okay. Now, do you recall being handed these two
15 exhibits, these two forms at the time you spoke to --

16 A I signed --

17 Q -- the officer --

18 A I signed the form stating that it was Brandon Adams
19 out there.

20 Q Okay.

21 A I only stated what I heard after what happened. You
22 see what I'm saying? I wasn't sure if it was Brandon
23 Adams or not, you know.

24 Q Okay.

25 A I only went off of what I heard in the neighborhood.

1 Because I had other charges. I explained that to y'all.
2 I had other charges. So I was doing what I thought I
3 could do to get out of jail and back to my family. You
4 see what I'm saying?

5 Q Okay. I want to take you back to this affidavit.
6 Okay. You, actually, signed this. Can you point out
7 where you signed it?

8 A Right here.

9 Q Okay. So you see where you signed it?

10 A Yes, sir.

11 Q And what's that date right next to it?

12 A 12/28/18 -- no. 12 --

13 Q It is 12/28/12?

14 A Yes, sir.

15 Q Okay. Now, I'm going to -- right here, it says, I,
16 Jimmy T. Cobb, have viewed a group of six photographs this
17 20th day of December, 2012.

18 A Yes, sir.

19 Q Okay. That's what it says on this form?

20 A Yes, sir.

21 Q Okay. From which I have positively identified
22 photograph one. Positively identified; correct?

23 A Yes, sir.

24 Q Displayed to me by Investigator Wayne Campbell;
25 correct?

1 A Uh-huh.

2 Q Of the sheriff's office?

3 A Uh-huh.

4 Q Okay. As being the person who was involved in the
5 murder of Joe. Joe being Joe -- last name?

6 A I don't know Joe's last name. I never met Joe. I
7 never seen Joe until this morning on the news. They
8 showed his picture.

9 Q Okay. But you're saying you signed on this form
10 that --

11 A I --

12 Q Hold on. Let me finish.

13 That you positively identified. Do you know what
14 "positively" means?

15 A Yes. I understand what it --

16 Q What does it mean? Just for the record. I'm not
17 trying to insult you. But what does it --

18 A It means that Wayne Campbell was telling me to work
19 with him, and he would work with me on my charges --

20 THE COURT: That's not the definition of
21 "positively." He asked you what "positively" means.
22 Listen to the question --

23 THE WITNESS: Positively --

24 THE COURT: -- and give an answer.

25 THE WITNESS: Positively -- I mean, that I identified

1 him. That's what it means.

2 BY MR. HOLLOWAY:

3 Q Okay. You identified Brandon Adams as the person
4 involved with the murder of Joe Crite?

5 A Yes, sir.

6 Q Okay. And that was back in December of 2012?

7 A Yes, sir.

8 Q And is it -- it's fair to say that would have been
9 a -- roughly 17 days after Mr. Crite was shot and killed;
10 is that right?

11 A Yes. I don't know the date that I made the
12 statement --

13 Q Okay. Have you -- I'm sorry. Go ahead.

14 A The date that he made the statement, I don't know.

15 Q Have you in the past three years gone back to
16 Investigator Campbell and said that wasn't what I meant?

17 A I couldn't. I was incarcerated at the time.

18 Q Okay. Did you send him a letter?

19 A I tried to call him.

20 Q Okay. Did you send him a letter?

21 A No, I did not.

22 Q You never said -- you never backed off on identifying
23 Brandon Adams as the shooter --

24 A I was --

25 Q -- or as the person involved in the murder of Joe

1 Crite?

2 A I thought that I would get with him when he came to
3 see me. He told me that he would help me out on my
4 charges, and he would get with me on the back end. That's
5 what he stated to me.

6 And I said, What's the back end?

7 He said when I go to court.

8 When I went to court, I brought it up in the
9 courtroom. And the Solicitor stated that they would get
10 with me when his trial come [sic]. Mr. Campbell was
11 nowhere in the courtroom. But, yes, I did want to talk to
12 him about it.

13 Q Okay.

14 A But I've been incarcerated. I mean, I don't have a
15 way to use the phone. I mean, you've got to pay for your
16 phone calls.

17 MR. HOLLOWAY: One second, Your Honor.

18 (Pause.)

19 BY MR. HOLLOWAY:

20 Q Mr. Cobb, do you recall being interviewed about this
21 case twice?

22 A I don't know. I may have been. They kept pulling me
23 out questioning me. I don't know.

24 Q Okay. Let me ask you this. Are you aware -- because
25 you testified before your first interview was on camera?

1 A Right.

2 Q Okay. Are you aware that the second interview was,
3 also, on camera?

4 A But, under oath, I'm letting it be known that -- the
5 reason why I gave my statement.

6 Q I understand. That's not my question, though.

7 A Because I don't want to lie to the Court.

8 Q I understand. But my question is, you were aware
9 that the second interview was, also, on camera?

10 A I don't -- I don't remember any -- that was three
11 years ago. When y'all arrested me, I was -- probably had
12 been on drugs for two months in the streets. I don't
13 remember a lot, you know.

14 Q Okay. At the time you were talking to Investigator
15 Wayne Campbell on both occasions, were you smoking crack
16 in his office?

17 A I don't know.

18 Q You don't know if you had a crack pipe in front of an
19 officer or not?

20 THE WITNESS: Your Honor, I wish not to be a witness
21 of this case.

22 BY MR. HOLLOWAY:

23 Q Mr. Cobb, please, answer my questions.

24 A I mean --

25 Q It's true --

1 A -- you know, I wasn't smoking crack in front of him.

2 Q Very good.

3 Okay. Now, would it help you to recall what you said
4 to this investigator to see yourself on camera --

5 A It won't --

6 Q -- identifying Mr. Adams as being involved in the
7 shooting of Joseph Crite?

8 A It won't help me. Because I tell you that I did say
9 it was him. I told him that. Yeah, it's on camera. I
10 know it's on camera. But I'm telling you my reasons why.

11 Q Now, you're saying you're changing that?

12 A Yes. I told you that I had other charges. Wayne
13 Campbell told me that he would help me out on my charges.

14 Q Do you want to see the video?

15 A No, I don't.

16 Q Okay. Is the reason why you're changing your story
17 today because you feel like you were cheated by
18 Investigator Campbell?

19 A No. I just don't want to sit here and say it was him
20 when I'm not a hundred percent sure it was him.

21 Q But you just said that you've changed your story
22 because you feel like you didn't get -- Investigator
23 Campbell didn't fulfill his end of the bargain?

24 A No. You said why didn't I write him a letter or
25 contact him. I said when he was -- if he would have came

1 to see me, I was going to let him know then. You see what
2 I'm saying?

3 MR. HOLLOWAY: The Court's indulgence.

4 (Pause.)

5 MR. HOLLOWAY: Your Honor, under Rule 611, I'd ask
6 the Court to let me treat the witness as hostile.

7 THE COURT: I don't think that's required of --

8 MR. HOLLOWAY: Okay.

9 THE COURT: -- me to do that. I think you can do it
10 under the rules --

11 MR. HOLLOWAY: Yes, sir.

12 THE COURT: -- that you may impeach. So I don't even
13 think I have to make an Anderson evaluation anymore.

14 MR. HOLLOWAY: Okay. Thank you, Your Honor.

15 THE COURT: You may proceed, though.

16 MR. HOLLOWAY: Thank you, Your Honor.

17 BY MR. HOLLOWAY:

18 Q Mr. Cobb, I'm going to run through what you said to
19 Investigator Campbell on December the 27th, 2012. Okay.
20 And you correct for the Court for the record what is
21 incorrect.

22 A Can I ask you a question?

23 Q Sure.

24 A What that mean that you were asking the Judge, the
25 question you asked the Judge? I don't understand that.

1 MR. HOLLOWAY: I'll let the Court explain.

2 THE COURT: I'm not here to answer questions or to be
3 questioned.

4 THE WITNESS: Okay.

5 THE COURT: You're the questioner. He's the witness.

6 MR. HOLLOWAY: Yes, sir.

7 THE COURT: You ask the question. He's not here to
8 be a questioner. He's here to be a witness.

9 MR. HOLLOWAY: Yes, sir.

10 BY MR. HOLLOWAY:

11 Q I'm going to ask you some questions. I'm going to
12 have you answer them -- okay -- truthfully.

13 A Okay.

14 Q Okay. You said that you wanted to make a deal for
15 valuable information, but the -- Wayne Campbell, actually,
16 told you that wasn't up to him; isn't that true? He said
17 it was up to the assigned prosecutor?

18 A He said he would help me out on the back end. That's
19 what he said.

20 Q But he, also, told you -- and this is on camera. He
21 told you that it's up to the prosecutor of your case to
22 decide what, if any, benefit you get; isn't that true?

23 A I don't remember.

24 Q Okay. Now, on the day of December the 27th, you were
25 sitting with whom and where?

1 A (There was no response.)

2 Q Where were you sitting on December the 27th at about
3 1:00 a.m.?

4 A The day I got arrested?

5 Q You were, actually, sitting with Sanchez Allman;
6 isn't that true? Sweet Pea?

7 A I was sitting with him? Where at?

8 Q Were you sitting with him?

9 A Where at?

10 Q At Landford Apartments.

11 A Yes.

12 Q Okay. So you were there at Landford Apartments
13 around 1:00 a.m.?

14 A Probably.

15 Q Probably or yes?

16 A I don't remember a lot. I'm telling you I don't
17 remember. I guess you're going to make me say what you
18 want me to say.

19 Q Okay. I'm just asking --

20 A I guess you're going to keep asking me -- you're
21 going to ask me the question another way the next time.

22 Q Okay. You told Investigator Campbell that you and
23 Sweet Pea were sitting in a car when three suspects pulled
24 up; is that true?

25 A I don't remember.

1 Q Okay. You told Investigator Campbell that two of the
2 suspects were guys, the third suspect was a girl, a
3 female; is that true?

4 A I may have.

5 Q You may have.

6 Okay. Now, one of the suspects told you what they
7 were going to do; isn't that true?

8 A (There was no response.)

9 Q They said they were going to rob Mr. Crite?

10 A (There was no response.)

11 Q Is that true?

12 A It may be true.

13 Q Okay.

14 A Again, it happened three years ago. I'm telling you
15 I don't remember, sir.

16 Q And one of the suspects you said to Investigator
17 Campbell that went to Mr. Crite's door and went inside was
18 Brandon Adams; isn't that true?

19 A I know that I told Mr. Campbell that it was Brandon
20 Adams. Because after all this happened, word in the
21 neighborhood was that it was Brandon Adams. So I went
22 along with what everybody else was saying.

23 Q But you said, I saw Brandon Adams --

24 A Right. I'm telling you I may have said that. I
25 know, at the time, I was scared. I was on drugs. And I

1 wanted to get out of jail. I know that. And I was making
2 statements to -- and Wayne Campbell was telling me -- he
3 kept telling me that he was going to work with me on the
4 back end. He told me that.

5 Q How long have you known the Adams family? How many
6 years?

7 A I mean, I've known the daddy for maybe 15 years,
8 20 years, or something.

9 Q And that's the father of?

10 A Brandon Adams.

11 Q Okay. And who else?

12 A I just recently -- I ain't long [sic] met them,
13 probably around that time, you know.

14 Q Okay. But you knew Brandon at the time of this
15 interview; correct?

16 A I mean, yeah. I never -- me and Brandon have never
17 been together, or nothing. We never hung out. I just
18 know him from seeing him around. We --

19 Q Has anybody -- I'm sorry. Go ahead. I don't want to
20 interrupt.

21 A We don't have a personal relationship, or nothing
22 like that. We're not friends, or nothing like that.

23 Q Okay. Has anybody in the family contacted you about
24 this case since the murder of Joe Crite?

25 A Has anybody contacted me?

1 Q Yeah. Have they called you? Have they come by where
2 you stay?

3 A I just was released from prison, sir.

4 Q Okay. But have they contacted you?

5 A No, sir.

6 Q What about today in the hallway?

7 A What you [sic] mean?

8 Q Have they talked to you about this case? Anybody?
9 Mercedes? Has anybody in the family talked to you today
10 about this case?

11 A Well, I talked to Mercedes, yes.

12 Q Okay. What did you talk about?

13 A I was just saying everything's going to be all right,
14 I hope.

15 Q Okay. Would you like to hear your interview?

16 A It doesn't matter. I mean, I don't -- it's no reason
17 for me to hear it. Because, I mean, like I told you, the
18 reason why I made the statement -- Wayne Campbell was
19 telling me that he was going to work with me.

20 MR. TONEY: Your Honor, I don't know if the Court...

21 THE COURT: Sir?

22 MR. TONEY: I'm going to move to exclude his
23 identification, obviously, based on numerous, numerous
24 statements that he doesn't remember.

25 THE COURT: I don't know what his testimony is --

1 MR. TONEY: I understand. Yes, sir.

2 THE COURT: I mean, if he's known him for 15 years, I
3 don't know why I'm having a Neil v. Biggers hearing. But
4 if he cannot -- if he has no memory, then there's other
5 avenues that --

6 MR. TONEY: Yeah.

7 THE COURT: -- can be explored, perhaps --

8 MR. TONEY: Yes, sir. I appreciate that.

9 THE COURT: -- may be the proper word --

10 MR. TONEY: Thank you.

11 THE COURT: -- the road less taken, perhaps.

12 MR. HOLLOWAY: At this time -- Your Honor, this is
13 all the questions I have for this witness at this time. I
14 do have the audio of -- and, at least, maybe one of -- the
15 video of the second interview, if the Court wants to hear
16 it. It's an hour long on the first interview. I don't
17 know if the Court would like to hear it in deciding.

18 THE COURT: Are you going to offer it in front of the
19 jury? I'm not sure what I'm ruling on right now.

20 MR. TONEY: Well, this is a Biggers hearing. So the
21 question would be the -- not the substance of his
22 testimony, but the identification.

23 MR. HOLLOWAY: Essentially, Your Honor, what's --
24 he's -- of course, he said from the stand he was coerced
25 or he felt like he could get a benefit in exchange. And

1 he identified these -- from word on the street. But
2 that's more of a weight of the evidence put in front of a
3 jury.

4 I guess the question is -- under Biggers is, would
5 the Court like to hear or view some of the video to make
6 sure his -- that he was -- the process of identifying
7 Mr. Adams was not overly suggestive?

8 MR. TONEY: Your Honor, under Neal v. Biggers, the
9 main issues, of course, are the -- whether or not the
10 identification procedures were suggestive and whether
11 there were other indicia reliability. And you can analyze
12 it by looking at the opportunity to view the person and
13 the witnesses degree of attention.

14 In this case, he's testified he just said what he
15 said to try to help himself out and get home. He
16 didn't -- he doesn't recall seeing it. He has made that so
17 clear that it's almost impossible for there to be any other
18 testimony. I mean, he's just said, I don't recall. And
19 he's made it abundantly clear. There shouldn't even be a
20 Biggers analysis at this point. His --

21 THE COURT: I agree.

22 MR. TONEY: Yeah.

23 THE COURT: I agree that the Biggers analysis is --
24 because if he's known him for 15 years -- I was just
25 looking at Upstate v. Lieberman I believe is the last and

1 most recent case I was familiar with is the basis of
2 knowing him. The problem with him is he has no
3 credibility with this Court, because he's lying.

4 Don't raise your hand. Do you know what's through
5 that door? The Greenville County Detention Center. And
6 that's where you're going to be headed in a few minutes.
7 Don't raise your hand. Don't interrupt me.

8 THE WITNESS: Yes, sir.

9 THE COURT: So it's not an analysis of eyewitness
10 identification at this point, if he's known Adams and he's
11 known Brandon Adams for 15 years. He says, I don't
12 remember. I was on crack. I don't know. I don't know.
13 Now, there may be other avenues.

14 If you read Neil v. Biggers, Mr. Biggers raped
15 Ms. Beamer in her house and, quite frankly, out in the
16 moonlight. And it was a one person show [sic] up seven
17 months later. And it was admissible. It was admissible.
18 Everybody seems to skip over that speed bump, that it was
19 admissible. But I don't think the analysis is there yet.

20 Yes, sir, Mr. Toney.

21 MR. TONEY: In the Biggers case, the justices stated
22 that they not -- the lady not only had the opportunity to
23 see the rapist in the kitchen, but that he escorted her
24 outside the back door, across the train tracks, and into
25 the woods. And that she had the opportunity to view him

1 at quite some length. And she was coherent. And she was
2 not on drugs.

3 In this case, we have a witness who's stated he
4 doesn't know what he was doing at the time because he was
5 on drugs. He was high. He even stated he was high in the
6 interviews maybe, and the Court should put no reliability
7 in it.

8 It's so clear in my mind that this does not meet the
9 Biggers test of reliability that it's beyond any question.
10 And I respectfully move to suppress his statement.

11 THE COURT: It's so clear in my mind that I do not
12 even have to do a Neil v. Biggers analysis.

13 MR. TONEY: I, certainly, respect --

14 THE COURT: A knows B and has known B for a period of
15 time. It doesn't go to the reliability of his
16 identification at this point.

17 It may, ultimately, go there, Solicitor. I don't
18 know.

19 Or, Mr. Toney, I don't know. I just don't know.

20 MR. HOLLOWAY: Yes, sir.

21 Well, Your Honor, at this time, this is all I have
22 for Mr. Cobb.

23 THE COURT: All right. Mr. Toney.

24 MR. TONEY: Pardon, sir?

25 THE COURT: Mr. Toney, do you have any questions?

CROSS-EXAMINATION

BY MR. TONEY:

Q When you gave the interview to the officers, did you -- were you in custody at the time?

A Yes, sir.

Q But you might have been coming off the effects of drugs at the time; correct?

A Yes, sir.

Q And you weren't in your right mind; correct?

A I would say I wasn't. You're right.

Q Yeah. And let's be clear. Nothing you said in those interviews should be relied on; correct?

A Right.

Q And you've made that abundantly clear; correct?

A Yes, sir.

Q And before you went to prison, you had a drug problem; correct?

A Yes, sir.

Q And, that night, you were on drugs; correct?

A Yes, sir.

Q The night this happened?

A Yes, sir.

Q And you were high; correct?

A Yes, sir.

Q And do you think it would be wrong for anyone to rely

1 on your opinion that night as to anything that you saw,
2 based on the fact that you were on drugs?

3 A I think it would be wrong.

4 MR. TONEY: Yes, sir.

5 That's all the questions I have for this witness.

6 THE COURT: Sheriff, I want an investigation into
7 when he was incarcerated in the Greenville County
8 Detention Center previous to 2/28 of '12, how long he had
9 been there, what his physical and mental condition was.
10 He's to remain under subpoena of this Court.

11 And I want it investigated as far as perjury. I want
12 to know if there was an inmate named Jimmy Cobb that was
13 in the Greenville County Detention Center high on drugs on
14 December the 28th of 2012.

15 All right. Any other motions, Solicitor?

16 MR. MARCHANT: Judge, at this point in time, the
17 other witness is still not here.

18 THE COURT: All right.

19 MR. MARCHANT: The sheriff is looking for him.

20 THE COURT: All right. We'll take that up at the
21 appropriate time.

22 Anything, Mr. Toney?

23 MR. TONEY: So if the other witness shows up, I'll
24 still be able to get my Biggers hearing; correct?

25 THE COURT: Of course, naturally.

1 MR. TONEY: Yes, sir.

2 THE COURT: I mean, they can't bring it up and they
3 can't testify to it before you have your hearing.

4 MR. TONEY: Since I'm starving, Your Honor. I have
5 no other motions.

6 THE COURT: All right. Thank you. Thank you very
7 much.

8 Court will be in recess until 3:00.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Are you ready?

11 MR. MARCHANT: Yes, sir.

12 THE COURT: Anything from the Defense before we bring
13 in our jury?

14 MR. TONEY: Nothing, Your Honor.

15 THE COURT: Anything from the State before we bring
16 in our jury, Solicitor?

17 MR. MARCHANT: No, Your Honor.

18 THE COURT: Oh, Ms. Schluetz, #181, has been elected
19 Foreperson.

20 MR. MARCHANT: Your Honor, I'm sorry. I do have the
21 information that you requested before we broke.

22 THE COURT: What was my question?

23 MR. MARCHANT: About the time Mr. Cobb had been in
24 the detention center.

25 THE COURT: All right. Well, we can revisit that.

1 MR. MARCHANT: Okay.

2 THE COURT: We'll get -- we're going to get started.

3 MR. MARCHANT: Very good.

4 THE COURT: Thank you, Solicitor.

5 MR. MARCHANT: Thank you, Your Honor.

6 THE COURT: Bring the jury in.

7 (WHEREUPON, the jury came into open court at
8 approximately 3:06 p.m.)

9 THE COURT: All right. Madam Clerk, will you swear
10 our jury, please?

11 THE CLERK: Absolutely.

12 Please stand and raise your right hand for the oath
13 in this case. The proper response is "I will."

14 (WHEREUPON, the jury was sworn at approximately
15 3:05 p.m.)

16 THE CLERK: Thank you.

17 Please be seated.

18 INTRODUCTORY REMARKS

19 THE COURT: Good afternoon, ladies and gentlemen.
20 Welcome back. I hope you all had a pleasant lunch.

21 Madam Forelady, thank you very much for fulfilling
22 that very important responsibility.

23 Ladies and gentlemen of the jury, the case we are
24 about to try is the case of the State v. Brandon Dashun
25 Adams.

1 What I will now say is intended to serve as an
2 introduction to the trial of this case. These remarks are
3 not an instruction on the law in the case. I will
4 instruct you on the law applicable to the case at the end
5 of the trial before you retire to consider your verdicts.
6 This is merely an explanation of the procedures that we
7 will follow in the trial so that you may better understand
8 what may be happening.

9 The Defendant, Mr. Adams, as you know, is charged by
10 indictments filed with this Court with the crimes of
11 murder, burglary in the first degree, armed robbery, and
12 possession of a weapon during the commission of a violent
13 crime. The elements of which will be explained to you
14 later.

15 Again, ladies and gentlemen, the indictments are
16 simply the charge by which the case is brought into court.
17 And they are not in any sense evidence of any of the
18 allegations contained therein.

19 Mr. Adams has pled not guilty to these indictments.
20 The State, therefore, has the burden of proving each of
21 the elements of the indictments beyond a reasonable doubt.

22 And it will be your duty, ladies and gentlemen, to
23 decide whether the State has met its burden. Your
24 purpose, as jurors, is to find and determine the facts.
25 You, ladies and gentlemen, are the sole judges of the

1 facts.

2 If at any time I make any comment regarding the
3 facts, you must disregard it. You are to determine the
4 facts from the testimony you hear and other evidence
5 introduced in court. It is up to you to determine the
6 inferences which you feel may properly be drawn from the
7 evidence.

8 It is especially important that you perform your
9 duties of determining the facts diligently and
10 conscientiously. Because, ordinarily, there is no way to
11 correct an erroneous determination of the facts by the
12 jury.

13 On the other hand and with equal emphasis, the same
14 law that makes you the judge of the facts makes me the
15 judge of the law. The law as given by the Court is the
16 only law you may consider. You must accept it and follow
17 it, even though you may disagree with it.

18 I cannot tell you what the facts are. And you cannot
19 disagree with me about what the law is, or what the law
20 should be. Your job is to take the law as I give it to
21 you, apply it to the facts as you find them from the
22 testimony and any other evidence introduced. After doing
23 that, you will render your verdict -- true and just
24 verdicts under the solemn oath that you have just taken as
25 jurors.

1 Until I advise you to begin your deliberations, you
2 must not discuss this case with anyone, including your
3 fellow jurors, family, friends, or anyone else. After the
4 case is submitted to you, you must discuss it only in the
5 jury room with your fellow jurors.

6 The attorneys and the parties in this case have been
7 advised that they are not and they will not talk to you at
8 all. So if you see anyone involved in the case in your
9 coming and going from the courthouse and they do not even
10 say hello, they're not being unfriendly or rude. They are
11 simply following my instructions.

12 During the trial, do not read, listen to, or watch
13 any news reports about this case. This includes anything
14 that may be in the newspaper or on the Internet, radio, or
15 television. You must not consider anything you may have
16 read or heard about the case outside the courtroom whether
17 before or during the trial.

18 It is important that you keep an open mind and not
19 decide any issue in the case until all of the evidence has
20 been presented, the parties have made their closing
21 arguments to you, and I have instructed you on the law in
22 the case. It is your solemn responsibility to determine
23 the guilt or the innocence of the Defendant. And your
24 verdict must be based solely on the evidence as it is
25 presented to you in this trial and on the law as I

1 instruct you during and at the close of the trial.

2 Now, in just a moment, the Solicitor will make what
3 is called an opening statement in which the Solicitor will
4 explain to you the issues in the case or, at least, what
5 the Solicitor thinks the issues are in the case.

6 Mr. Toney, the attorney for Mr. Adams, may, also,
7 make an opening statement, although he is not required to
8 do so. A criminal defendant, regardless of the
9 seriousness of his charges in South Carolina, is always
10 presumed to be innocent and has no burden whatsoever of
11 proving himself or herself innocent.

12 What the attorneys tell you during their opening
13 statement is not evidence in the case. It is only their
14 contention as to what the issues are. The questioning by
15 the attorneys, the questions themselves are not evidence.
16 It's the framework by which the responses come from the
17 witness -- witnesses on the witness stand under oath, it's
18 those responses that is the evidence in the case.

19 The same with the closing arguments. What the
20 attorneys say is not evidence, but, please, give them your
21 strict and undivided attention. That from that witness
22 stand is where the evidence will be presented to you.

23 From time to time during the trial, you may hear one
24 of the attorneys say something like, Your Honor, I believe
25 we have a question of law or a matter of law to discuss

1 with you, or, Your Honor, may we approach the bench, or,
2 sometimes, I myself might find it necessary to excuse you
3 from the courtroom for a short while so the attorneys and
4 I can discuss a matter of law.

5 The reason for this is not to hide anything from you.
6 The reason is because you are the judges of the facts in
7 this case and, sometimes, when I am discussing matters of
8 law with the attorneys, it may be necessary for me to make
9 some comment as to the facts in connection with the ruling
10 and whether or not a particular law applies. I am not
11 supposed to tell you what I think the facts are. So I
12 will excuse you from the courtroom while these discussions
13 take place so that in no way will you be influenced by
14 anything that I might say or do in connection with the
15 facts.

16 In determining what the true facts are in this case,
17 and using your good judgment individually and
18 collectively, and your common sense individually and
19 collectively, you must decide whether or not the testimony
20 of the witnesses is believable. It will be my
21 responsibility to rule, as a matter of law, as to whether
22 certain testimony is admissible at all or not. In other
23 words, whether you get to hear it at all or not. But once
24 the testimony is admitted, whether or not you believe it
25 is solely for you, the jury, to determine.

1 In deciding whether to believe a witness, you have a
2 right to consider the interest of any witness, the bias of
3 any witness, the prejudice of any witness, the opportunity
4 for the witness to have seen the matters and things about
5 which the witness may testify, and the way the witness
6 acts on the witness stand, the demeanor, the appearance of
7 the witness.

8 You have the right to consider anything that is in
9 the record that will help you evaluate the testimony of
10 the witnesses. That means it will be your duty to pay
11 close attention to these witnesses, to observe them, to
12 listen to them, to pay close attention to the attorneys
13 and to the Court. Don't let your thoughts wander. But
14 give strict attention to the testimony in this case so
15 that at the end of all the testimony, after the arguments
16 by the attorneys, the instruction on the law by the Court,
17 you will then be in that position to determine what the
18 true facts are and to apply the law to those facts and,
19 thus, render true and just verdicts.

20 It will be your added duty, Madam Forelady, to
21 preside in the jury room and be the juries spokesperson
22 here in the courtroom. It will, also, be your duty to
23 write the verdicts, but I will give you further
24 instructions about that at the conclusion of the case.

25 Just as far as administrative issues, many times,

1 charts, diagrams, documents could be introduced. Of
2 course, now days with modern technology, many times,
3 they're displayed on the screen and such like that. From
4 time to time, a photograph could be handed to the
5 Foreperson of the jury and passed among members of the
6 jury while you're out here in the jury box.

7 If I allow an item into evidence, you will have that
8 item with you in your jury room at the time of your
9 deliberations. I tell you that not to inhibit your time
10 in any way to view it here in the jury box, but just give
11 you an indication that if it's in evidence, you will have
12 it in the jury room with you, and you will have that
13 additional opportunity to look at that item as long and as
14 often as you wish.

15 Further, seating -- and you've heard me say this
16 before. I need our Foreperson to remain here, our two
17 alternates here. The other of you, y'all may sit wherever
18 you would like to sit within the jury box. It has -- in
19 observing jurors over a number of years now, it has been
20 my observation that many of them can be very territorial.
21 And if you want to sit in the same place, same time,
22 that's fine. But, again, please, keep in mind just our
23 Foreperson and our alternates.

24 Also, from time to time, you may see me on my
25 computer. I don't e-mail, Peak, repeat, don't know what

1 hashtog [phonetic] is, snap photos. I don't know any of
2 that. I track the case.

3 These are good trial lawyers. I'm sure they're
4 prepared to try their case. If I see what I think is a
5 legal issue coming around the dusty bin somewhere, I will
6 do some legal research. I tell you that because, imagine,
7 a juror complained about it one time. But be that as it
8 may, that's what I would be doing.

9 So, finally, what am I really in charge of? Taking
10 breaks. I'm in charge of taking breaks. I have a very
11 simple rule. When I want to take a break, we take a
12 break. It works out. Y'all take y'all's break, I take my
13 break.

14 Again, this is an important case, ladies and
15 gentlemen. It's important to Mr. Adams. It's important
16 to the State of South Carolina.

17 This is not a judicial marathon. If you sit out here
18 too long and your thoughts start wandering, you're
19 probably not the only one. If you need a break, please,
20 raise your hand and get my attention, the attention of one
21 of our fine bailiffs, the clerk. Y'all will take y'all's
22 break, we will take ours.

23 All right. With that being said, any objections to
24 anything I told the jury from the State, Solicitor?

25 MR. MARCHANT: None from the State, Your Honor.

1 THE COURT: From Mr. Adams, Mr. Toney?

2 MR. TONEY: None, Your Honor.

3 THE COURT: All right. Thank you. Thank you very
4 much.

5 We'll now begin the trial.

6 Solicitor, you may address the jury.

7 OPENING STATEMENTS

8 MR. HOLLOWAY: Thank you, Your Honor.

9 On December the 11th, 2012, this Defendant and one
10 other individual entered the apartment of Joseph Crite
11 with the intent to rob him. And that robbery went very
12 bad very quickly, very tragically. Mr. Crite ended up
13 getting shot that night.

14 Throughout this trial, you will hear from various
15 witnesses, from law enforcement who was out there, law
16 enforcement who later got the case and did their
17 investigation. You'll hear from people who were out
18 there. You'll hear from people who were sitting out in
19 the parking lot just outside that apartment on December
20 the 11th, 2012.

21 The Defendant had gone over to this apartment for the
22 purpose to rob Mr. Crite. He went there with his sister,
23 who will testify. He went there with this second -- this
24 third person.

25 What we know that occurred inside the apartment is

1 Mr. Crite was shot four times. He was shot here, here,
2 below his belly, below his waist, and in his head right
3 here right by his left eye. At that point, he's in his
4 bedroom. He is down on the ground. He's face down.
5 That's what we know that occurred inside the apartment.

6 Once -- in the wake of the shooting, law enforcement
7 did their investigation. They tested for fingerprints,
8 you know, the standard things that you would expect from
9 watching shows like CSI, and sort of the science fiction
10 shows you see. But these are the standard things that law
11 enforcement do in reality.

12 They looked for fingerprints that will tie the body
13 of Mr. Crite to who, actually, killed him. They tested
14 for DNA. They found none of that.

15 So what did law enforcement do? They didn't throw
16 their hands up. They, actually, went and investigated
17 this case to figure out who done it. And by doing good
18 old fashion police work, pounding the pavement,
19 interviewing people, people who were out there, people who
20 had leads.

21 The investigator in this case will testify in this
22 trial that he chased every lead that was presented to him
23 and other members of the sheriff's office. And those
24 leads led to Brandon Adams, and his sister, and a third
25 individual.

1 Throughout this trial you will hear, you know, from
2 people who were out there on the scene in the parking lot.
3 You'll hear some testimony about -- from a doctor who did
4 do the -- who did assess the body of Joe Crite to
5 determine the cause and manner of death, the location of
6 the bullets.

7 When you decide this case and you go back to that
8 room tomorrow, probably, decide what do the locations of
9 the bullets mean? Do they mean anything regarding what,
10 actually, happened in the apartment? That's in your
11 domain like the Judge said earlier. Those are part of the
12 facts of this case.

13 But the important thing is that the witnesses in this
14 case gave statements that placed the Defendant going into
15 Mr. Crite's apartment, and then gunshots were heard within
16 moments, within a few minutes. And then Mr. Adams came
17 barrelling out of the apartment and hopped in a vehicle
18 that had -- his sister was behind the wheel of the
19 vehicle. And that third person came out as well.

20 They heard gunshots -- they go inside the apartment.
21 They hear gunshots. And then both of these individuals
22 come running back to the car that's waiting for them
23 driven by his sister, Mercedes.

24 The charges that you're -- that you will consider in
25 this case are murder, burglary first degree, armed

1 robbery, possessing a weapon during the commission of a
2 crime that's classified as violent. And if you look at
3 the charges, it is an escalation. It is precisely what
4 happened that night.

5 There's the burglary, the entering of the apartment
6 with the intent to commit a crime therein. There is the
7 armed robbery that occurs. The possessing of the gun
8 during the commission of that violent crime. And,
9 finally, ultimately, Mr. Crite is shot in the head. He's
10 shot three other times in his body. That's what we have
11 in this case.

12 You will hear testimony -- the Judge discussed
13 accomplices. That word may come up in the instruction
14 section of this trial. Accomplice liability is something
15 in -- that's the law of South Carolina. It is really the
16 hand of one is the hand of all. That's sort of the other
17 way to describe it --

18 MR. TONEY: Objection.

19 THE COURT: Overruled.

20 MR. HOLLOWAY: The hand of one is the hand of all
21 means that no matter what part you played in that crime,
22 you are equally guilty, say, as in this case as the person
23 who, actually, shot Mr. Crite.

24 Did you -- and throughout this trial when you hear
25 from all the witnesses who placed him in the apartment,

1 gunshots going off, and barrelling out of the apartment,
2 decide what level of contribution Mr. Adams played in that
3 that led to each and every crime for which he is charged
4 from burglary, armed robbery, possessing a gun during the
5 commission of a violent crime, and murder.

6 As I said, there's another person of interest in this
7 case, the person who accompanied Mr. Adams into
8 Mr. Crite's apartment. That person has not been arrested.
9 His day of justice will come some day. But today,
10 possibly tomorrow, this trial is Mr. Adams day for justice
11 and being held accountable for what happened on December
12 the 11th, 2012.

13 Thank you.

14 THE COURT: Thank you, Solicitor.

15 Mr. Toney.

16 MR. TONEY: Ladies and gentlemen, once again, my name
17 is Ivan Toney.

18 I appreciate you listening. This is an important
19 case, very important. My client's future, his fate is in
20 your hands. He has chosen to come to trial. He has the
21 right to a jury trial. It's in our Constitution. This is
22 one of the things that makes America a worthwhile place to
23 live. I love America. Believe me, without the right to a
24 jury trial, this country would not be worth living in.
25 You would be in your right mind to abandon the country,

1 and forget it, and leave. Without these rights, we would
2 live in a police state.

3 But we have this right to a jury trial. And we're
4 here. I have a lot of faith in our system. Because our
5 system allows 12 regular people to sit down and judge
6 important matters.

7 My client has chosen this jury trial. The State does
8 not get to pick a jury trial. They do not get to say, I
9 demand a jury trial. My client has asked you to be here.
10 He has taken his life and he has put it in your hands.

11 I'm going to ask that you pay very close attention.
12 Because this is the most important thing he's ever done in
13 his life. And if you all live a thousand years, you may
14 never get a chance to participate in something this
15 important for the rest of your life. As a matter of fact,
16 it's highly unlikely that you will. Because there's not
17 much more important than what you're doing here today.

18 The Court is going to instruct you on reasonable
19 doubt. And they're going to give you detailed
20 instructions. If anything I say here today contradicts
21 that, then you should follow what the Court says. But I
22 will tell you that reasonable doubt is a heavy burden to
23 bear. And that we don't have to bear one iota of it, one
24 ounce. The State has to prove their case beyond a
25 reasonable doubt to you.

1 I don't know if you listened to the -- I'm sure you
2 did -- to the State's opening. But they already have
3 raised more questions than I think they'll be able to
4 answer. They have already admitted or come out and stated
5 that there was a room and that there was several people in
6 it, at least, two, and that somebody got shot. And they
7 have stated they don't know who. And they're going to ask
8 you to try to sleuth this together and piece it through.
9 But they don't have the other person here today. And that
10 person, I believe, will not testify. I could be wrong.
11 So, right there, I would submit to you the State has
12 already brought some reasonable doubt into this case.

13 Now, these are just -- this is just the beginnings of
14 the thread of the tapestry that's going to be woven. But
15 we have to look at this very carefully. But I just want
16 to bring to your attention that already they have raised
17 substantial questions. And, based upon that, I'm going to
18 ask that you pay close attention, and that you hold the
19 State to its burden of proof.

20 Thank you very much.

21 THE COURT: Before you call your first witness,
22 Solicitor, I'd like to tell those in the audience, I do
23 not allow movement in or out of the courtroom while the
24 trial is progressing. Obviously, our bailiffs, and our
25 court staff, and our sheriffs have the ability to deal

1 with an issue that may be emergent. But, besides that,
2 otherwise, it is distracting to the Court. It is
3 distracting to the jury.

4 If you want to leave, you can leave between
5 witnesses. During the trial testimony, you will not be
6 allowed to reenter until the next witness has completed
7 his or her testimony. So, please, keep that in mind. If
8 you cannot sit for extended periods of time, I would
9 advise you to leave now. Because I'll consider it a
10 contempt of court, unless it's an emergency situation, for
11 you to leave at any other time as to oppose the ones I
12 just outlined.

13 Thank you very much.

14 Solicitor, call your first witness.

15 MR. HOLLOWAY: Thank you, Your Honor.

16 The State calls Wes Arflin to the stand.

17 THE COURT: All right. If you'd come around and be
18 sworn for us, please.

19 THE CLERK: Sir, if you'll, please, place your left
20 hand on the Bible and raise your right hand.

21 THE BAILIFF: Face the Clerk, please.

22 WHEREUPON,

23 WES ARFLIN,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: All right. Please be seated.

1 And would you, please, state your name for the
2 record?

3 THE WITNESS: Yes. It's Deputy Wes Arflin.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. HOLLOWAY:

7 Q Deputy, for the record -- I know what you're wearing.
8 But, for the record, could you tell the jury where you
9 work?

10 A That's affirmative. Greenville County Sheriff's
11 Office.

12 Q And how long have you worked for the sheriff's
13 office?

14 A About four and a half years.

15 Q Okay. And what are your -- just kind of briefly
16 disguise -- describe, what are your duties with the
17 sheriff's office?

18 A I work for the uniform patrol division, which is
19 dispatched to 911 calls.

20 Q Okay. So you've been at the sheriff's office for
21 about four and a half years?

22 A That's correct.

23 Q This means, at the time of this case, you were --
24 you'd been on the force for maybe about a year?

25 A Correct. That's -- yeah.

1 Q Okay. And do you recall the incidents of this case?

2 A Yes.

3 Q Okay. And that was back on December the 11th, 2012?

4 A That's correct.

5 Q Okay. Can you tell the jury -- just take them out
6 there to this scene as you recall. What did you see when
7 you arrived?

8 A Okay. I was dispatched to this call in reference to
9 a gunshot victim at somewhere around 1:45 in the morning.
10 I responded to a duplex that seemed to be like a U-shaped
11 duplex with multiple duplexes throughout there.

12 Once on scene, I made contact with a male subject,
13 who I later identified as Kendrick Waller, who stated that
14 his father had been shot inside this duplex.

15 Q Okay. And what was the address for the apartment for
16 his father's --

17 A ■■■ Landford Drive.

18 Q And what county is that --

19 A It's in Greenville County.

20 Q Okay. You talked to Mr. Waller. And then what
21 happened?

22 A Mr. Waller had advised me that his father had been
23 shot inside the home. I asked him if he had been inside
24 the home. He told me, Yes. And I asked him to sit on the
25 curb while, also, asking him if anybody else was in the

1 home. He said he didn't know.

2 Q Okay. And, based on that, you did what?

3 A I went to the door of the home where I seen the door
4 standing open. I -- looking through the home to a back
5 room, I could see legs of a victim laying in a back
6 bedroom.

7 At this time, without knowing if anybody else -- any
8 suspects or even if any more victims were in the home, I
9 proceeded into the home where I cleared every room into
10 the home. And I saw the victim laying face down on the
11 floor.

12 Q Okay. And, at that point, what did you do to confirm
13 his vital signs, make sure -- see what's truly wrong with
14 him?

15 A When I first made contact with the victim, it was
16 apparent that he was lifeless. There was a large pool of
17 blood coming from his face and head area. And he was --
18 it was -- obviously, you could tell he wasn't breathing or
19 showing any signs of life.

20 Q Okay. And while you're assessing Mr. Crite, did
21 anybody come in the apartment while you were there?

22 A While I was in there?

23 Q Uh-huh.

24 A No, sir.

25 Q Okay. Who else from the sheriff's office came out

1 there directly right after your --

2 A Deputy Eichelberger, actually, responded, as well as
3 a backup unit. And she showed up as I was exiting the
4 home.

5 Q Okay. Deputy Arflin, I'm going to -- I'm handing you
6 what's been pre-marked as State's Exhibit No. 6. Can you
7 identify this for the jury?

8 A Yes. It's an aerial photo of ■■■ Landford Drive.

9 Q And is that exhibit a fair and accurate photograph
10 facing downward, essentially, over that area?

11 A That's correct. Yes, sir.

12 MR. HOLLOWAY: Your Honor, I would ask to move
13 State's Exhibit No. 6 into evidence.

14 MR. TONEY: I don't know what it is, Your Honor. It
15 looks like -- it doesn't look like a photo.

16 MR. HOLLOWAY: Well, that's the desktop that I put in
17 here --

18 MR. TONEY: I'm sorry.

19 (Pause.)

20 MR. TONEY: Okay. No objection.

21 THE COURT: State's Exhibit No. 6 is in evidence
22 without objection.

23 (WHEREUPON, State's Exhibit No. 6 was admitted into
24 evidence.)

25 MR. HOLLOWAY: We'd like to ask to publish to the

1 jury.

2 THE COURT: You may publish.

3 MR. HOLLOWAY: Thank you, Your Honor.

4 BY MR. HOLLOWAY:

5 Q All right. Can you point -- I guess as soon as the
6 computer kind of focuses -- here you can...

7 Okay. Can you -- this is the light-saver pointer.
8 Can you point to that location where you were dispatched
9 to?

10 A Yes, sir. I was dispatched to this duplex right here
11 at ■ Landford Drive.

12 Q And can you point to where you talked to the -- his
13 son, Mr. Waller?

14 A Yes. Yes, sir. I responded and parked my patrol car
15 about right here. And I made contact with Mr. Waller
16 about right here in the yard.

17 Q Okay. When you responded and at that -- I guess
18 shortly after assessing Mr. Crite, what did you then do?
19 Did you see other witnesses out -- or other people
20 outside?

21 A Yeah. Obviously, we separated Mr. Waller. Because,
22 at the time, he was the only witness that had stated that
23 someone had been shot. I, also, noticed two other females
24 standing out close to the apartment that I was not -- I'm
25 not aware who they were.

1 Once I came back out, I secured the scene by roping
2 it off with police tape. And we, essentially, held what
3 we had for EMS personnel and for the investigator.

4 Q And who called in EMS?

5 A I'm pretty sure that Deputy Eichelberger called in
6 EMS as soon as I came out and told her that there was
7 nobody in there but the victim.

8 Q Okay. Did you, actually, see them come out there,
9 EMS?

10 A Yes, I did.

11 Q Okay. And how long did you stay out at this scene?

12 A For hours, yeah, it seemed like.

13 Q Okay. And were you out there until the main
14 investigator arrived?

15 A That's correct.

16 Q And who was that?

17 A Investigator Wayne Campbell.

18 MR. HOLLOWAY: Okay. Thank you.

19 Your Honor, that's all I have for this witness at
20 this time.

21 THE COURT: Thank you, Solicitor.

22 Mr. Toney.

23 CROSS-EXAMINATION

24 BY MR. TONEY:

25 Q Deputy Arflin?

1 A Yes, sir.

2 Q You met Kendrick Waller?

3 A That's correct.

4 Q At the house?

5 A That's correct.

6 Q And he was the son of the victim?

7 A That's what he claimed, yes, sir.

8 Q Okay. So you don't know for sure if he's the son of
9 the victim; correct?

10 A I haven't done any type of investigation to confirm
11 that.

12 Q And he stated -- or you determined that he'd been in
13 the house; correct?

14 A That's correct.

15 Q And were you there when he was in the house?

16 A No, sir.

17 Q So, at least, one person was in the house when you
18 weren't there; correct?

19 A That's correct.

20 Q Between the time of the shooting and when you arrived
21 at the house?

22 A Correct.

23 Q Do you know what kind of time period that was?

24 A I don't know an exact time.

25 Q Could it have been more than 30 minutes, or more than

1 an hour possibly?

2 A I'm pretty sure that per a witness or -- that I had
3 spoke to in the apartment next door --

4 MR. TONEY: Objection to hearsay.

5 THE COURT: You asked him the question.

6 MR. TONEY: Yeah. But I didn't anticipate hearsay.
7 I just asked what he could determine.

8 THE COURT: The question is struck and the response
9 is struck.

10 MR. TONEY: Okay.

11 THE COURT: Ask your next question, please.

12 MR. TONEY: Yes, sir, Your Honor

13 BY MR. TONEY:

14 Q How many people had been in the house in the interim
15 period?

16 A Prior to my arrival?

17 Q Yes.

18 A One confirmed.

19 Q Is it possible there were others in the house?

20 A I guess you could say so, yes.

21 Q The main point is you don't know if anyone else was
22 in the house; correct?

23 A Correct.

24 Q Okay. And is this house in your area that you
25 patrol?

1 A At the time, yes.

2 Q Okay. And the house was a known drug house, or crack
3 house and liquor house; correct?

4 A That I can't confirm on.

5 Q But you'd, at least, had some knowledge that that
6 kind of activity was going on there?

7 A In that general area, that's correct.

8 Q Okay. And there were people waiting outside?

9 A Yes.

10 Q Were they known drug users?

11 A I've never dealt with the people before in my life.

12 Q Okay. You don't know of anyone -- since you don't
13 know who was in that house, you don't know if anyone
14 removed anything from that house in the interim period
15 because you weren't there; correct?

16 A Correct.

17 Q All right. And you don't know the names or how many
18 people entered that house?

19 A I do not.

20 MR. TONEY: Thank you very much, Deputy Arflin.

21 THE COURT: Redirect, Solicitor?

22 MR. HOLLOWAY: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HOLLOWAY:

25 Q As soon as -- how long did it take you to get out to

1 the scene?

2 A The response time, I believe, was somewhere around
3 five minutes.

4 MR. HOLLOWAY: All right. Thank you very much.

5 THE COURT: Recross?

6 RECROSS-EXAMINATION

7 BY MR. TONEY:

8 Q But you don't know respectfully how long after the
9 incident someone called it in?

10 A Correct.

11 MR. TONEY: Okay.

12 THE COURT: Thank you, Officer.

13 You may step down.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Solicitor, you may call your
16 next witness.

17 MR. MARCHANT: May it please the Court.

18 The State calls Joseph Antwon Waller.

19 THE COURT: All right. If you'll come around for us,
20 Mr. Waller, and be sworn.

21 THE CLERK: Sir, if you'll, please, pause at the end
22 of the bench.

23 And place your left hand on the Bible and raise your
24 right hand.

25 THE BAILIFF: Face the Clerk.

1 WHEREUPON,

2 JOSEPH ANTWON WALLER,
3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 And would you, please, state your name for the
7 record?

8 THE WITNESS: Joseph Antwon Waller.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MARCHANT:

12 Q All right. Mr. Waller, if you'll speak up so we can
13 hear each other. We'll have a little conversation. Okay.

14 A Okay.

15 Q What is your relation to Joseph Crite?

16 A That's my dad.

17 Q And do you have any brothers or sisters?

18 A Yes, Kendrick Lewis Waller and Calissa [phonetic]
19 McCullough [phonetic].

20 Q Who's older, you or Kendrick?

21 A Me.

22 Q And how old are you today?

23 A 32.

24 Q So back in December of 2012, you would have been 28?
25 29?

1 A Yes, sir.

2 Q And so how long is Kendrick -- how much older are you
3 than Kendrick?

4 A Three years older.

5 Q The apartment that we're talking about where your
6 father was living in December of 2012, do you know how
7 long he had been living there before this incident
8 occurred?

9 A Not quite a year.

10 Q And do you know where he lived before that?

11 A He was in prison.

12 Q Do you know what for?

13 A Crack cocaine.

14 Q ■ Landford Drive, can you give the jury a general
15 description of what the apartment looked like inside, the
16 layout, if you will?

17 A Okay --

18 Q Before you answer that, let me approach. And I'm
19 going to show you State's Exhibit No. 7. And I know that
20 you did not prepare this, but does that look familiar?

21 A Uh-huh.

22 Q Just a minute.

23 All right. Mr. Waller, since I've shown you State's
24 Exhibit No. 7 --

25 MR. MARCHANT: I'd move State's Exhibit No. 7 into

1 evidence.

2 THE COURT: Without objection?

3 MR. TONEY: That's correct, Your Honor.

4 Thank you, sir.

5 THE COURT: State's Exhibit No. 7 is in evidence.

6 (WHEREUPON, State's Exhibit No. 7 was admitted into
7 evidence.)

8 BY MR. MARCHANT:

9 Q All right. So as soon as this comes up -- number
10 one, let me turn it right side up.

11 If you would, explain to the jury, essentially, the
12 layout of your father's apartment. And, again, I'm going
13 to jump back real quick to State's Exhibit No. 6. This
14 apartment down here that's labeled #1, is that your
15 father's apartment?

16 A Yes, sir, right there.

17 Q And what is that area in the middle of that building
18 that leads out into the parking lot?

19 A The middle of the building like right here?

20 Q No, sir. Let me see the pointer.

21 Right here, what is this?

22 A Oh, that's the front porch.

23 Q Okay. So moving to State's Exhibit No. 7, if you
24 would, orient the jury. Tell them what's what as soon as
25 you get inside the apartment.

1 A Okay. This is when you come in. This is the door
2 right here --

3 Q If you'll be sure to speak up so everybody can hear
4 you now.

5 A This is the front door right here that you come in.
6 This is where you have like the furniture and stuff at
7 right here. The table be right here. This is the kitchen
8 area. This is the bedroom area. This is his bathroom.
9 This leads to the other bedroom right here.

10 Q Does anyone else stay in the other bedroom?

11 A No, sir.

12 Q Okay. So did he live alone, or did he have a --

13 A He always stayed alone, or he had maybe like a little
14 puppy. He had a puppy dog he had in there.

15 Q All right. And I'm going to walk you through State's
16 Exhibit Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
17 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.
18 I'd ask you to take a look at those and see if you
19 recognize those photographs.

20 A (Witness complied.)

21 Q Okay. So with respect to State's Exhibit Nos. 8
22 through 32, do they fairly and accurately depict your
23 father's apartment, obviously, after the incident
24 occurred?

25 A Uh-huh.

1 Q Mr. Waller, let's talk briefly about your father and
2 his employment history, if you would. Did your father
3 work?

4 A No -- well, he used to. But he --

5 Q What did he used to do?

6 A He used to lay bricks. He used to be a brick mason.

7 Q And back in December of 2012, was he laying bricks?

8 A No, sir.

9 Q Why not?

10 A Because he was disabled. He was on dialysis.

11 Q Dialysis. How often did he receive treatment?

12 A Every two days, every other day.

13 Q And did he receive that at the house, or did he go
14 somewhere to receive that treatment?

15 A He went to the dialysis center.

16 Q How did he get there? Do you know?

17 A Sometimes, I would take him. Sometimes, my Aunt
18 Barb [phonetic] would take him. Sometimes, the bus would --
19 a van would come out there and take him.

20 Q How often did you see your father?

21 A I see my dad every day.

22 Q Every day?

23 A Every day.

24 Q Where did you live in relation to Landford Drive back
25 in December of 2013?

1 A Me, I stayed in Simpsonville. My brother stayed
2 right across the street.

3 Q But even though you lived in Simpsonville, you're
4 telling me you went by the house every day?

5 A Uh-huh, every day.

6 Q Why?

7 A Because me and my brother -- me and my dad had that
8 bond. It was like my best friend, you know. I'm there
9 every day with him no matter what.

10 Q Seeing how your father was on disability, did he
11 receive a check?

12 A Yes, sir.

13 Q And did that check cover all of his expenses?

14 A No, sir.

15 Q Okay. Tell the jury what he did to supplement his
16 income.

17 A He sold crack to make it -- you know, to pay his
18 bills.

19 Q Well, how do you know personally that he sold crack?

20 A I was there with him, you know. I seen him do it.

21 Q And let's talk about how a deal or transaction would
22 take place. How would it go down at your father's
23 apartment?

24 A Well, if I'm there, you know, and -- if I'm there, I
25 would ask him do you -- you know, do he know you, or

1 whatever. If he don't know you, you won't get in the
2 house at all. And, you know -- but if he know you, you
3 can go right there at that front door, that's it, only in
4 the living room, no farther.

5 Q I'm going to pull this schematic of the apartment
6 back up real quick so we can orient the jury of where
7 you're referring to.

8 Have you still got the pointer?

9 A Yes, sir.

10 Q So would somebody call, or just show up, or how did
11 it, typically, take place?

12 A They would just show up. Like this would be the
13 parking lot. And from this -- this is the door. So from
14 the door, I can see anybody that really pull up right
15 there in that area.

16 And they would come up to the door and knock at the
17 door right there. And if I'm there, I'd come and open the
18 door, or whatever. And I, you know -- my dad would be
19 like in the area right here. He might peek his head out
20 like that and see if he know you. If he tells me he knows
21 you, then I let you in. But if he don't know you, you
22 won't get in.

23 And if you do come in, you're only going to stand
24 right there. You won't come no farther.

25 Q Why?

1 A Because that just -- the rule I always had, you never
2 come -- you would never be able to roll in through the
3 house and know where everything was at, or nothing like
4 that. That was his rule, too.

5 Q What if he knew the person that was at the door?

6 A Even if he still knew you, you still wouldn't move
7 but right -- the area right there. You won't go no
8 farther.

9 Q So where would a deal take place if somebody came in?

10 A Right in this area right here. Right here close to
11 the table. Right in this area right here.

12 Q Well, where did he keep the crack cocaine that he
13 sold?

14 A Most of the time, he would have it on him. But his
15 stash would always be in this area, the kitchen.

16 Q And roughly where in the kitchen -- or was it in
17 multiple spots?

18 A Most of the time, multiple spots.

19 Q Why is that?

20 A It don't stay in one area too long. Because a lot of
21 people that comes in this door right here, sometimes, he
22 would go to the kitchen to go pick it up and then come
23 back to this area right here. And then you already know
24 where his spot is at. So he's not going to keep it in the
25 same exact spot.

1 Q Well, if he was making a deal, would he have
2 everything -- would he have all of the crack on him, or
3 would some of it still be in the kitchen area?

4 A Some of it would still be in the kitchen area. But
5 the most of -- the majority is -- everything is on him.
6 So, that way, he can make his transaction right in this
7 area right here.

8 Q And do you know what sort of a container or --

9 A It was always in a bottle, a medicine bottle. It'd
10 be already cut up in a medicine bottle.

11 Q How often when you're over there is he making deals?

12 A How often?

13 Q I mean, you're there -- you said you were there every
14 day; right?

15 A Yeah. I'm there every day. Most of the time -- the
16 majority of the whole time, I'm there. The majority of
17 the whole time, I'm there.

18 Q I'm sorry. Will you say that one more time?

19 A The majority of the whole time, I'm there. Most of
20 the time, it might be like maybe 20 people might come
21 by the time I left.

22 And then the majority of the time, it would always be
23 my brother, or somebody might be there. But if I'm not
24 there, my brother would be there.

25 Q Did he have anybody else that he worked with?

1 A He had a few people he had out there like some --
2 that would watch his house, that'd watch his house.

3 Q Are those people that lived in the complex?

4 A Yeah.

5 Q Monetarily wise, how much crack cocaine did he,
6 typically, have when he -- what's commonly referred to as
7 re-up?

8 A An ounce.

9 Q And how much does an ounce cost on the street?

10 A About 1,200.

11 Q And once you get an ounce, what is it that you do to
12 it to increase the value of it?

13 A Take it and cook it up, cook it up. And the value --
14 the street value is about \$3,500. You cook it up and
15 crack it -- and cut it up.

16 Q Did he have anywhere that he kept money that were the
17 profits of the transactions that he had?

18 A Yeah. He always put -- yeah.

19 Q Where is that?

20 A Most of the time, his rent money -- he would have
21 like his rent money. He'd have his rent money put up in a
22 certain area like it might be put up in his overall pants.
23 He might have money put in a can or either some kind of
24 money bag. That's what we used. That's what he used, a
25 bank money bag.

1 Q You mentioned -- did you say overalls?

2 A Yeah.

3 Q Where did he, typically, keep the overalls?

4 A On the back of the -- his room door.

5 Q Was there anything else that he kept in those
6 overalls?

7 A He kept a pistol in the back on the other side of the
8 pocket.

9 Q Do you know what kind?

10 A A 380.

11 Q Is that an automatic or a resolver?

12 A It's a Glock. It's like a baby 380. It's a -- it
13 ain't no revolver. It's a handgun.

14 Q Was it loaded?

15 A Yeah.

16 Q Did he ever keep it on him, or was it always in the
17 overalls?

18 A He always -- it was always in the overalls, or most
19 of the time it was always -- it depends. Like sometimes
20 it might be where -- if he's laying down here, it might be
21 here, this area. But the majority of the time, it's
22 always -- this would be pretty much where the overalls
23 would be sitting at right here on this door right here,
24 this area. That's where it would be at.

25 Q And how much money was, typically, in the overalls?

1 A Anywhere from nine to \$1,200, way up.

2 Q Why that particular amount?

3 A That's always his re-up stash.

4 Q Well, what --

5 A Any extra money like profit money would always be in
6 the money bag, the bank money bag, TD Bank.

7 Q So if there was a bank money bag and there wasn't any
8 money in it or the overalls, does that mean he would have
9 spent it?

10 A No. He always kept his rent money.

11 Q So let's talk about this back bedroom here. If
12 someone had come in and wanted to make a purchase, would
13 he allow them to go into the back bedroom?

14 A No, never.

15 Q Why?

16 A That was his rule, never -- it would never be nobody
17 allowed to go out in his back room. Because he would
18 know -- like he wouldn't want everybody exposed to like what
19 he got in his room. Because he have money sometimes on his
20 dresser, or whatever. So he would never let anybody go in
21 his room. Because his wallet was always in his room.

22 Q What about the bathroom?

23 A He would never let anybody use the bathroom. He
24 would never let me use it. I mean, he never let his own
25 sons use it. Because my dad was on dialysis and he was

1 always having -- he couldn't pee. So he was always having
2 to use the -- you know, use the bathroom. But he always
3 would have to sit on it. Because that way -- he would
4 never let nobody use his bathroom.

5 Q Can you describe for the jury the front door? Did
6 the front door have a lock on it?

7 A Yeah. It had a lock on it.

8 Q And describe for them what sort of lock it was.

9 A It had a dead bolt lock on it, but you have to have a
10 key.

11 Q A key for the inside or the outside?

12 A The one -- I know the back door did, but I don't --
13 the front door, too, you had to have a key.

14 Q So if I'm inside the apartment and I want to lock the
15 door, are you saying I have to use a key from the inside
16 of the house to lock the apartment?

17 A Not the front door, I don't think.

18 Q You're sure about the side door, though?

19 A I know -- I'm definitely sure about the side door,
20 though, that you have to have a dead bolt to get out of
21 there.

22 Q So the night that this happened, did you go to your
23 dad's that day?

24 A Yes.

25 Q Business as usual?

1 A Uh-huh.

2 Q And do you recall roughly what time you left that
3 evening?

4 A That time I left -- I left at 10:38 that night.

5 Q And where were you when you were notified that
6 something had happened at his apartment?

7 A I was at my home in Simpsonville.

8 Q Do you recall what time that was, or who called you?

9 A My brother was -- I was notified by my brother. It
10 was like maybe -- maybe 12:30, maybe. He called and told
11 me that my dad had got shot. I was on my way right then
12 and there.

13 Q Before you left that night, do you know whether or
14 not your dad had any more crack to sell?

15 A No. He told me he didn't have any. And when he tell
16 me, he usually always right. He always tell me the truth
17 about it, that he didn't have no more. He told me -- he
18 said, Son, I don't got no more. So I don't have to open
19 the door for nobody, because I don't have any more.

20 Q Well, if he didn't have any more product to sell and
21 somebody came to the door, would he let them in?

22 A Yes, if they wanted beer, or cigarettes, or liquor.

23 Q What do you mean?

24 A Because my daddy sold beer and liquor, too, and
25 cigarettes. But if they wanted drugs, no. But most of

1 the time -- but the majority of the time that I know when
2 I was there when he didn't have no drugs and he knew the
3 person that came to the door that wanted drugs, he would
4 tell you, Ain't nothing. And he wouldn't even open the
5 door at all. He wouldn't even crack the door open.

6 Q So what mood, spirit was your dad in when you left
7 him that night?

8 A He was fine, and everything. He was like -- I was
9 like, Daddy, I've got to go home because I've got to go to
10 work in the morning.

11 And he was like, All right then, son. He said, I
12 love you.

13 And I said, I love you, too.

14 And then that's the last time I seen him, or talked
15 to him.

16 Q You didn't talk to him on the phone, or anything like
17 that?

18 A Huh-uh.

19 Q Speaking of phones, does he have a -- does he have a
20 house phone?

21 A He had a cell phone.

22 Q Okay. Where did he, typically, keep the phone?

23 A On the bed. It always was -- because he -- at night,
24 he -- when he's always going to bed, he always had his
25 cell phone laying in his bed with him, always in the bed.

1 Q The side door that's in the kitchen, did he ever
2 access that side door?

3 A No.

4 Q It always stayed locked?

5 A It always stayed locked, always.

6 MR. MARCHANT: All right. Mr. Waller, please, answer
7 any questions Mr. Toney may have.

8 THE COURT: Thank you, Solicitor.

9 Mr. Toney.

10 CROSS-EXAMINATION

11 BY MR. TONEY:

12 Q Mr. Waller --

13 A Yes, sir.

14 Q -- first off, before I get started, I'm sorry for
15 your loss. I know you loved your father. And I know you
16 must answer my questions, but I don't intend any
17 disrespect with these questions. It's just a job I have
18 to do.

19 You say your father served time for crack cocaine?

20 A Yes, sir.

21 Q How many times was he in prison?

22 A (There was no response.)

23 Q More than once; correct?

24 A More than once. It was maybe four or five times,
25 maybe.

1 Q And in jail more than that; correct?

2 A Yeah.

3 Q All right. And did your father ever smoke crack
4 cocaine?

5 A Yes, sir.

6 Q And did he ever associate at any other time with
7 people that smoked crack cocaine?

8 A Yes, sir.

9 Q And there were people, you say, in the other houses
10 who watched his house for him?

11 A Uh-huh.

12 Q That's a "yes"?

13 A Yes, sir.

14 Q And they -- did some of those people smoke crack
15 cocaine, also?

16 A Yes, sir.

17 Q And there were people -- when the police came, there
18 were people outside the house; correct?

19 A When --

20 Q Were there often people outside the house?

21 A Yes.

22 Q And some of these people would have been addicts;
23 correct?

24 A Not really.

25 Q Okay. Was liquor ever sold in the house, also?

1 A Yes.

2 Q Is this house what you would call a liquor house
3 maybe where people can go buy liquor?

4 A Pretty much.

5 Q A liquor house is where someone maybe goes and buys a
6 big bottle of, say, Grey Goose and then splits it down, or
7 vodka, or something, and charges, say, \$2, \$3 a cup;
8 correct?

9 A Yeah. Your words, yeah. But my dad would never do
10 it that way.

11 Q Okay. How would he do it?

12 A He would buy them by the cases.

13 Q Cases?

14 A Yeah. Go to the liquor store and buy them by the
15 cases and add -- maybe add like an extra dollar to
16 whatever he'd buy to the box.

17 Q So how many -- so he would buy it by the case. How
18 often would he buy a case?

19 A It depends on how fast they sell.

20 Q But he would sell a lot if it; correct?

21 A Yeah.

22 Q So there'd be a lot of people in the area; correct?

23 A Yeah.

24 Q And you said your dad would be on the bed sometimes
25 or the couch, and then you would go open the door?

1 A Yes, sir.

2 Q So, really, at times -- you were there every day;
3 correct, you said?

4 A Yes, sir.

5 Q Okay. You were part of this; correct? I mean --
6 right?

7 A Yeah. That's my dad. I'd ride by.

8 Q And you watched your dad sell crack out of the house;
9 correct?

10 A Yes, sir.

11 Q And I mean no disrespect by these questions, once
12 again. So please --

13 THE COURT: Just ask your next question. No
14 editorial comments --

15 MR. TONEY: Yes, sir.

16 THE COURT: -- I like questions. I like answers.

17 MR. TONEY: Yes, sir. I apologize.

18 THE COURT: Ask questions.

19 MR. TONEY: I'm sorry, sir. I won't editorialize
20 again.

21 BY MR. TONEY:

22 Q You said your father kept crack on him?

23 A Yes, sir.

24 Q And he, also, had money; correct?

25 A Yes, sir.

1 Q Now, you yourself have a conviction for --

2 A Crack cocaine.

3 Q -- crack cocaine?

4 A Yes, sir.

5 Q Was it manufacturing, possession with intent to
6 distribute, or distributing crack cocaine? Correct?

7 A Yes, sir.

8 Q And you got 30 months suspended to 15 months of
9 probation; correct?

10 A Yes, sir.

11 Q And that was a few years ago?

12 A Yes, sir.

13 Q And you, also, have a shoplifting?

14 A Yes, sir.

15 Q Were you given drug treatment as part of your
16 probation?

17 A Yes, sir.

18 Q Well, did you have to go to classes like 12 step, or
19 something like that?

20 A No. I just done my probation, and that was it.

21 Q Did part of your treatment -- had -- involved
22 admitting that you were addicted to drugs; correct?

23 A No, sir.

24 Q Okay. You never had to admit that you were --

25 A No, sir.

1 Q -- addicted to drugs?

2 A No, sir.

3 Q All right. Would you consider yourself an addict?

4 A No, sir.

5 Q Okay. Was your dad an addict?

6 A No, sir.

7 Q Is it possible to use crack cocaine on a regular
8 basis and not be an addict?

9 A My dad wasn't a user before he died.

10 Q Is crack cocaine, to your knowledge, addictive?

11 A Crack cocaine is addictive.

12 Q As a matter of fact, crack cocaine is extremely
13 addictive; correct?

14 A Yes, sir.

15 Q And people would do anything for crack cocaine, some
16 people; correct?

17 A Some people.

18 MR. TONEY: That's all the questions I have for this
19 witness.

20 THE COURT: Redirect, Solicitor?

21 MR. MARCHANT: Very briefly.

22 REDIRECT EXAMINATION

23 BY MR. MARCHANT:

24 Q He -- Mr. Toney brought up the other items that your
25 father was selling out of the house. What were the other

1 items that he did sell?

2 A Like beer, liquor, cigarettes that was like Newports,
3 crack. That was it.

4 Q Any other drugs?

5 A No, sir.

6 Q No marijuana?

7 A No, sir, definitely not.

8 Q Why not?

9 A My dad -- that wasn't the type of money that was
10 quick, and easy, and fast money. Crack was easy money,
11 and quick money, and fast money. Weed -- you don't make
12 money off weed.

13 Q Thank you --

14 A Nickel and dime. That's it.

15 MR. MARCHANT: I have no further questions.

16 THE COURT: Recross, Mr. Toney?

17 RECROSS-EXAMINATION

18 BY MR. TONEY:

19 Q When he sold cigarettes, would he sell them by the
20 pack or -- would he sell loosies?

21 A Loosies?

22 Q One or two at a time?

23 A Yes, sir.

24 Q And how many cigarettes could he sell on a given day
25 in that manner?

1 A Maybe a pack or two.

2 Q Some days, did he easily have 30, 40, 50, 60 people
3 coming in the house buying, say, liquor, crack, loosies,
4 all the other things?

5 A Yes.

6 MR. TONEY: That's all the questions I have.

7 THE COURT: Thank you.

8 Thank you, Mr. Waller.

9 You may step down.

10 All right. You may call your next witness,

11 Solicitor.

12 MR. MARCHANT: The State would call Kendrick Waller.

13 THE COURT: Mr. Waller, if you'll come around and be
14 sworn, please.

15 THE CLERK: Sir, if you'll, please, place your left
16 hand on the Bible and raise your right hand.

17 WHEREUPON,

18 KENDRICK LEWIS WALLER,

19 after first having been duly sworn, testified as follows:

20 THE CLERK: Thank you.

21 Please have a seat.

22 And would you, please, state your name for the
23 record?

24 THE WITNESS: Kendrick Lewis Waller.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MARCHANT:

Q Good afternoon, Mr. Waller.

A Good afternoon.

Q Where do you live now?

A Old Buncombe Road.

Q Okay. How long have you been there?

A Going on two years.

Q And where are you working?

A At Columbia Farms House of Raeford.

Q Back in December of 2012, where were you living?

A Across the street at [REDACTED] Landford Drive.

Q Across the street from where?

A My dad's house, from [REDACTED] Landford Drive.

Q All right. If you would, use that pointer and show the jury where you were living then.

A I was staying right here.

Q Okay. And let's just get right to it. Were you home when your father passed away that evening?

A Yes, sir.

Q What were you doing at the house that night?

A I was asleep.

Q And who is it that notified you?

A It was a guy who was from the neighborhood. He came and knocked on my door. And he told me that he heard some

1 gunshots, and my daddy's door was kicked in.

2 Q Okay.

3 A He told me he heard some gunshots, and my dad's door
4 was open. So I ran across the street.

5 MR. TONEY: I'm going to object to any hearsay.

6 MR. MARCHANT: Judge, he's not indicated anybody by
7 name, or anything that was told to him. He's just
8 indicated what --

9 THE COURT: All right. Well, move along.

10 MR. MARCHANT: Yes --

11 THE COURT: I think it's part of the res gestae.

12 MR. TONEY: Sure.

13 THE COURT: Just move along. He -- an outcry, so to
14 speak.

15 MR. MARCHANT: Very good.

16 BY MR. MARCHANT:

17 Q So you were notified that your father -- something
18 has happened at your dad's apartment. You go across the
19 street?

20 A Yeah. I ran across the street.

21 Q All right. I'm going to show you what's been marked
22 as State's Exhibit Nos. 8 through 32. And I would ask you
23 to take a look at those photographs real quick for me.

24 A (Witness complied.)

25 Q Do these photographs accurately show what you saw

1 when you went over to your dad's apartment that night --

2 A Yes, sir.

3 Q -- early morning?

4 A Yes, sir.

5 MR. MARCHANT: We move State's Exhibit Nos. 8 through
6 32 into evidence.

7 THE COURT: Without objection, Mr. Toney?

8 MR. TONEY: That's correct, sir.

9 THE COURT: All right. State's Exhibit Nos. 8
10 through 32 are in evidence without objection.

11 (WHEREUPON, State's Exhibit Nos. 8, 9, 10, 11, 12, 13,
12 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
13 28, 29, 30, 31, and 32 were admitted into evidence.)

14 BY MR. MARCHANT:

15 Q Mr. Waller, we're going to walk through these. And
16 you -- if you'll tell the jury what each one shows as we
17 go through them. I'm referring to State's Exhibit No. 8,
18 what is that a picture of?

19 A The screen door. And that's where his moped was.
20 And that's just the screen door.

21 Q Okay. State's Exhibit No. 11?

22 A Same thing, the screen door.

23 Q Okay. State's Exhibit No. 12?

24 A That's the front door.

25 Q State's Exhibit No. 13?

1 A That's where his keys always go in the door, because
2 he's got a deadbolt lock.

3 Q And let's talk about that real quick. When you got
4 over to his apartment that morning, was the door open or
5 shut?

6 A The door was open.

7 Q And was it -- how far open was the door?

8 A It was far enough from when I was across the street,
9 I could see the light.

10 Q State's Exhibit No. 14?

11 A Yes. See, that's the light you can see through the
12 door from my view when I looked and seen the light. And I
13 ran across there. And then that's when I noticed there
14 was pillows flipped over in his house.

15 Q Well, let's start walking through the inside of the
16 house, if you will. Here is State's Exhibit No. 15. What
17 does that -- where was that picture taken, meaning what's
18 the vantage point?

19 A When you walk in the house, that's his little TV
20 right there. That's --

21 Q Okay. So where is -- when you're walking in the
22 house, where's that TV stand on State's Exhibit No. 7?

23 A Right here.

24 Q Okay. And that's what that's showing?

25 A Yes.

1 Q All right.

2 A That's his room, and that's the other room.

3 Q And that room that you just pointed to to the right
4 side of the TV stand on State's Exhibit No. 15 --

5 A Yes.

6 Q -- what is in that room?

7 A Nothing but a little -- a little dog -- a little
8 thing that the dog lays on, and really nothing.

9 Q Is there a bed in that room?

10 A No. There's nobody that sleeps in there.

11 Q I'm showing you State's Exhibit No. 18.

12 A That's the back door, the side door, whatever you
13 want to call it.

14 Q And you say "back door," where is that door located?

15 A Right here.

16 Q Okay. State's Exhibit No. 19?

17 Let me go this way.

18 A That's the deadbolt from the back door. He don't
19 never use that door.

20 Q State's Exhibit No. 20?

21 A That's his kitchen.

22 Q State's Exhibit No. 21?

23 A That's in the living room.

24 Q Where -- referring back to State's Exhibit No. 7,
25 where is the person standing -- in State's Exhibit No. 21,

1 where is the person standing when they're taking that
2 picture in here?

3 A Right there.

4 Q Okay. State's Exhibit No. 22?

5 A That's his refrigerator with his beer.

6 Q Going back to State's Exhibit No. 7, where is the
7 refrigerator?

8 A Right here.

9 Q State's Exhibit No. 23?

10 A That's underneath the cabinet in the kitchen.

11 Q State's Exhibit No. 24?

12 A That's his bathroom.

13 Q Referring back to State's Exhibit No. 7, where's the
14 restroom?

15 A Right here.

16 Q So this picture right here, is it -- the door that's
17 on the right side of that, is that going into your
18 father's bedroom or the spare bedroom?

19 A This one?

20 Q Yes.

21 A This one is -- that ain't his bedroom. That is to
22 the other bedroom. It was just a bed in there, but it
23 wasn't put up. It was just leaning against the wall. He
24 had an air mattress in his.

25 Q All right. State's Exhibit No. 25?

1 A Yeah. That's my dad's bedroom right there. That's
2 if you in his bathroom, you would take a picture out.

3 Q Okay. State's Exhibit No. 26?

4 A That's his little brown suit he have on when he ride
5 his moped. And he keep his money in there.

6 Q Is that the same one that your brother was referring
7 to?

8 A Yes. Yes, sir.

9 Q State's Exhibit No. 27?

10 A That's the same one. And that's his closet.

11 Q State's Exhibit 28?

12 A This is his dresser, and his little brown suit.

13 Q State's Exhibit No. 29 -- now, how often were you
14 over at your dad's?

15 A Almost every day, most of the time.

16 Q Okay.

17 A Because usually in the morning, sometimes, he don't
18 be there. And then I work second shift. So when I get
19 off at night, I go home and go to sleep, or sometimes I go
20 over there. It all depends. If I see his light on, then,
21 me, I go over there. But when I got off, it was like dark
22 over there. So I said, well, I'm going to go ahead and go
23 in the house and go to sleep.

24 Q Are you talking about the night this happened or
25 generally?

1 A Yes, the night it happened.

2 Q So when you got off work that day, you're saying his
3 apartment was dark?

4 A Yeah. It was dark.

5 Q And what time would you normally get off work?

6 A I get off at 11:00.

7 Q And how long does it roughly take you to get from --

8 A About 25 minutes.

9 Q You're familiar with your father's business?

10 A Yes.

11 Q Okay. State's Exhibit No. 30. Does he usually keep
12 a tidy place, or...

13 A What you [sic] mean? Like a hiding spot?

14 Q Like is -- are things usually put up in the dressers
15 and the closet, or is your dad sort of messy?

16 A Nah. I mean, everything is mostly put up. I mean,
17 the only time stuff don't be put up is stuff that he just
18 bought.

19 Q Let me show you State's Exhibit No. 31.

20 A Yeah. See all the...

21 Q That's normal?

22 A (Witness shook his head.)

23 That came out of the dresser.

24 Q Is it normal for stuff to be on the floor like that?

25 A No.

1 Q And what does State's Exhibit No. 32 show?

2 A His cell phone.

3 Q And what's the -- what is the cell phone sitting on?

4 A Sitting on his bed. That's where he kept his cell
5 phone was on his bed.

6 Q So when you got over there that morning, what did you
7 do?

8 A When I got over to his house?

9 Q When you got to your dad's house, what did you do?

10 A When I first walked up to the door, I noticed that
11 the door was open. So I went into the house. I yelled my
12 daddy's name. He didn't say anything. And I was looking.
13 I was looking. I looked to my right and I seen the
14 pillows flipped over in his living room on the couch.
15 They was flipped over.

16 And I went on in and looked to my left. I seen some
17 blood in the kitchen. And then that's when I seen my
18 daddy's feet dangling. I seen my daddy's feet at the end
19 of the doorway.

20 Q Did you check him to see if he was still alive?

21 A No.

22 Q What did you do?

23 A I called 911.

24 Q From your phone? His phone?

25 A From my phone.

1 Q And once you called 911, where did you go?

2 A They told me to check and see was he breathing.

3 Q And did you do that?

4 A And so they told me how to flip him over and put
5 pressure on him.

6 Q Did you do that?

7 A No. My dad was a big dude. I couldn't flip him
8 over.

9 Q Did you check at all to see if he was still --

10 A No. They -- no. And then they said, Is anybody else
11 in the house?

12 So I looked. And I said, No, nobody else is in the
13 house.

14 And so when I heard the ambulance -- and then my
15 sister was coming up the steps. I told her, Don't come.

16 But when the ambulance came, I had started walking
17 outside.

18 Q Where did your sister live?

19 A She stayed with me across the street.

20 Q And was there any other females that lived with you?

21 A My girlfriend at the time. She's not my girlfriend
22 anymore.

23 Q What was her name?

24 A Yolanda.

25 Q Last name?

1 A Gamble.

2 Q Did anybody else stay with you across the street back
3 then?

4 A No.

5 Q Did you see anybody come out of that -- your dad's
6 house that morning?

7 A I didn't even see anybody outside anymore. Everybody
8 always outside. It's like a hood. Everybody's outside.

9 Q From the time that you got done in the house and
10 called 911, how long do you think it was between the time
11 you called 911 and the Greenville County sheriff shows up?

12 A I'd say about 10 minutes.

13 Q And did you see anybody else go into that house,
14 other than law enforcement that morning?

15 A No.

16 MR. MARCHANT: Thank you, Mr. Waller.

17 Please answer any questions the Defense lawyer may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. TONEY:

21 Q You would go visit your father's house when you lived
22 across the road from him?

23 A Can you repeat that, please?

24 Q You lived across the road from your father; correct?

25 A Yes.

1 Q Did you go visit him regularly?

2 A Yes.

3 Q And was that every day or every other day?

4 A It was about every other day. It depends on like
5 when I get off if it's dark over there, I don't go over
6 there. But if the light is on, I know he's still up.
7 Because he has dialysis -- it depends what day it is,
8 because he go Monday, Wednesday, and Friday.

9 Q You said everybody was there all the time or -- is
10 that what you said?

11 A Yeah. Either my brother is there or I'm there.

12 Q And everybody was usually around the house, too;
13 correct?

14 A Yeah.

15 Q There was cases of beer in the pictures; correct,
16 lots of cases in the back and then lots of beers in the
17 fridge?

18 A Yes.

19 Q Did he sell those beers?

20 A Yeah. He don't drink.

21 Q Pardon?

22 A Yes.

23 Q Okay. How much did he sell them for?

24 A A dollar apiece.

25 Q And he can only sell all the beers; correct?

1 A Yes.

2 Q All right. And you were asleep when someone came and
3 told you; correct?

4 A Yes.

5 Q You don't know how long it was between when you
6 were -- when it happened and when someone woke you up, do
7 you?

8 A No.

9 Q So you don't know for sure if someone came in that
10 house or not, do you, in that time while you were asleep;
11 correct?

12 A No, sir.

13 Q All right. You have a conviction for
14 manufacturing -- or possession with intent to distribute
15 drugs; correct?

16 A Yes, sir.

17 Q And you --

18 THE COURT: What drug?

19 MR. TONEY: Drugs. Crack cocaine, I think.

20 BY MR. TONEY:

21 Q Is that correct?

22 THE COURT: You think --

23 THE WITNESS: Yes, sir.

24 THE COURT: -- or is that correct?

25 MR. TONEY: Correct.

1 THE COURT: No, no. Wait a minute. I'm asking you.
2 Is that correct?

3 MR. TONEY: I believe so, yes. I mean --

4 THE COURT: I don't want I believe. I want the
5 answer.

6 MR. TONEY: It's -- on here, it says,
7 Manufacturing -- possession with intent. If you look on
8 the other side, it says, Crack cocaine. But it doesn't
9 say that on this one, so.

10 THE COURT: All right.

11 MR. TONEY: Maybe I could ask him and tie it up, sir.

12 THE COURT: No. You're supposed to know that.

13 Yes, sir. Go right ahead.

14 BY MR. TONEY:

15 Q Was it for crack cocaine?

16 A I can answer?

17 Q (There was no audible response.)

18 A Yes.

19 Q And you were given one year suspended to 18 months
20 probation?

21 A Yes.

22 Q Now, you were, also, charged with possession of
23 hypodermic needles and syringes?

24 A Who?

25 Q You?

1 A No --

2 THE COURT: Wait a minute.

3 Step out, ladies and gentlemen, please. Step out.

4 And do not discuss the case during this brief recess.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 4:29 p.m.)

7 THE COURT: Why haven't y'all gotten these records
8 straight before these witnesses testify, number one?

9 Number two, what sentence does possession of
10 hypodermic needles carry?

11 And, number three -- well, what does it carry?

12 MR. TONEY: I'm not sure, Your Honor.

13 THE COURT: Well, if you're not sure, have we just
14 suspended the rules of evidence in Greenville County this
15 week under Rule 609 --

16 MR. TONEY: No, sir.

17 THE COURT: -- impeachment by evidence of a
18 conviction of a crime? Do they not apply in Greenville
19 County?

20 In fact, this is the first 2016 rule book I've seen.
21 And I found it today in Greenville County.

22 Do they not apply?

23 What does possession of hypodermic needles carry?

24 MR. TONEY: Well, I would think that's --

25 THE COURT: Sir?

1 MR. TONEY: I would think --

2 THE COURT: I don't want to think. I want to know
3 what it carries. The rule says -- the rule says, Evidence
4 that a witness other than an accused has been convicted of
5 a crime shall be admitted subject to full pre-analysis if
6 punishable by death or imprisonment in excess of one year
7 under the law with which the witness was convicted.

8 MR. TONEY: I would withdraw that question.

9 THE COURT: I don't want a withdrawal of the
10 question. I asked a question, I want an answer to the
11 question. As an officer of the Court, you and the
12 Solicitor, I want an answer to the question. I don't want
13 a withdrawal of a question.

14 MR. TONEY: Yes, sir.

15 THE COURT: So what's the answer?

16 MR. TONEY: I believe the Solicitor is looking it up.
17 He's got his little book there.

18 MR. MARCHANT: I don't have the statute book with me,
19 Judge. My understand of the -- paraphernalia is a civil
20 fine.

21 THE COURT: So we just impeached a witness in a
22 murder case with a civil crime. That's what we just did.

23 MR. TONEY: I don't think it's a civil crime, sir.
24 It's -- I think it's a misdemeanor from what --

25 THE COURT: What does it carry, Solicitor? What's

1 the punishment? What's the penalty?

2 MR. MARCHANT: Your Honor, I did not pull the
3 sentence on that because I didn't believe that it was --

4 THE COURT: What's the code section?

5 Look it up for me.

6 THE LAW CLERK: Yes, sir.

7 MR. TONEY: It's possible I just made a mistake, Your
8 Honor. And I apologize if I brought up a misdemeanor. I
9 didn't mean to.

10 THE COURT: The statute doesn't -- the rule doesn't
11 even go to misdemeanor felony.

12 Bring the jury back.

13 I guess the rules don't apply.

14 Go right ahead and bring the jury back.

15 MR. TONEY: I do beg your pardon, sir.

16 THE COURT: Just bring the jury back.

17 MR. TONEY: Yes, sir.

18 THE COURT: Don't listen to him. Somebody can listen
19 to me up here, I think.

20 (Pause.)

21 THE COURT: Is the jury coming?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Thank you.

24 How long is your next witness, Solicitor?

25 MR. HOLLOWAY: I would say probably about an hour, at

1 least.

2 THE COURT: Y'all probably don't want to put up with
3 me another hour today, Solicitor. And I don't blame you.

4 MR. TONEY: Your Honor --

5 THE COURT: All right. So --

6 MR. TONEY: -- I don't think you're any -- I don't
7 think you're at all hard to put up with. I think you're a
8 fine judge, sir.

9 THE COURT: Well, I think I've got to revise my New
10 Year's list. It's disappearing rapidly.

11 (WHEREUPON, the jury came into open court at
12 approximately 4:34 p.m.)

13 THE COURT: Thank you. Thank you very much, ladies
14 and gentlemen.

15 All right. Mr. Toney, you may continue.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. TONEY:

18 Q Sir, did you ever assist your father in the sale of
19 narcotics in the house?

20 A Yes.

21 MR. TONEY: That's all the questions I have for this
22 witness.

23 THE COURT: Redirect, Solicitor?

24 MR. MARCHANT: No, Your Honor.

25 THE COURT: All right. Thank you.

1 Thank you, Mr. Waller.

2 You may step down.

3 All right. During that brief recess, I talked with
4 the Solicitor and Mr. Toney. It appears the next witness
5 may take well in excess of an hour. So I think it may be
6 prudent for us now to take our evening recess.

7 I remind you, during this recess, do not discuss this
8 case with anyone, fellow jurors, family, friends, or
9 anyone else. Do not read, watch, or listen to any news
10 accounts about this case, should there be any.

11 Do not do any investigation on those items which are
12 prohibited, which includes but it is not limited to the
13 following of research on a party, an attorney, a court
14 officer, or a witness, news accounts about the case past
15 or present, research on any testimony that may have been
16 presented that the jurors think might would help them in
17 deciding the case, or research that a juror might think
18 would be helpful in deciding the case. In other words,
19 don't do any independent investigation. Do not do any
20 investigation on the Internet or otherwise.

21 Any questions?

22 (WHEREUPON, there was no response.)

23 THE COURT: No questions.

24 If you'd, please, be back promptly at 9:30 in the
25 morning. And I believe the bailiff informed me y'all --

1 They assemble in the jury assembly room --

2 THE BAILIFF: Yes, sir.

3 THE COURT: -- downstairs; is that correct?

4 THE BAILIFF: Yes, sir.

5 THE COURT: All right. No questions.

6 Hope y'all have a pleasant evening.

7 Thank you very much.

8 You're now excused.

9 Questions?

10 (WHEREUPON, there was no response.)

11 THE COURT: You're good to go.

12 Thanks.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 4:37 p.m.)

15 THE COURT: Court's still in recess. If you would,
16 please, take your -- court is not in recess. If you
17 would, take your seats.

18 Sheriff, I don't allow contact between a Defendant
19 and members in the gallery.

20 THE COURTROOM DEPUTY: Yes, sir.

21 THE COURT: Thank you.

22 Anything from the State before we take our recess?

23 MR. MARCHANT: Judge, we've had two witnesses that
24 were subpoenaed by Investigator Campbell who have not
25 shown today. So I'm going to have to ask Your Honor to

1 execute the appropriate paperwork --

2 THE COURT: All right.

3 MR. MARCHANT: -- to secure their attendance
4 tomorrow.

5 THE COURT: Have y'all prepared the paperwork?

6 MR. MARCHANT: No, sir. I will get that done.

7 THE COURT: All right. Well, if you don't get it
8 done before I leave, just call me on my cell. I'm close.

9 MR. MARCHANT: Thank you, Your Honor.

10 THE COURT: All right. And I will come meet you --
11 meet whoever somewhere.

12 Anything from the Defense, Mr. Toney?

13 MR. TONEY: Nothing from the Defense, Your Honor.

14 THE COURT: All right. Thank y'all. Thank you very
15 much.

16 Hope y'all have a pleasant evening.

17 (WHEREUPON, the proceedings were concluded at
18 approximately 4:38 p.m., to be reconvened on
19 Tuesday, January 5, 2016.)

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1 TUESDAY, JANUARY 5, 2016

2 (WHEREUPON, State's Exhibit No. 41 was marked for
3 identification only.)

4 THE COURT: I understand our jury is present.

5 Anything from the State before we bring in our jury,
6 Solicitor?

7 MR. MARCHANT: Judge, we have -- our third or fourth
8 witness will be Mr. Cobb, who we had on the stand
9 yesterday. Just so there there's no confusion with
10 respect to prior record, Mr. Holloway has his convictions
11 that we can review with the Court and Mr. Toney --

12 THE COURT: All right.

13 MR. MARCHANT: -- to ensure we're all on the same
14 page.

15 MR. TONEY: Yes, sir.

16 MR. HOLLOWAY: Your Honor, the -- essentially, under
17 Rule 609, it allows the Defense to impeach the witness
18 based on is it a crime of dishonesty, or is it a crime
19 carrying more than a year.

20 Mr. Cobb has numerous prior convictions. I mean,
21 we're talking, at least, 20 to 25 prior convictions that
22 could qualify. My assessment of Rule 609 is that
23 Mr. Toney can ask, isn't it true you were convicted of a
24 crime carrying more than a year on such and such date, or
25 a crime that's of dishonesty. He can't go into the nature

1 of those crimes, certainly, not the sentences. That's
2 what I think Rule 609 says.

3 And I would -- I have a copy of his RAP sheet right
4 here for Mr. Toney to go over. But I think anything going
5 into, you were convicted of shoplifting or this, that, and
6 the other is not relevant to his credibility on the stand.

7 THE COURT: Mr. Toney.

8 MR. TONEY: Of course, I would disagree with that
9 vehemently. I think I have a right to go into -- maybe
10 not into the facts of his charge, but, certainly, to say,
11 you know, were you convicted of this, were you convicted
12 of this.

13 THE COURT: Let's look at the rule.

14 MR. TONEY: Yes, sir.

15 MR. HOLLOWAY: And I think what I'm arguing, also,
16 sort of dovetails into Rule 403. I think it goes out of
17 bounds. It confuses the issues for the jury. I think
18 it -- taking a 403 -- the assessment of Rule 403, the
19 probative value is outweighed by its effects -- prejudice
20 on that witness.

21 THE COURT: Well, I take it if you're talking about
22 shopliftings, then you're referring to 609(A)(2), Evidence
23 that any witness has been convicted of a crime shall be
24 admitted if it involves dishonesty or a false statement in
25 regards to the punishment.

1 Is that correct?

2 MR. HOLLOWAY: Yes, sir.

3 And I agree. I think the -- obviously, I agree that
4 the rule is known as the black letter rule. But I think
5 going into the nature of the crime is where I would
6 disagree. I think having the jury hear shoplifting,
7 forgery, fraudulent check -- which he's got several
8 fraudulent checks on here. Knowing the nature of the
9 crime has nothing to do with his credibility, which is
10 what the purpose of the rule is, to probe into his
11 credibility based on his prior convictions.

12 But going into the nature of the crimes themselves is
13 not relevant.

14 THE COURT: Well, it's relevant under 609(A)(2) when
15 it talks about a crime involving dishonesty or false
16 statement or statement. And shoplifting, fraudulent
17 check, breach of trust, whatever it may be does that.

18 So I think he can ask, were you convicted of
19 shoplifting or whatever on whatever date. I think he can
20 ask all of it.

21 MR. HOLLOWAY: What I've got -- if the Court's
22 prepared to hear, I've got a listing of his prior
23 convictions. I can hand a copy of the RAP sheet up to the
24 Court.

25 THE COURT: I'm not going to read a RAP sheet.

1 MR. HOLLOWAY: Sure.

2 THE COURT: I mean, y'all can read a RAP sheet and
3 get that straight.

4 MR. HOLLOWAY: Yes, sir.

5 THE COURT: I'm not going to sit here and do that.
6 The other thing is, what's the time limits?

7 MR. HOLLOWAY: Your Honor, I believe it's 10 years.
8 I think anything beyond 10 years --

9 THE COURT: So anything outside of 10 years --

10 MR. HOLLOWAY: Yes, sir, is out of bounds.

11 THE COURT: -- wouldn't be admissible, unless there'd
12 been notice given.

13 MR. HOLLOWAY: Right. And there's been no notice
14 given.

15 THE COURT: All right. So y'all can read the
16 criminal history as well, if not better, than I can.

17 MR. TONEY: Mr. Holloway and I can take two or three
18 minutes in the back or over here, and figure it out, sir.

19 THE COURT: And decide whether it's --

20 MR. TONEY: Yes, sir.

21 THE COURT: -- 20 or 25 would be in the proper time
22 limits.

23 MR. HOLLOWAY: And just to clarify, too. Mr. Cobb,
24 also, has charges that carry more than a year that aren't
25 crimes of dishonesty. And I would say the nature of those

1 felony crimes -- or those crimes are -- is not relevant.
2 It's, certainly, not -- even if it is relevant, it's
3 not -- it does not meet the Rule 403 analysis is what I'm
4 saying.

5 He does have some felonies that aren't crimes of
6 dishonesty that I think asking Mr. Cobb and our other
7 witness, Mr. O'Neal, isn't it true you were convicted of
8 such and such, that's not -- I think that's beyond the
9 scope of Rule 609.

10 MR. TONEY: Your Honor, this is a view of that rule
11 that I've never ever heard before, never.

12 MR. HOLLOWAY: Your Honor, I've argued this rule
13 numerous times. And I think it's -- and judges have
14 agreed with me on this issue.

15 Going that far afield is not the purpose --
16 essentially, this witness -- these witnesses are not on
17 trial themselves. It's about probing into their
18 credibility, certainly, but not going so far into left
19 field to go into their criminal past.

20 THE COURT: What are the charges you're referring to?

21 MR. HOLLOWAY: We've got possession of crack cocaine,
22 those types of charges, throughout the years. Grand
23 larceny you could argue is a crime of dishonesty,
24 stealing. It depends on the Court's interpretation of
25 taking something and the victim's not there. Is a false

1 statement a false -- something -- some false words?

2 THE COURT: Well, him being a thief, I mean, that's
3 dishonesty. A thief is a dishonest person.

4 MR. HOLLOWAY: Some case law kind of probes into what
5 a crime of dishonesty is. And, certainly, larceny, I
6 think, could --

7 MR. TONEY: If larceny is not dishonest, then I don't
8 know what is.

9 MR. HOLLOWAY: Well, again, I'm going into what
10 words -- in committing the crime itself, what words is the
11 witness [sic] saying to the victim to accomplish the
12 crime. That's what the case law talks about when it looks
13 at what a crime of dishonesty is.

14 And if someone simply takes a car, we don't know if
15 the victim is there or not. It would be more carjacking,
16 actually.

17 THE COURT: And you're saying the case law is such
18 that I have to go back and analyze the facts --

19 MR. HOLLOWAY: I think when the courts have looked at
20 whether a crime is a crime of dishonesty, they have probed
21 into the nature of the crime to see --

22 THE COURT: Well, Judge Cooper, certainly, did that
23 in the case of the -- out of Richland County on the armed
24 robbery, you know. I can't -- that name won't bubble up
25 to the top right now. It won't get to the surface.

1 MR. HOLLOWAY: Yes, sir.

2 THE COURT: But he, certainly, did that analysis in
3 that particular case. But I think grand larceny is
4 admissible if it's within the time frame. I think whether
5 or not a person has that conviction goes to the issue of
6 his credibility.

7 MR. HOLLOWAY: Your Honor, what I see on his record
8 are multiple fraudulent checks in the past 10 years. I
9 see failure to stop for blue lights. That, certainly,
10 carries more than a year. And it's not a crime of
11 dishonesty. I don't think failure to stop for blue
12 lights -- asking the Court -- asking the witness, isn't it
13 true you were convicted of failure to stop for blue lights
14 in 2012, that's not -- the nature of the crime is not
15 relevant.

16 MR. TONEY: Judge, if it's in the last 10 years and
17 it carries more than a year, it could potentially --

18 THE COURT: You know, y'all are beating a dead horse.
19 You've got 20 to 25 convictions --

20 MR. TONEY: Yeah.

21 THE COURT: -- fraudulent check, shoplifting, grand
22 larceny, failure to stop. Do I think it's a crime of
23 dishonesty? Of course, I do. Because I think when you
24 turn on -- the blue light comes on behind you, it's
25 dishonest not to pull over and stop. However, under a 403

1 analysis, I think after 20 to 25 convictions for
2 shoplifting, it's almost moot. I would not allow failure
3 to stop, though.

4 Now, what about the crack cocaine?

5 MR. HOLLOWAY: Again, it carries more than a year. I
6 don't think -- there's no insinuation that these witnesses
7 are -- were involved in the drug trade with Mr. Crite. I
8 think that, essentially, Mr. Toney should be limited to,
9 isn't it true on this particular date you were convicted
10 of a crime carrying more than a year?

11 MR. TONEY: Judge, that would not only gut the
12 purpose of the rule by saying you had a conviction, but I
13 can't even ask what it is. You've already allowed
14 questioning on the -- just the charge.

15 Not only that, that is extremely relevant in this
16 case because it goes to credibility. This is a known drug
17 house, obviously. And it goes to their perception of
18 events.

19 Mr. Cobb here is going to be testifying that he was
20 there at 2:00 a.m. in the morning and he was outside
21 somewhere. If that's not relevant, then nothing is
22 relevant.

23 THE COURT: That's not relevant. Because if you're
24 trying to tie in the fact that he has a prior conviction
25 of crack cocaine and tie it to the offense itself with

1 which Mr. Adams is on trial for and that somehow
2 Mr. Cobb --

3 MR. TONEY: No, sir.

4 (Pause.)

5 MR. TONEY: Sorry.

6 THE COURT: That somehow Mr. Cobb, therefore, was
7 involved in the drug trade, I would find under a 403
8 analysis that is not admissible and you may not go into
9 that. You may ask him if he has a conviction for a crime
10 as far as the drug offenses that carry more than a year.

11 MR. TONEY: Yes, sir.

12 THE COURT: Anything further, Solicitor?

13 MR. HOLLOWAY: No, sir.

14 And I would -- just -- I would, also, argue that with
15 regard to witness Brandon O'Neal that we follow the same
16 pattern. We have copies of the RAP sheets for both of
17 these witnesses. I would ask the Court to make --
18 obviously, make the same ruling regarding Mr. O'Neal's
19 prior possession of crack cocaine conviction back in 2008,
20 2009. Asking the nature of that prior conviction would be
21 out of bounds under Rule 403 in this case.

22 THE COURT: Mr. Toney.

23 MR. TONEY: I think I can ask him if he had a
24 conviction for crack cocaine. I think that's relevant.

25 MR. HOLLOWAY: It's the same analysis --

1 MR. TONEY: It's the same -- I think it's fair game
2 for everybody, Judge. I mean, I don't think you can go
3 into what happened in the event and this and that. But I
4 think you can say, were you convicted of possession of
5 crack cocaine on such and such a date? I mean, I just
6 think that's always been the rule.

7 THE COURT: I've ruled on that under 403.

8 MR. TONEY: Yes, sir.

9 MR. HOLLOWAY: Thank you, Your Honor.

10 And I'll just go ahead and hand -- just for the
11 record, I'll hand over the copies of the NCIC's to
12 Mr. Toney.

13 MR. TONEY: Maybe we should take two or three minutes
14 and -- just so there's no errors.

15 THE COURT: All right. We can, certainly, do that.

16 (Pause.)

17 THE COURT: Anything further, Solicitor?

18 MR. HOLLOWAY: Just one thing, Your Honor. And I do
19 thank you for your patience this morning.

20 I just want to make sure your ruling on a failure to
21 stop for blue lights -- I know it's kind of beating a
22 horse here. But is Mr. Toney -- is the Court's ruling to
23 limit him to saying, isn't it true you were convicted of a
24 crime carrying more than a year, or can he go into the
25 nature of that crime?

1 THE COURT: I ruled that failure to stop for a blue
2 light is not admissible.

3 MR. HOLLOWAY: Okay. Thank you, Your Honor.

4 THE COURT: Anything, Mr. Toney?

5 MR. TONEY: No, sir.

6 THE COURT: Now, while I had the opportunity, I took
7 it to locate State v. Broadnax, which is, of course, Judge
8 Cooper's case out of Richland County. In the analysis of
9 the Court of Appeals under 609(A)(1) and 609(A)(2) --
10 under (A)(2), If a crime is viewed as one involving
11 dishonesty, the Court must admit the prior conviction
12 because prior convictions involving dishonesty or false
13 statement must be admitted, regardless of their probative
14 value or prejudicial effects, citing State v. Bryant.

15 Our Supreme Court held in Bryant that a conviction
16 for robbery, burglary, theft, and drug possession beyond
17 the basic crime itself is not probative of truthfulness,
18 citing United States v. Smith, a federal case stating that
19 since the Government did not show that any of the
20 convictions of robbery, burglary, theft, or drug
21 possession involved any false statement or acts of deceit
22 beyond the basic crime itself, they were not admissible
23 under the federal rule of evidence 609(A)(1).

24 The Court goes on to say, If the crime of armed
25 robbery is not considered a crime of dishonesty under 609

1 (A) (2), it may still be admitted under 609(A) (1), but it
2 would be subject to the balancing test.

3 In that regard, those crimes of dishonesty are
4 admissible as I have ruled under 609(A) (2). The drug
5 offenses are not admissible. They are not crimes of
6 dishonesty in my analysis under 609(A) (1). I find that
7 they would not be admissible, that the probative value of
8 admitting the evidence does not outweigh the prejudicial
9 effect in that regard and that 403 analysis in that
10 regard.

11 All right. Anything further from the State before we
12 bring in our jury, Solicitor?

13 MR. HOLLOWAY: I'm sorry, Your Honor. Mr. Cobb,
14 actually, has a conviction for burglary.

15 Is the Court's ruling based on a case that cited that
16 that's out of bounds, too?

17 THE COURT: I don't rule on things that I don't know
18 about.

19 MR. HOLLOWAY: Okay, sir.

20 THE COURT: How do I rule -- you know, I'm like
21 Officer Wiles [phonetic]. I can predict anything but the
22 future. How can I predict that?

23 So, now, you're saying Mr. Cobb has a burglary
24 conviction?

25 MR. HOLLOWAY: Yes, sir, he does.

1 THE COURT: When was it?

2 MR. HOLLOWAY: I believe -- one moment. The Court's
3 indulgence.

4 MR. TONEY: That was March of '06.

5 MR. HOLLOWAY: March of '06, just within the 10-year
6 mark. Ironically, if this case had been scheduled a
7 couple months from now, most of his priors wouldn't even
8 come up. They would be beyond the 10-year mark. But I
9 guess based on that case, the Court's saying that a
10 burglary, without knowing more about the case, the Defense
11 can't probe into that with Mr. Cobb.

12 THE COURT: Not under 609(A)(2). Now, the analysis
13 under 609(A)(1) is different. Because then I have to do
14 the balancing test.

15 MR. HOLLOWAY: Okay.

16 THE COURT: And when I balance the factors -- give me
17 just a moment.

18 (Pause.)

19 THE COURT: The factors to be considered, the
20 impeachment value of the prior crime, the point in time of
21 the conviction and the witnesses subsequent history, the
22 similarity of the past crime and the charged crime -- I
23 think that primarily goes to the Defendant -- the
24 importance of the testimony and the centrality of the
25 credibility issue.

1 Mr. Toney.

2 MR. TONEY: Your Honor, obviously, this witnesses
3 credibility is extremely important. The case is very
4 significant. It's as significant almost as you can get.
5 It is within the last 10 years.

6 I will say that not only is there a burglary, there's
7 a grand larceny from March '06, and another grand larceny
8 from March '06. I think we've agreed that the forgeries,
9 and the fraudulent checks, and the -- there's something we
10 called a third property offense times two, and some
11 shopliftings come in.

12 But as far as the burglary and the grand larceny from
13 March '06, they may not be similar to any other crimes,
14 but they are additional crimes that involve dishonesty.
15 And they are within the 10-year period.

16 THE COURT: Well, what I just read from Broadnax,
17 there has to be a greater finding to determine if they
18 involve dishonesty, at least, from burglary. Because
19 that's the difference between doing a balancing test and
20 not doing a test. Crimes of dishonesty are admissible.

21 MR. TONEY: Apparently, this crime -- at least, the
22 grand larceny -- I don't know if they're together. I
23 assumed it, but I don't know.

24 Grand larceny, certainly, in my opinion, would
25 involve dishonesty. Burglary may or may not involve

1 dishonesty. It's normally seen as something involving
2 dishonesty, but that's not necessarily so. I think grand
3 larceny always involves dishonesty.

4 THE COURT: Well, as I just finished reading the
5 State v. Bryant, a conviction for robbery, burglary,
6 theft, and drug possession beyond the basic crime itself
7 is not probative.

8 All right. Anything else, Mr. Toney?

9 MR. TONEY: Just for clarification, are you
10 instructing us not to bring up the burglary and grand
11 larcenies?

12 THE COURT: I haven't ruled.

13 MR. TONEY: Yes, sir.

14 Thank you.

15 THE COURT: Solicitor, anything further?

16 MR. HOLLOWAY: Your Honor, that's all from the State.
17 Thank you.

18 THE COURT: All right. Given the centrality of what,
19 I assume, is Mr. Cobb's testimony and credibility issue, I
20 would allow under the analysis -- even though it is nine
21 years old, under (A)(1), that the burglary and the grand
22 larceny is admissible as far as a conviction in 2006 under
23 609(A)(1).

24 Anything further, Solicitor?

25 MR. HOLLOWAY: No, sir.

1 THE COURT: Mr. Toney?

2 MR. TONEY: No, Your Honor.

3 THE COURT: Bring the jury in.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:05 a.m.)

6 THE COURT: Good morning.

7 Welcome back, ladies and gentlemen.

8 I apologize for the delay. I assure you it has
9 nothing to do with either of the parties, the State or the
10 Defense. They were here not on time, but early and
11 working very diligently to continue in the trial of the
12 case.

13 I hope y'all had a pleasant evening and a brisk walk.
14 How far do y'all have to walk from wherever you park?

15 JUROR #181, DAWN SCHLUETZ: It's about a block away.

16 THE COURT: About a block away?

17 JUROR #181, DAWN SCHLUETZ: Not quite.

18 THE COURT: Well, I hope you enjoyed that stroll this
19 morning, it quickened your pace. It, certainly, did mine.

20 As you recall, we're continuing the trial of the case
21 by the presentation of evidence and testimony by the State
22 in its case in chief. If you'll, please, continue to give
23 the parties your complete and undivided attention as you
24 have done throughout the trial of this case.

25 Solicitor, you may call your next witness.

1 MR. MARCHANT: May it please the Court.

2 The State calls Dr. Michael Ward.

3 THE COURT: Dr. Ward, if you'd come around and be
4 sworn for me, please.

5 THE CLERK: Good morning, sir.

6 If you'll, please, place your left hand on the Bible
7 and raise your right hand.

8 WHEREUPON,

9 MICHAEL EUGENE WARD, M.D.,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 And would you, please, state your name for the
14 record?

15 THE WITNESS: Michael Eugene Ward.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MARCHANT:

19 Q Dr. Ward, where are you employed?

20 A I'm employed here in Greenville by Pathology
21 Associates of Greenville, and by Greenville County as the
22 chief medical examiner.

23 Q And what are your duties as the chief medical
24 examiner of Greenville County?

25 A My responsibilities are to investigate deaths that

1 occur in the county to determine cause and manner of
2 death.

3 Q And how long have you been tasked with those duties?

4 A 20 years.

5 Q For the county of Greenville?

6 A Yes.

7 Q Are there other medical examiners in the office?

8 A Yes. There's a deputy chief medical examiner. There
9 are two of us.

10 Q So are you the chief?

11 A I am.

12 Q What type of education and training did you have
13 prior to becoming the chief medical examiner of Greenville
14 County?

15 A I received my Bachelor's Degree in Biology from the
16 University of Alabama. I have a Masters Degree in
17 Forensic Science from the University of Alabama at
18 Birmingham. I received my medical degree from the
19 University of South Alabama, which is in Mobile.

20 I did a four-year anatomic pathology residency at the
21 Medical University of South Carolina in Charleston, and a
22 one-year fellowship in forensic pathology at the
23 University of New Mexico, which is in Albuquerque.

24 I'm certified by the American Board of Pathology in
25 both anatomic and forensic pathology.

1 Q And for my information, as well as the juries, what
2 is pathology?

3 A Pathology is a medical discipline that involves the
4 study of disease, and disease processes, and how they
5 affect man.

6 Forensic pathology takes that one step further,
7 taking disease processes, trauma to determine how and why
8 people die, and then the presentation of that information
9 in the court of law.

10 Q Dr. Ward, have you ever testified in this courthouse
11 before about work you have done on other cases?

12 A Yes, I have.

13 Q And approximately how many -- well, how many cases
14 have you done, not testified about, but how many autopsies
15 have you performed roughly?

16 A Well over 5,000 cases.

17 Q And, of those, have some of those brought you to
18 court here in this courthouse?

19 A I've testified well over a hundred times.

20 Q And have you been qualified as an expert in those
21 other cases?

22 A Yes, I have.

23 Q And what have you been qualified?

24 A I've been qualified in both anatomic and forensic
25 pathology.

1 MR. MARCHANT: The State would submit Dr. Ward as an
2 expert in forensic pathology.

3 THE COURT: Mr. Toney?

4 MR. TONEY: No objection, Your Honor.

5 THE COURT: All right. Thank you.

6 Madam Forelady, and, ladies and gentlemen of the
7 jury, normally, a person cannot give opinion testimony.
8 Normally, when a person testifies, they must testify as to
9 what they either saw, heard, or sensed by smell, or
10 something of that nature. However, there is an exception
11 when someone is qualified because of education,
12 experience, training. They are permitted to give their
13 opinion in certain areas, if the Court qualifies them that
14 way.

15 This witness, Dr. Michael Ward, will be qualified in
16 the area of forensic pathology to give opinion testimony
17 in that area, and to give the basis for those opinions.
18 That does not mean you must accept the opinions. But it
19 is evidence for you, the jury, to use in any way you deem
20 appropriate.

21 Thank you.

22 Solicitor, you may continue.

23 MR. MARCHANT: Thank you, Your Honor.

24 BY MR. MARCHANT:

25 Q Dr. Ward, with respect to the case that we're here

1 today on, did you have the opportunity to perform an
2 autopsy on Joseph Lewis Crite?

3 A Yes, I did.

4 Q And where did that autopsy take place.

5 A The autopsy facility is at the Greenville Memorial
6 Hospital main campus.

7 Q Okay. And is that there on Grove Road and Mills --

8 A Yes, it is.

9 Q Would you walk the jury through the process by
10 which -- with which you performed the autopsy on
11 Mr. Crite? And what things are you looking for during the
12 course of your probing of Mr. Crite?

13 A An autopsy is a detailed physical examination
14 performed on someone who has died. This begins with an
15 external examination. So we look at the outer portion of
16 Mr. Crite beginning with the clothing. We document what
17 clothing he's wearing, any disruption of those clothing.

18 Following removal of the clothing, we look at the
19 external surface of the body for any evidence of trauma.
20 And then during the autopsy process during the dissection
21 portion, we look at the internal surface of the body for
22 any natural disease that may be present, as well as
23 continuation of trauma to the internal organs from the
24 outside. So a continuation of the injury process from the
25 outside to the inside.

1 We, also, remove certain organs to look at
2 microscopically. And we, also, remove body fluids for
3 toxicological testing.

4 Q How -- you mentioned clothing and whether there was
5 any disruption of clothing. How was Mr. Crite clothed
6 when you received him?

7 A He was wearing a pair of light blue shorts,
8 boxer-style underwear, and a white pullover short-sleeve
9 shirt. And a pair of black flip flops accompanied the
10 body, but he was not wearing them at the time that I saw
11 him.

12 Q How many injuries did you find on Mr. Crite? And
13 starting with the lower body injury, would you describe
14 that one to the jury first?

15 A Yes. There were four separate gunshot wounds. The
16 one -- the -- probably the easiest way to go through them
17 is from below upward.

18 So the lowest gunshot wound was one to Mr. Crite's
19 abdomen. This was -- the entrance was just below the
20 belly button or the umbilicus. This passed downward only
21 through the skin and underlying fatty tissues, the
22 subcutaneous tissues. It then exited the skin and almost
23 immediately reentered the skin.

24 So it's passing downward very superficially through
25 the fat pad of the abdomen. And then it came to rest

1 within these muscular fibers that are just above the pubis
2 bone, the pelvic bone in the midline.

3 So, from there, we recovered a relatively intact
4 missile.

5 Q And with respect to that entry, exit, and reentry,
6 was that wound fatal?

7 A This one was superficial and would not have been
8 fatal.

9 Q Even if left untreated, would it have become fatal?

10 A Most likely not.

11 Q Based off of your analysis of that wound, are you
12 able to tell or determine the distance from with which
13 that projectile entered Mr. Crite?

14 A There was no -- to determine range of fire or the
15 distance from the muzzle of the gun to the target, we look
16 for certain components of a gunshot wound. When a weapon
17 is fired not only does the bullet exit the barrel of the
18 gun, but there's, also, hot gas, soot, and unburned gun
19 powder.

20 And we look for those components on the clothing and
21 on skin to help us to determine range of fire. If those
22 components are present, then we can narrow that range of
23 fire down to a relative distance. Without those
24 components, then we call that a distant range gunshot
25 wound, which is considered to be greater than two to three

1 feet.

2 So two to three feet may be the same as six feet, may
3 be the same as 10 feet. There was no gunshot residue
4 identified by me on the clothing of Mr. Crite or on his
5 skin. So it'd be my estimate that these are greater than
6 two to three feet in range of fire from the muzzle of the
7 gun to Mr. Crite.

8 Q All right. Let's talk about the next wound that you
9 found on the left side of Mr. Crite's chest.

10 A On the left lower chest, within the components of the
11 rib cage was a separate distant range gunshot wound. It
12 entered from the left side. It passed into his abdominal
13 cavity. It perforated or passed through loops of small
14 intestine, and penetrated into the musculature of the
15 right lower back, which is where we recovered a second
16 projectile.

17 This wound, again, perforated loops of small
18 intestine and would not have been immediately fatal, but
19 would have been potentially fatal as a result of bleeding
20 and infection which, certainly, would've occurred.

21 Q And what determination were you able to make about
22 the distance range on that projectile?

23 A Again, there was no evidence of gunshot residue
24 either on the clothing or on the body of Mr. Crite. So
25 this would have been greater than two to three feet.

1 Q Let's, if you would, discuss the other shot wound to
2 the right side of Mr. Crite.

3 A On Mr. Crite's right chest almost on to his side was
4 a gunshot wound of entry, which passed through the ribs of
5 the right-hand side through the right hemidiaphragm, which
6 is part of the muscle that we use to breathe, through the
7 liver back into the chest. So that forms like a dome that
8 extends up into the chest.

9 So it goes through the dome of the liver, back into
10 the chest, into the heart where it terminated its course.
11 And we were able to recover a third projectile from within
12 the fibers of Mr. Crite's heart.

13 Q Would that wound have been a fatal wound?

14 A This wound would have been a fatal gunshot wound,
15 yes. Not immediately fatal, but, eventually, fatal as he
16 continued to bleed out. It would not have immediately
17 caused him to become incapacitated, to immediately fall,
18 or to immediately die. But he would have, eventually,
19 died from this gunshot wound.

20 Q Are you saying it would be possible for Mr. Crite to
21 have been struck in the right side and continue to be
22 ambulatory?

23 A Yes, he would have been.

24 Q So he could still be walking around?

25 A That's correct.

1 Q Were you able to determine the distance on that
2 wound?

3 A There was no gunshot residue on the clothing
4 associated -- or on the skin associated with this wound.
5 So it would be my opinion that it was greater than two to
6 three feet.

7 Q Out of the three that we've just discussed, could you
8 explain to the jury how bleeding would occur on those
9 wounds? Would it be slow, dripping? Would it pool at the
10 surface of the skin? Or would it potentially be a little
11 more fluid and running out of the body?

12 A The blood loss from these wounds would be both on the
13 external surface. In fact, the one that is more
14 superficial, the one to the midline of the abdomen, which
15 passes only through skin but it disrupts a great deal of
16 skin, would probably bleed more to the external surface
17 than the two to the chest, the left side and the right
18 side.

19 They would more likely bleed internally because
20 they've created relatively small holes. And the damage
21 that they're doing is on the internal surface. But
22 they're allowed to collect into a space, the space around
23 the lungs, the space around the heart, and the space
24 around the intestinal contents.

25 So their blood would -- their bleeding would be

1 mostly internal, as opposed to this superficial wound
2 where it just disrupts skin. So he's going to have more
3 blood loss to the outside from that wound than from the
4 others.

5 Q Let's move to the last wound that you found in
6 Mr. Crite's head.

7 A The fourth gunshot wound to Mr. Crite is to the
8 central portion of the face just inside the left eye. So
9 it's between the eye and the bridge of the nose.

10 This wound passes backward -- or from his front to
11 his back entering the cranial vault or inside the head to
12 disrupt the fibers between the right and left side of the
13 brain and then, eventually, passing into the right
14 cerebral hemisphere, or the right side of the brain.

15 So this wound goes from here and is recovered from
16 the back right portion of Mr. Crite's brain.

17 Q Are you able to determine a distance on that wound?

18 A Again, there was no indication of range of fire. So
19 this would have been greater than two to three feet.

20 Q What effect would that wound have on Mr. Crite's
21 ability to continue movement?

22 A Mr. Crite would have become immediately unconscious
23 or non-ambulatory, and would have most likely fallen where
24 he was shot.

25 Q And we've talked about these wounds from the stomach

1 up to the head. But are you able to tell this jury which
2 shot came first and which one came last?

3 A No, I am not. I can say that Mr. Crite would not
4 have been ambulatory following the gunshot wound to his
5 head. But in which order those came, I do not know.

6 Q And, as part of your job that morning and the
7 recovery of the projectiles, did you take those
8 projectiles and secure them for this investigation?

9 A Yes, I did.

10 Q I'm going to have you look at what's marked as
11 State's Exhibit No. 34, and ask you if you recognize that?

12 A Yes, I do.

13 Q Okay. And how is it that you recognize those?

14 A State's Exhibit No. 34 contains four specimen
15 containers in which are projectiles which we recovered
16 from Mr. Crite at the time of autopsy. They are labeled
17 by me, sealed, and with my initials.

18 Q Okay. Are they sealed today?

19 A They are not.

20 Q Okay. But when you packaged them up, were you the
21 one that sealed the container?

22 A I packaged them and I sealed them, yes.

23 Q And is each projectile labeled corresponding to your
24 report?

25 A Yes. Each gunshot wound was labeled one through

1 four. And the projectiles were labeled A through D
2 corresponding to whichever gunshot wound it was recovered
3 from.

4 Q And did you label that information on the top of each
5 of those packages as well?

6 A I did, as well as in my report.

7 Q Once you sealed each individual container up, what
8 did you do with it?

9 A It was receipted to Sergeant Dar Shaw of the
10 Greenville County Criminal Justice Support Department.

11 Q Why is it that you didn't keep the projectile?

12 A They were turned over as evidence for examination.
13 That is not part of my purview in...

14 Q So, essentially, your responsibility with the
15 projectiles ended at the time you recovered them from the
16 body?

17 A That's correct.

18 Q Okay. As part of your normal process when doing an
19 autopsy, do you conduct a toxicology on the deceased?

20 A Yes, we do.

21 Q And what is a toxicology?

22 A A toxicological analysis is looking at body fluids or
23 tissues. In this case, it was femoral blood to determine
24 the presence or absence of any drugs or alcohol that may
25 be present. Toxicological analysis of Mr. Crite's blood

1 was negative. There were no drugs or alcohol present.

2 Q As part of your process as well, do you, also, take a
3 blood sample or blood swab of the decedent?

4 A Yes, we do.

5 Q And do you keep that in your office in the normal
6 course of business?

7 A We -- a drop of blood is placed on what we call a DNA
8 card for future reference, if needed. And it is kept in
9 our office, yes.

10 Q So, Dr. Ward, considering everything that you found
11 in this case and your analysis of Mr. Crite, were you able
12 to determine a cause of death?

13 A Yes, I was.

14 Q And what is your opinion as to cause of death?

15 A Mr. Crite died as a result of multiple gunshot
16 wounds.

17 Q And, along those same lines, were you able to
18 determine a manner of death?

19 A Yes, I was.

20 Q And what is your analysis of his manner of death?

21 A Mr. Crite died -- was -- I'm sorry. His manner of
22 death was homicide.

23 Q Other than the four gunshot wounds that you found on
24 Mr. Crite, was there anything unusual or abnormal about
25 his heart, his lungs, any -- the size of them? Was he,

1 essentially, a relatively healthy 50, 51-year-old black
2 male?

3 A No. Mr. Crite had significant hypertensive heart
4 disease. He had a very enlarged heart, probably, at
5 least, twice the normal size. It was large. The muscle
6 wall was thick.

7 As a result of that, he had damaged his kidneys. So
8 he had chronic renal insufficiency. And there was
9 indication that he was undergoing chemo dialysis, or a
10 machine was functioning as his kidneys.

11 MR. MARCHANT: Thank you, Dr. Ward.

12 Please answer any questions Mr. Toney may have.

13 CROSS-EXAMINATION

14 BY MR. TONEY:

15 Q Dr. Ward, you say "homicide," just to clarify, that
16 doesn't mean you've formed an opinion as to who killed
17 him, or whether or not it was a crime, or murder, or
18 anything of that sort; correct? Homicide is just a -- I'm
19 sorry. I'll let you answer that question.

20 A There are five categories of manner of death, natural
21 death, which it, certainly, is not, accidental death,
22 suicide, homicide, and undetermined.

23 So dying at the hands of another individual, in this
24 case being shot by another individual without -- even
25 without the circumstances would put this in the category

1 of a homicide.

2 Q That doesn't say anything as to who shot who, or what
3 the intent was, or who the parties were, or anything like
4 that; correct?

5 A That is correct. I do not know who shot Mr. Crite.

6 MR. TONEY: That's all the questions I have for this
7 witness.

8 THE COURT: Redirect?

9 MR. MARCHANT: Nothing further, Your Honor.
10 We'd ask that the witness be excused.

11 THE COURT: Thank you very much for being with us
12 today.

13 You may step down.

14 All right. Solicitor.

15 MR. MARCHANT: May it please the Court.

16 The State would call James Armstrong.

17 THE COURT: All right. Mr. Armstrong, if you'd come
18 around and be sworn for us, please.

19 THE CLERK: Sir, if you'll, please, place your left
20 hand on the Bible, and raise your right hand.

21 THE BAILIFF: Face the Clerk.

22 WHEREUPON,

23 JAMES WILLIAM ARMSTRONG,
24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 Please be seated.

2 And would you, please, state your name for the
3 record?

4 THE WITNESS: James William Armstrong.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. MARCHANT:

8 Q Mr. Armstrong, where are you employed?

9 A I'm employed with the Greenville County Department of
10 Public Safety and Forensic Division Crime Laboratory.

11 Q And what are your responsibilities with the crime
12 lab?

13 A I have a dual responsibility as a forensic drug
14 chemist and a firearms examiner.

15 Q How long -- as it relates to this case, how long have
16 you been a firearms examiner?

17 A Right at 16 years.

18 Q And have you -- how many firearms roughly would you
19 say you've examined --

20 A Thousands.

21 Q -- and projectiles?

22 A Thousands.

23 Q And have you ever testified in court before with
24 respect to your findings on other cases?

25 A Yes, sir, I have. I've testified as an expert in the

1 field of firearm identification, at least, 46 times.

2 Q If you would, just briefly tell the Court and the
3 jury what your training and experience was prior to your
4 becoming employed with the Department of Public Safety
5 Crime Lab.

6 A Yes, sir. I have a Bachelor of Science Degree in
7 Chemistry from Erskine College. I trained in the area of
8 firearm identification under the direction of a retired
9 firearm examiner for the Philadelphia PD for approximately
10 two years.

11 I've attended numerous schools sponsored by the
12 Bureau of Alcohol, Tobacco, and Firearms concerning the
13 field of firearm identification. I've toured 13 different
14 firearm manufacturing facilities to see how firearms are
15 manufactured from raw material to the finished product.

16 I've, also, attended five different armor schools to
17 learn how to work on various types of firearms. I have,
18 also, been through four different ammunition assembly
19 manufacturing plants to see how the ammunition is
20 manufactured.

21 And I have testified in federal and state courts, at
22 least, 46 times as an expert in the field of firearm
23 identification.

24 MR. MARCHANT: The State would move to have
25 Mr. Armstrong qualified as an expert in firearm

1 identification and analysis.

2 MR. TONEY: No objection, Your Honor.

3 THE COURT: Again, ladies and gentlemen, you recall
4 my instructions as to Dr. Wall [sic] that, generally, a
5 person cannot testify to opinion testimony. However,
6 based on training and experience, if the Court qualifies
7 him that way in a particular field, they would be
8 authorized to give opinion testimony and the basis of that
9 opinion.

10 This witness, Officer James Armstrong, will be
11 qualified in the area of firearm identification and
12 analysis to give opinion testimony, and the basis of that
13 opinion. It does not mean that you must accept the
14 opinion. But it is evidence for you to use in any way you
15 deem appropriate.

16 Thank you.

17 Solicitor, you may continue.

18 MR. MARCHANT: Thank you, Your Honor.

19 BY MR. MARCHANT:

20 Q Mr. Armstrong, I'm going to have you look at State's
21 Exhibit No. 34, and ask you if you recognize that exhibit?

22 A Yes, sir, I do.

23 Q Okay. How is it that you recognize State's Exhibit
24 No. 34?

25 A Well, on the outside bag, I have my initials and date

1 where I opened and sealed the bag as well. And on the
2 inside containers, I have my initials and item number
3 placed on each container.

4 Q Okay. When you received those containers inside the
5 bag, were they sealed, or were they opened?

6 A The bag itself was sealed, as well as the containers
7 that have the white tape, which was, actually, sealed
8 over.

9 Q Okay. There's something else inside the container
10 other than a projectile. Do you recognize that?

11 A Yes, sir, I do.

12 Q And what is that?

13 A Those are little -- it's like communion-style cups I
14 used, actually, to place the projectiles in to clean them
15 before my analysis.

16 Q Okay. And did you conduct an analysis on all four of
17 these projectiles?

18 A Yes, sir, I did.

19 Q And following that, did you return it to property and
20 evidence?

21 A Yes, sir, I did.

22 MR. MARCHANT: The State would move State's Exhibit
23 No. 34 into evidence.

24 THE COURT: All right. Mr. Toney?

25 MR. TONEY: No objection, Your Honor.

1 THE COURT: All right. State's Exhibit No. 34 is in
2 evidence without objection.

3 (WHEREUPON, State's Exhibit No. 34 was admitted into
4 evidence.)

5 BY MR. MARCHANT:

6 Q Mr. Armstrong, if you would take a look at those and
7 talk about how you were able to determine from looking at
8 a projectile what caliber the projectile is.

9 A By looking at the projectile, the way we determine
10 the caliber is, actually, to measure it by calibers or
11 even through the use of a comparison microscope where you
12 take a measurement just over the base of the diameter.
13 And by doing so, we do those measurements and determine
14 the caliber based on that measurement.

15 Q Your analysis of these four projectiles yielded what
16 caliber?

17 A They're a 32 caliber.

18 Q And, based off your expertise, what sorts of firearms
19 are able to expel a 32?

20 A These particular ones here have general rifling
21 characteristics which are consistent with firearms
22 marketed by Harrington and Richardson, New England
23 Firearms Company, and possibly others.

24 Q Are you able to know from these projectiles whether
25 or not they were fired by a rifle or a handgun?

1 A It would be most consistently with a handgun.

2 Q And of the handguns, are you able to go one step
3 further and determine whether or not it was fired from an
4 automatic or a revolver?

5 A These are most consistently fired from revolvers.

6 Q And why is that -- your opinion is that it's most
7 consistent with a revolver?

8 A There are some people that, actually, reload. And I
9 can't determine if someone, actually, had taken this
10 projectile, which is consistently manufactured in a
11 revolver cartridge, and had reloaded it into a
12 semiautomatic.

13 Q All right. Well, let's talk about three of the
14 projectiles you have up there that, I believe, are marked
15 item A, B, and C. Are you able to determine from A, B,
16 and C if they were fired from the same firearm?

17 A Yes, sir. These three were fired from the same
18 firearm.

19 Q How -- explain to the jury how you're confident that
20 they were fired from the same firearm?

21 A When you're using the comparison microscope, you're,
22 basically, like putting a puzzle together. You place one
23 projectile on one side and another projectile on the --
24 one on the left and one on the right. And you're
25 overlapping with striations that land in the groove

1 agreement [phonetic] and any imperfection that was in the
2 barrel of the firearm is then picked up by this
3 projectile. So it's like a puzzle piece. And if the
4 puzzle pieces kind of line up in simple terms and you see
5 that agreement throughout the entire projectile, then we
6 could determine that they were fired in the same firearm.

7 Q What's your analysis about the fourth projectile,
8 item D?

9 A Item D, once again, is a 32 -- it's a caliber 32
10 fired bullet specimen. It has similar but insufficient
11 microscopic marks to permit a positive identification to
12 items A, B, and C projectiles.

13 Q So are you able to determine whether or not D came
14 out of the same firearm?

15 A Not completely, no, sir.

16 Q What would it take for you to be able to determine
17 that?

18 A I'd have to have some more agreement on the
19 projectile, which the projectile has some differtation to
20 it, and some foreign marks, which are picked up when the
21 projectile went through its intended target.

22 Q If you had the firearm that expelled item D, would
23 you be able to conclude that it came from that firearm
24 or --

25 A There is a possibility.

1 Q All right. Did Investigator Campbell with the
2 sheriff's office ask you to perform an analysis on a 32
3 firearm that was in evidence at the sheriff's office?

4 A Yes, sir, he did.

5 Q And what was the result of those findings?

6 A It came up with negative results. The firearm was
7 not used in this crime.

8 Q So the one firearm Investigator Campbell asked you to
9 analyze that was a 32 definitely did not fire these
10 projectiles?

11 A That's correct.

12 Q I'll move forward and show you what's been marked as
13 State's Exhibit No. 33 --

14 MR. MARCHANT: I don't believe this has been marked
15 yet.

16 (WHEREUPON, State's Exhibit No. 42 was marked for
17 identification only.)

18 BY MR. MARCHANT:

19 Q Do you recognize State's Exhibit No. 33?

20 A Yes, sir, I do.

21 Q Do you need scissors?

22 A Yes.

23 Q How is it that you recognize State's Exhibit No. 33?

24 A It has my initials and the date where I opened and
25 sealed this container on, at least, two different

1 occasions.

2 Q Okay. When you received that container, how was it
3 packaged?

4 A It would have been, basically, in a similar nature
5 just with red evidence tape, actually, sealing the end of
6 the envelope.

7 Q Do you recognize State's Exhibit No. 33?

8 A Yes, sir, I do.

9 Q Okay. What sort of -- well, what is State's Exhibit
10 No. 33?

11 A State's Exhibit No. 33 is my item number IRO3, which
12 is a fired cartridge case, caliber nine millimeter.

13 Q How is it that you know it's a nine millimeter? What
14 analysis did you do to determine that?

15 A Basically, that one was a visual examination by
16 looking at the head stamp region on the fire cartridge
17 case. It, actually, states nine-millimeter Luger.

18 Q Did Investigator Campbell ask you to analyze State's
19 Exhibit No. 33 and determine whether or not it was fired
20 from State's Exhibit No. 42? And do you recognize State's
21 Exhibit No. 42?

22 A Yes, sir, I do. And he did ask me to examine and
23 compare the fired cartridge case to State's Exhibit No.
24 42, the pistol. And, in my findings, I was able to
25 determine that -- give me one moment.

1 That the item A1 pistol, State's Exhibit No. 42, did
2 fire the fired cartridge case, State's Exhibit No. 33.

3 MR. MARCHANT: I move State's Exhibit Nos. 33 and 42
4 into evidence.

5 THE COURT: Mr. Toney?

6 MR. TONEY: No objection, Your Honor.

7 THE COURT: State's Exhibit Nos. 33 and 42 are in
8 evidence without objection.

9 (WHEREUPON, State's Exhibit Nos. 33 and 42 were
10 admitted into evidence.)

11 THE COURT: And what is the condition of State's
12 Exhibit No. 42, if you'd state that into the record,
13 please, Solicitor.

14 MR. MARCHANT: Your Honor, I'm not sure I quite
15 understand and follow your question.

16 THE COURT: Is it safe --

17 MR. MARCHANT: Oh, yes, sir.

18 THE COURT: -- with a gun lock?

19 MR. MARCHANT: Yes, sir --

20 THE WITNESS: Yes, sir, a gun lock --

21 THE COURT: Mr. Armstrong can do it --

22 THE WITNESS: Yes, sir, it's safe.

23 THE COURT: All right.

24 MR. MARCHANT: Forgive me, Your Honor. The deputy
25 secured that prior to trial.

1 THE COURT: Thank you, Solicitor.

2 BY MR. MARCHANT:

3 Q So, Mr. Armstrong, it's your expert opinion that
4 State's Exhibit No. 33 was fired from State's Exhibit No.
5 42?

6 A That's correct.

7 Q Now, did you, also, do some analysis on some
8 fragments to determine whether or not they came from
9 State's Exhibit No. 42, which is the gun?

10 A Yes, sir, I did.

11 Q Okay. And I'm going to show you --

12 MR. MARCHANT: The Court's indulgence.

13 (Pause.)

14 (WHEREUPON, State's Exhibit Nos. 43, 44, 45, 46, 47,
15 and 48 were marked for identification only.)

16 BY MR. MARCHANT:

17 Q Mr. Armstrong, I'm going to ask you to look at
18 State's Exhibit Nos. 43 through 47, and ask if you
19 recognize those?

20 A Yes, sir, I do.

21 Q Okay. How is it that you recognize those?

22 A I have my initials and date on the seal where I,
23 actually, sealed the container back when I finished my
24 analysis.

25 Q Okay. So it's sealed now?

1 A Yes, sir, it is.

2 Q All right. If you'd open State's Exhibit Nos. 43 to
3 47.

4 A (Witness complied.)

5 Q And what are State's Exhibit Nos. 43, 44, 45, 46, and
6 47?

7 A State's Exhibit No. 43 was listed on the property
8 report as my item number IRO15, which is a metal fragment
9 consistent with being a portion of a fired bullet core,
10 which was not suitable for microscopic comparison
11 purposes.

12 Q What do you mean it "was not suitable"?

13 A There is no rifling characteristics or identifying
14 features on the piece of metal that would bear any kind of
15 identification toward a firearm or any other piece of
16 evidence.

17 Q So are you saying that you can include it as a
18 projectile, or are you excluding it as a projectile, or is
19 there not enough information?

20 A There's really not enough information. It's
21 consistent with being a portion of a fired bullet core,
22 which is the center portion of a projectile that -- where
23 the jacket has been stripped off and it has a piece of
24 lead. And that's what it's most consistent with.

25 Q And that was State's Exhibit No. 43?

1 A That is State's Exhibit No. 43, yes, sir.

2 Q All right. What about State's Exhibit No. 44?

3 A State's Exhibit No. 44 is my item IOR7, which is two
4 pieces. There's what I identified by 7A and 7B.

5 The item 7A was a metal fragment not suitable for
6 microscopic comparison purposes, undeterminable what type.

7 The item 7B is a copper over lead fired bullet
8 specimen jacket fragment, just a little piece of fragment
9 off of the jacket.

10 Q And you say "jacket," what do you mean by "jacket"?

11 A The outer covering on most projectiles is usually
12 copper. And it's just that coating that goes over the
13 lead.

14 Q How about State's Exhibit No. 45?

15 A State's Exhibit No. 45 I have identified as my number
16 IOR14, which is a metal fragment not suitable for
17 microscopic comparison purposes.

18 Q State's Exhibit No. 46?

19 A State's Exhibit No. 46 is my IOR19, which is a metal
20 fragment, once again, not suitable for microscopic
21 comparison purposes.

22 Q State's Exhibit No. 47?

23 A State's Exhibit No. 47 is my IOR18, which was, once
24 again, another metal fragment not suitable for microscopic
25 comparison purposes.

1 Q All right. Can you determine whether or not these
2 five items are -- come from the same projectile?

3 A There's no way to determine that.

4 MR. MARCHANT: I would move State's Exhibit Nos. 43
5 through 47 into evidence.

6 THE COURT: Mr. Toney?

7 MR. TONEY: No objection, sir.

8 THE COURT: State's Exhibit Nos. 43 through 47 are in
9 evidence without objection.

10 (WHEREUPON, State's Exhibit Nos. 43, 44, 45, 46, and 47
11 were admitted into evidence.)

12 BY MR. MARCHANT:

13 Q So you're unable to determine if State's Exhibit Nos.
14 43 through 47 are, one, the same projectile?

15 A Correct.

16 Q Or, two, if they are even a projectile?

17 A There is -- one of my item numbers, the IOR7B, bears
18 a fragment that determined that it was at one time a
19 portion of a fired jacket.

20 Q Considering the size and the condition of 7B, which
21 is State's Exhibit No. 44, are you able to determine what
22 sort of caliber that projectile would have been?

23 A Not completely. But it does bear general rifling
24 characteristics consistent with the item A1 pistol in the
25 case.

1 MR. MARCHANT: Thank you, Mr. Armstrong.
2 Please answer any questions Mr. Toney may have.

3 CROSS-EXAMINATION

4 BY MR. TONEY:

5 Q So you analyzed the gun --

6 A Yes --

7 Q And you weren't able to -- and it came back with
8 negative results for the firearm used?

9 A For the 32, yes, sir.

10 Q The 32. And the shell fragments, the metal
11 fragments, all of them are not suitable for microscopic
12 comparison?

13 A The majority of them. There -- I had one of them
14 that I was able to do some comparison with, the item
15 IOR7D. It did have some rifling characteristics to do a
16 comparison. And I wasn't able -- only -- I was only able
17 to determine that that jacket fragment, there is similar
18 general rifling characteristics as the item A1 pistol, but
19 insufficient microscopic marks to prevent identification.

20 Q Because IOR7A was not suitable?

21 A Correct.

22 Q On 7B, you only had a few characteristics on just the
23 outer covering; correct?

24 A That's correct.

25 Q So it's not at all conclusive or even close to

1 conclusive; correct?

2 A It probably is -- just generally speaking, it was
3 similar in nature. That was it.

4 MR. TONEY: Yes, sir.

5 That's all the questions that I have for this
6 gentleman.

7 THE COURT: Redirect?

8 MR. MARCHANT: Nothing further, Your Honor.

9 We'd ask that he be excused from his subpoena.

10 THE COURT: Thank you. Thank you very much.

11 Yes, you may step down, Officer.

12 Thank you for being with us.

13 And you may be excused.

14 MR. TONEY: Judge, may we have a two or three-minute
15 break?

16 THE COURT: How long is your next witness, Solicitor?

17 MR. HOLLOWAY: Your Honor, it could be a while, so.

18 THE COURT: All right. Perhaps, now, ladies and
19 gentlemen, would be a good time to take a morning recess.
20 We'll take about a 15-minute recess.

21 Please do not discuss the case during this recess.

22 Thank you very much.

23 You may go with your bailiff.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 10:49 a.m.)

1 THE COURT: Court will be in recess for 15 minutes.
2 Thank you.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Anything from the State before we bring
5 in our jury, Solicitor?

6 MR. HOLLOWAY: No, sir.

7 THE COURT: From the Defense, Mr. Toney?

8 MR. TONEY: No, Your Honor.

9 THE COURT: The bailiff informed me that the jury
10 wanted to take notes. So I told the bailiff to provide
11 them pads and pencils. And I will give them a very brief
12 charge on note taking.

13 All right. Thank you.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:12 a.m.)

16 THE COURT: Welcome back, ladies and gentlemen.

17 The bailiff informed me that some of you wanted to
18 take notes; is that correct?

19 (WHEREUPON, some of the jurors nodded their heads.)

20 THE COURT: And have y'all been provided pad and pen?

21 (WHEREUPON, some of the jurors nodded their heads.)

22 THE COURT: You may take notes. That is permissible.
23 However, you may not have those notes with you until the
24 time of your deliberation.

25 So if at any time we take a break, if you'd just turn

1 them upside down and -- put your juror number on the front
2 of them and turn them upside down on your chair. They
3 would remain on the chair during our -- just brief
4 recesses. However, lunch and recess, I'd probably have
5 the Clerk's Office secure them. And then the overnight
6 recess, if there is an overnight recess again, I would
7 have the Clerk's Office secure them and then hand them
8 back out.

9 Again, you would have access to them in the courtroom
10 now. And I would provide access to them for you during
11 your deliberations once you begin your deliberations.

12 Note takers -- some people are note takers. I'm one.
13 And then I go back and I can't read my notes sometimes.
14 But I do take a lot of notes.

15 One juror's notes have no more weight or value than
16 another juror's memory, number one. Number two, remember,
17 when you're taking notes, you may look down and be writing
18 something in your notes and you could miss the demeanor,
19 the appearance, the gesture of a witness that can be used
20 in determining an individual's credibility.

21 So just, please, keep those factors kind of in your
22 mind in that regard.

23 All right. With that being said, please, continue to
24 give the parties your complete and undivided attention,
25 which I know you will, and you have done throughout the

1 trial of the case.

2 Solicitor, you may call your next witness.

3 MR. HOLLOWAY: Thank you, Your Honor.

4 The State calls Jimmy Cobb.

5 THE COURT: All right. Mr. Cobb, if you'd come
6 around and be sworn for us, please.

7 THE CLERK: Sir, if you'd, please, place your left
8 hand on the Bible and raise your right hand.

9 THE BAILIFF: Face the Clerk, please.

10 WHEREUPON,

11 JIMMY COBB,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 Please be seated.

15 And, sir, please, state your name for the record.

16 THE WITNESS: Jimmy Cobb.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. HOLLOWAY:

20 Q Mr. Cobb, can you tell the jury where you were around
21 12:30 a.m. on December the 11th, 2012?

22 A I don't know a physical address, but I was off White
23 Horse Road.

24 Q Okay. And where is that near? What apartments is
25 that near?

1 A It's by the community center of Kennedy Park. I
2 don't know the name of the apartments.

3 Q Okay. Were you in the area of Landford Drive on
4 December the 11th, 2012?

5 A Yes, sir.

6 Q Okay. Right around 12:30, 1:00 a.m., can you tell
7 the jury what you saw, what you were doing?

8 A I was sitting in the car.

9 Q Okay. Whose car were you sitting in?

10 A My girlfriend's car.

11 Q Okay. And was there anybody with you?

12 A Yes, sir.

13 Q And who was that person?

14 A Sanchez Allman.

15 Q Okay. What were you guys doing?

16 A Using drugs.

17 Q Okay. What sort of drugs were you using?

18 A Crack cocaine.

19 Q Okay. And can you kind of tell the -- explain to the
20 jury how that -- if that affects your ability to perceive?

21 A It do. It affects my ability. Because a lot of the
22 stuff I can't remember. I do know that I was there.

23 But in the mix of me using drugs like I can't -- a
24 lot of stuff I don't remember. Like last night I was
25 racking my brain trying to remember a lot of stuff, you

1 know. But I only could remember bits and pieces.
2 Because, at the time, I was on the run from the sheriff's
3 department. And I was up for so many days, you know. I
4 hadn't had no sleep. I was just using, you know, numbing
5 myself up with drugs. And it really does have an affect
6 on your memory.

7 Q Okay.

8 A And like things you can remember sometimes. And
9 later on, you may remember it, you know. But it just --
10 it come and it goes, you know. And I had been on -- in
11 the act of addiction for way over 20 years, you know. So
12 it's had -- played a big affect on my memory.

13 Q Did you talk to the main investigator in this case,
14 Wayne Campbell?

15 A Yes, sir.

16 Q Okay. And do you recall -- was that -- how far -- or
17 how long after what happened on Landford Drive was that
18 when you talked to him?

19 A I don't know. Once I knew -- I was using in the car
20 that night. I -- from then on, I really can't say, you
21 know, when I talked to him. I don't know the dates, you
22 know. I don't even know the date I got arrested. If you
23 was to ask me, I wouldn't even know the date, you know. I
24 mean, I just know that I was arrested. And I do know he
25 came to talk to me, you know, but...

1 Q Let's talk about what you told him.

2 A Yes, sir.

3 Q Okay. You were out there -- where were you? Where
4 was your car -- or your girlfriend's car parked in the
5 area of Landford Drive?

6 A In the apartments.

7 Q Okay. Would it help you to see a map or an aerial
8 photo?

9 A It may help. I don't know.

10 Q Okay. I'm going to hand you the pointer. And all
11 you have to do is press that little button right there.

12 Okay. Will you point to the jury where you and
13 Mr. Allman were sitting?

14 A It was back right in here, one of these parking
15 spaces.

16 Q Okay. Now, Mr. -- the guy who was with you, did he
17 have -- did he go by a street name or a nickname?

18 A Sweet Pea.

19 Q Okay. And what's yours? Do you have a --

20 A Tab.

21 Q Tab. Okay. What kind of car were you in?

22 A A Honda Accord.

23 Q What color?

24 A A white Honda Accord.

25 Q Okay. So you're sitting in the white Honda Accord,

1 your girlfriend's car, that evening -- or that night;
2 correct?

3 A Uh-huh.

4 Q Okay. What did you see as you were sitting in that
5 vehicle?

6 A At what time?

7 Q Okay. At -- around 12:30. I guess what I'm getting
8 at is, did you see the Defendant at any time that evening?

9 A That's -- I mean, I -- again, I may have. I mean,
10 and I've been racking my brain trying to remember, you
11 know, did I see him or not.

12 Like I told you, I mean, I'm pretty sure you have
13 never used crack cocaine before. But, I mean, once you --
14 it's just -- it's -- I can't even explain, you know, the
15 affect that it have [sic] on you. You see what I'm
16 saying?

17 But I'm not going to say that I didn't see him, you
18 know. But I may have seen him. But the drugs really
19 interfered with my memory at the time.

20 Q Okay. Your statement you gave to Investigator
21 Campbell, do you recall if that was done on video?

22 A Yes, sir.

23 Q Okay. And you were advised of your rights?

24 A Yes, sir.

25 Q Okay. And do you recall -- would it help you to see

1 that video, help you to refresh your memory?

2 A Well, I understand on the video that I said I did
3 talk to him and --

4 Q Talk to who?

5 A Mr. Adams right there.

6 Q Brandon Adams?

7 A Yes, sir.

8 Q You said -- I just want to make sure the jury heard
9 what you said.

10 A Yes, sir.

11 Q You said that you talked to Mr. Adams that night --

12 A Yes, sir.

13 Q -- in your statement?

14 A On video, yes, sir.

15 Q Okay. Do you recall what else you said in your
16 statement?

17 A I mean, it was like three years ago. You like --
18 bring it up and I may -- you know, I don't remember
19 everything.

20 Q Okay. Do you recall saying to Investigator Campbell
21 that there -- that three individuals arrived in a white
22 vehicle?

23 A No.

24 Q A gray vehicle?

25 A A gray vehicle?

1 Q Yeah.

2 A No. I don't recall it.

3 Q Okay. Do you recall telling Investigator Campbell
4 that you saw the Defendant come out of that vehicle?

5 A I know I told Mr. Campbell that I talked to him. And
6 I was trying to do what I thought was right, you know.
7 Because I was like -- I was crying out for help every
8 time.

9 Q Okay.

10 A Do you see what I'm saying? And I'm not sure for
11 sure, you know. And, really, I don't want to -- I'm
12 trying to -- I don't know. I mean, I'm trying to remember
13 what was -- you know. I mean, it's been three years ago
14 at the same time.

15 Q Okay.

16 A You see what I'm saying?

17 Q But --

18 A Now, maybe if you would've asked me this maybe like
19 right around the time it happened, I -- my memory probably
20 will be better. But like being on drugs and being three
21 years later, I mean, it's like -- it's hard right now. I
22 really can't answer a lot of that memory stuff.

23 Q Okay. But you gave a statement on December 27th,
24 2012; isn't that correct?

25 A I may have, sir. I was arrested at the time.

1 Q Okay. Did you -- do you recall being presented a
2 photo lineup?

3 A Yeah. I was shown a photo lineup, yes, sir.

4 Q Okay. I'm going to hand you what's been premarked as
5 State's Exhibit Nos. 4 and 5. Can you identify them for
6 the record?

7 A Yes, sir. It's an affidavit of photograph
8 identification.

9 Q And that's State's Exhibit No. 4?

10 A Yes, sir.

11 Q Okay. And State's Exhibit No. 5?

12 A Yes, sir.

13 Q Okay. Now, it's fair to say on this photo lineup,
14 Investigator Campbell showed this to you; is that correct?

15 A It's got my signature on it, sir.

16 Q Okay. And you signed it, also, on State's Exhibit
17 No. 4; is that correct?

18 A Yes. That is my signature.

19 Q Okay. And can you see the date?

20 A Yes, sir.

21 Q Okay. What date is that?

22 A That's 12/28/12.

23 Q So December the 28th, 2012?

24 A Uh-huh.

25 Q Okay. And that would have been -- correct me if I'm

1 wrong. But that would have been about 17 days after
2 Mr. Crite was shot?

3 A I don't know. I don't know the date Mr. Crite was
4 shot.

5 Q But do you know it was in December of 2012?

6 A Yes, sir.

7 Q Okay. So when you tell the jury it would have helped
8 if people had talked to you at or near the time of the
9 shooting, they, actually, did?

10 A Right.

11 Q Okay.

12 A Right. But I'm saying -- I mean, by that like the
13 questions you asking me now -- okay -- the crime happened
14 three years ago. And the questions you're asking me now
15 is three years from now [sic]. And your questions with my
16 memory, I'm -- I can't answer your questions. He asked me
17 these questions how many days after it happened. Do you
18 see what I'm saying?

19 Q Okay. I do. I do.

20 A Yes, sir.

21 Q Now, I'm asking you questions today, obviously, three
22 years after the shooting?

23 A Yes, sir.

24 Q And Investigator Campbell asked you questions about
25 what happened within two weeks of the shooting; is that

1 correct?

2 A I don't even know the date of the shooting, sir.

3 Q Okay. Well, it was within the same month of the
4 shooting.

5 A Okay.

6 Q He asked you questions as to what happened; correct?

7 A Yes, sir.

8 Q Okay. Now, in response to those questions, what did
9 you tell him?

10 A What did I tell Investigator Campbell?

11 Q Yes.

12 A On what questions, sir?

13 Q The questions about what happened at Landford Drive
14 that same month.

15 A Again, sir, no disrespect. But, like I told you,
16 it's been three years ago. And I cannot tell you the
17 exact -- what me and Mr. Campbell talked about and how I
18 responded.

19 Q Would it help you to watch the video of your
20 statement -- of giving your statement?

21 A I mean, it may. I don't know. But I -- I mean, like
22 the questions I answered then, that's because the crime it
23 was -- like how long -- when I got arrested -- what day I
24 got arrested?

25 Q You tell me.

1 A I don't know that.

2 Q December the 27th maybe?

3 A I don't know what date I got arrested. But I know,
4 like you said, it was in the month of December. Now, the
5 month of December, this happened. And I got arrested,
6 what, maybe a few days later? A week later?

7 Okay. I was able to help more. You see what I'm
8 saying? Now, three years later, questioning me whether I
9 remember -- what's on video was said. But three years
10 later, do I remember saying the things that I said? Sir,
11 I don't -- I don't remember probably what I did last week.

12 MR. HOLLOWAY: Your Honor, at this time, we'd like to
13 excuse the jury to give Mr. Cobb the opportunity to view
14 the video of his interview.

15 THE COURT: All right. Madam Forelady, ladies and
16 gentlemen, if you'll, please, step to your jury room
17 momentarily.

18 Do not discuss the case during this recess.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 11:27 a.m.)

21 (WHEREUPON, a portion of State's Exhibit No. 38 was
22 played in open court.)

23 DIRECT EXAMINATION

24 BY MR. HOLLOWAY:

25 Q Mr. Cobb, has this helped? Has this helped you?

1 A Sort of.

2 Q Sort of. I can play the rest of the interview, if
3 you'd like. Is this enough for you to refresh what you
4 recall from this incident?

5 A Yes, sir.

6 Q And, right now, you're prepared to answer my
7 questions regarding what happened on December the 11th,
8 2012?

9 A Yes, sir.

10 MR. HOLLOWAY: Okay. Your Honor, I think we're ready
11 for the jury.

12 THE COURT: All right. Thank you.

13 Anything from the Defense before we bring the jury
14 in?

15 MR. TONEY: No, sir.

16 (WHEREUPON, the jury came into open court at
17 approximately 11:55 a.m.)

18 THE COURT: Solicitor, our jury is back. You may ask
19 your next question.

20 MR. HOLLOWAY: Thank you, Your Honor.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. HOLLOWAY:

23 Q Mr. Cobb, can you tell the jury, how do you know
24 Brandon Adams?

25 A From being in the same area.

1 Q What area would that be?

2 A White Horse Road area.

3 Q Okay. What name did he go by?

4 A Beano.

5 Q Okay. Did you see Beano on December the 11th, 2012,
6 on Landford Drive?

7 A I believe I may have talked to him that night.

8 Q You may have, or did you?

9 A Yes, sir.

10 Q Did you?

11 A Yes, sir.

12 Q Okay. What did he tell you, and where did you talk
13 to him?

14 A I don't remember what he told me, sir.

15 MR. HOLLOWAY: Your Honor, at this point, under Rule
16 613 and Rule 801(D)(1)(A), I'd like to play the -- his
17 interview to the jury.

18 THE COURT: 613. And tell me the other one.

19 MR. HOLLOWAY: Yes, sir. 801(D)(1)(A), it's
20 non-hearsay. He's testifying -- what he's testifying to
21 is not consistent with what he has said in a previous
22 statement.

23 THE COURT: Mr. Toney, objections?

24 If you have objections, I want to hear them outside
25 the presence of the jury. I'll ask the question that way.

1 MR. TONEY: No objection at this time.

2 THE COURT: And I would, also, add 803(5), perhaps.

3 MR. HOLLOWAY: Thank you, Your Honor.

4 THE COURT: Are you going to publish?

5 MR. HOLLOWAY: Yes. I would -- the State would ask
6 to publish State's Exhibit No. 138 [sic] for the jury.

7 Thank you.

8 THE COURT: And as far as the -- the exhibit, I'll
9 take that under advisement.

10 MR. HOLLOWAY: Yes, sir.

11 Thank you.

12 THE COURT: All right. You may publish it to the
13 jury.

14 (WHEREUPON, State's Exhibit No. 38 was played in
15 open court.)

16 BY MR. HOLLOWAY:

17 Q I just want to be clear. Because it's kind of hard
18 to hear what you're saying. Did you say both guys at
19 Mr. Crite's door pulled out guns? Is that what you said
20 on that video?

21 A I don't know, sir. It's like -- it's kind of hard
22 for me to hear a little bit, too.

23 Q Who was at the door?

24 A Who was at what door?

25 Q Who was at Mr. Crite's door, the person you're

1 talking about?

2 A I don't -- when I was sitting -- when I got out of
3 the car and talked to Mr. Adams and got back in the car --
4 and keep in mind, I have dark tint on the car. That's
5 when the guy that was with me got in the car and told me
6 what they was going to do. I know I said --

7 Q What were they going to do?

8 A He said they was going to rob Mr. Crite.

9 Q And who's "they"?

10 A Brandon Adams.

11 Q Once Mr. Adams went inside the apartment with the
12 other individual, what happened after that?

13 A I don't know if he went in the apartment, sir.

14 Q What did you hear?

15 A What did I hear when? When --

16 Q After they went in the apartment.

17 A I heard gunshots when I was sitting in the car
18 getting high. I heard gunshots. When I heard gunshots, I
19 crunk [sic] up and took off.

20 Q Okay. What did you see after the gunshots from
21 Mr. Crite's apartment?

22 A What did I see?

23 Q Uh-huh.

24 A After the gunshots?

25 Q Uh-huh. Yes.

1 A I took off and left after I heard the gunshots.

2 MR. HOLLOWAY: The Court's indulgence.

3 Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. HOLLOWAY: Your Honor, we'd ask for your
7 patience. We need a brief recess.

8 THE COURT: Do I need to get my grandson to come fix
9 it for you?

10 MR. HOLLOWAY: My daughter could probably fix it for
11 us.

12 THE COURT: Okay. What kind of time do you think
13 it's going to take, and how much longer is this?

14 MR. HOLLOWAY: I would say, at least, another
15 13 minutes on the video.

16 MR. TONEY: My questioning is about 10 minutes or
17 less.

18 THE COURT: All right. Let's see if we can take
19 about a 10-minute recess and see if we can get through
20 this witness before our luncheon recess.

21 All right. If you'd step to your jury room.

22 Do not discuss the case.

23 Thank you.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 12:12 p.m.)

1 THE COURT: Mr. Cobb, you may, certainly, step down
2 during this brief recess and refresh yourself. Do not
3 discuss your case -- your testimony with anyone. If
4 anyone tries to talk with you, please, let me know. And
5 just be back in 10 minutes.

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you very much.

8 Court will be in recess for 10 minutes.

9 (WHEREUPON, a break was taken.)

10 THE COURT: Solicitor, are we going to be a while?

11 This is not by way of complaint. It's just totally
12 time management.

13 MR. HOLLOWAY: I think I just heard life coming from
14 the audio.

15 (Pause.)

16 MR. HOLLOWAY: We're ready, Your Honor.

17 THE COURT: All right. Our witness, Mr. Cobb.

18 THE CLERK: He stepped out.

19 (Pause.)

20 THE COURT: All right. Mr. Cobb, you can come back
21 around and join us.

22 (WHEREUPON, Mr. Jimmy Cobb took the witness stand.)

23 THE COURT: Anything additional from the State before
24 we bring in our jury, Solicitor?

25 MR. HOLLOWAY: No, sir.

1 THE COURT: Defense?

2 (WHEREUPON, there was no response.)

3 THE COURT: Mr. Toney, anything from the Defense
4 before we bring in the jury?

5 MR. TONEY: No, Your Honor.

6 (WHEREUPON, the jury came into open court at
7 approximately 12:27 p.m.)

8 THE COURT: All right. Our jury is back.

9 You may continue, Solicitor.

10 MR. HOLLOWAY: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit No. 38 continued to be
12 played in open court.)

13 BY MR. HOLLOWAY:

14 Q The person you pointed out in that photo lineup, is
15 that person in the courtroom?

16 A Yes, sir.

17 Q Who is that?

18 A Brandon Adams.

19 Q All right. Would you, please, point him out for the
20 record?

21 A Right there.

22 MR. HOLLOWAY: Your Honor, for the record, he is
23 pointing to the Defendant, Brandon Adams.

24 THE COURT: All right. So reflected.

25 MR. HOLLOWAY: Your Honor, just for the record, too,

1 I believe I've been referring to the CD as State's Exhibit
2 No. 138. It is, actually, State's Exhibit No. 38, just
3 for the record.

4 THE COURT: State's Exhibit No. 38.

5 MR. HOLLOWAY: Your Honor, that's all I have for this
6 witness at this time.

7 Thank you.

8 THE COURT: Thank you, Solicitor.

9 Mr. Toney.

10 CROSS-EXAMINATION

11 BY MR. TONEY:

12 Q Sir, the crime did happen while you were in the car
13 on drugs using crack cocaine; correct?

14 A Yes, sir.

15 Q And smoking crack affects your ability to perceive,
16 and know and understand what's going on at the time;
17 correct?

18 A Yes, sir.

19 Q And you were, actually -- at that time, you were
20 thinking about smoking crack. That's what your attention
21 was on; correct?

22 A Yes, sir.

23 Q And even if you had seen anything that night, isn't
24 it true that nobody should rely on what you may or may not
25 have seen that night because you were smoking crack?

1 THE COURT: No, sir. That's not a proper question.
2 That's a credibility issue for the jury, not for him. The
3 witness can't comment on his own credibility.

4 Ask your next question

5 BY MR. TONEY:

6 Q It did affect your ability to remember what happened
7 that night; correct?

8 A Yes, sir.

9 Q Crack cocaine -- and it affects your ability to
10 remember to this day; correct?

11 A Yes, sir.

12 Q And crack cocaine has a very powerful affect on you;
13 correct?

14 A Yes, sir.

15 Q During the interview with Investigator Campbell,
16 isn't it true that you were either high or coming off
17 drugs, and not in your right mind; correct?

18 A Yes, sir.

19 Q I'm looking at the video and is it true that in the
20 video, you were leaning on the wall?

21 A Yes, sir.

22 Q And you were yawning, also; correct?

23 A Yes, sir.

24 Q Is it true that you had been up for days at that
25 time?

1 A Weeks.

2 Q Weeks. And when you're up for weeks, is your
3 perception, to say the least, skewed and not accurate, in
4 your opinion?

5 A Yes, sir.

6 Q And you were talking really fast; correct?

7 A Yes, sir.

8 Q And that's not how you normally speak, is it?

9 A No, sir.

10 Q And you said something about being F'd -- pardon my
11 language -- F'd up on some pills; is that correct?

12 A No, sir. I don't --

13 Q Okay. I'm sorry. And your speech was slurred in the
14 interview with Investigator Campbell; correct?

15 A Yes, sir --

16 Q Your speech was slurred?

17 A Yes, sir.

18 Q And that's not normally how you speak; correct?

19 A No, sir.

20 Q Were your eyes blurry and fuzzy at that time during
21 that interview?

22 A I'm pretty sure they was. I can't see my eyes
23 really, but I'm pretty sure they was.

24 Q Okay. But when you've been up for long periods of
25 time, are your eyes normally blurry and fuzzy?

1 A Yes, sir.

2 Q Is it possible that maybe you didn't even see what
3 he -- what -- properly what he put in front of you, whatever
4 he handed you?

5 A As far as?

6 Q Anything he handed you, is it possible because you
7 may not have even been able to properly see it because
8 your eyes were fuzzy?

9 A Well, I know I had the photo lineup in front of me,
10 yes, sir.

11 Q Okay. And, for example, since -- were you either on
12 drugs or coming off drugs at the time you spoke to
13 Investigator Campbell --

14 MR. HOLLOWAY: Objection. He's already asked and
15 answered the question.

16 THE COURT: That's correct.

17 Ask your next question.

18 MR. TONEY: Okay

19 BY MR. TONEY:

20 Q Which -- in your opinion, would you have felt
21 comfortable driving a vehicle at that time, based on the
22 condition you were in?

23 MR. HOLLOWAY: Objection. It's irrelevant under Rule
24 401.

25 THE COURT: I don't know the relevancy of that,

1 Mr. Toney.

2 I will sustain the objection.

3 MR. TONEY: Okay.

4 BY MR. TONEY:

5 Q I heard something in there about being on a drug
6 binge. Had you been on a drug binge at that time? Is
7 that correct?

8 A Yes, sir.

9 Q Isn't it true that you told -- you were facing
10 charges at that time?

11 A Yes, sir.

12 Q And that you told Investigator Campbell what he
13 wanted to hear in order to get home?

14 A Yes, sir.

15 Q And today is when you're under oath; correct? In
16 front of the Court; correct?

17 A Yes, sir.

18 Q At that time, you were interviewed by -- there was no
19 court there, there was no Bible. You weren't placed under
20 oath; correct?

21 A Not to my knowledge.

22 Q Okay. You did describe a second man in the interview
23 with Investigator Campbell; correct?

24 A That was with me?

25 Q What? No. That was with -- maybe someone going in a

1 building; correct?

2 A Yes, sir.

3 Q But you, also, said you didn't see much because you
4 were trying to get the "H" out of there; correct?

5 A Yes, sir.

6 Q All right. Isn't it true that whatever you saw then
7 was all a blur then and really -- really and truly all a
8 blur now?

9 A Well, it's kind of worser [sic] now because it's been
10 three years. So it's --

11 MR. TONEY: That's all the questions I have for this
12 witness.

13 THE COURT: Redirect, Solicitor?

14 MR. MARCHANT: Yes, sir, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HOLLOWAY:

17 Q The time of day when this interview occurred was,
18 also, 1:40 in the morning roughly?

19 A I don't know, sir.

20 Q It was at night?

21 A To my memory --

22 Q This interview, was it at night?

23 A The thing say like -- I think it was 12 something a.m.

24 Q It was a.m.; right?

25 A Yes, sir.

1 Q It was the middle of the night?

2 A Yes, sir.

3 Q Okay. Did you receive the deal that you wanted from
4 the investigator in this case?

5 A Well, I didn't receive no deal. I mean, he told me
6 he -- and that's not on camera. But he told me that he
7 would help me out on the back end --

8 Q Okay. And did he?

9 A -- is what he stated himself.

10 Q And did he?

11 A No, sir.

12 Q So you gave the information to him with the hope of
13 having help on the back end; correct?

14 A Yes, sir.

15 Q And, today, you didn't get that hope -- that help on
16 the back end; is that correct?

17 A Well, I got it other ways. I was -- had leniency due
18 to my saving a Department of Corrections officer's life
19 while I was doing time.

20 Q But, as far as today's concern, you're on the witness
21 stand --

22 A Yes, sir.

23 Q -- saying you didn't get what Investigator Campbell
24 you say promised him [sic]?

25 A Well, I didn't get nothing from him. He never came

1 back to see me.

2 MR. HOLLOWAY: All right. Thank you very much.

3 THE COURT: Recross, Mr. Toney?

4 MR. TONEY: None, Your Honor.

5 THE COURT: Thank you. Thank you very much.

6 Thank you, Mr. Cobb.

7 You may step down.

8 All right. Perhaps, now would be a good time to take
9 our luncheon recess, ladies and gentlemen.

10 Please remember during this recess, do not discuss
11 this case with others, including your fellow jurors, lunch
12 mates, family, friends, or anyone else. Do not read,
13 watch, or listen to any news accounts of the case, should
14 there be any. Do not do any independent research or any
15 research on the Internet.

16 With that being said, I would ask you to, please, be
17 back promptly at 2:15. If you'll, please, be back
18 promptly at 2:15, 14:15 hours.

19 I hope y'all have a pleasant lunch. And stay warm
20 out there.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 12:46 p.m.)

23 THE COURT: How many more witnesses do you have,
24 Solicitor, approximately?

25 MR. MARCHANT: No more than four, Your Honor.

1 THE COURT: Give me a time frame of when you think
2 the State's case in chief would be completed.

3 (WHEREUPON, there was no response.)

4 THE COURT: Keep in mind I always have the -- that
5 good trial lawyers cannot tell time. So I don't put much
6 confidence in whatever you're telling me, but I would just
7 like to hear it.

8 MR. MARCHANT: I was thinking Investigator Campbell's
9 direct and cross, maybe 45 minutes or an hour, and the
10 other witness, 15 to 20. So Ms. Adams --

11 THE COURT: So sometime 4:30ish, 5:00, you'd probably
12 finish?

13 MR. MARCHANT: Yes, sir. It just depends on how the
14 next witness responds to the State's questioning on the
15 stand.

16 THE COURT: All right. Thank you very much.

17 Anything from the Defense before we take our recess?

18 MR. TONEY: Just that I'm going to help him move this
19 case along as fast as I can.

20 THE COURT: Well, you know, I'm not in a hurry.

21 MR. TONEY: Yes, sir.

22 THE COURT: I would say that I think all my 609
23 rulings are moot.

24 With that being said, we'll take our luncheon recess.

25 Thank you very much.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Anything from the State before we bring
3 in our jury, Solicitor?

4 MR. MARCHANT: The State's ready, Your Honor.

5 THE COURT: Defense?

6 MR. TONEY: Nothing, Your Honor.

7 THE COURT: All right.

8 (WHEREUPON, the jury came into open court at
9 approximately 2:17 p.m.)

10 THE COURT: All right. Welcome back, ladies and
11 gentlemen. I hope y'all had a pleasant lunch.

12 We're continuing the trial of the case by the
13 presentation of evidence and testimony by the State in its
14 case in chief. Please, as you have done throughout the
15 trial of the case, continue to give the parties your
16 complete and undivided attention.

17 Thank you. Thank you very much.

18 Solicitor, you may call your next witness.

19 MR. MARCHANT: May it please the Court.

20 The State calls Brandon O'Neal.

21 THE CLERK: Mr. O'Neal, if you'll, please, come
22 around to this side of the bench. And if you'll pause
23 there.

24 Please place your left hand on the Bible and raise
25 your right hand.

1 WHEREUPON,

2 BRANDON O'NEAL,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: All right. Please be seated.

5 And, sir, would you, please, state your name for the
6 record?

7 THE WITNESS: Brandon O'Neal.

8 THE CLERK: Okay. Speak louder.

9 THE WITNESS: Brandon O'Neal.

10 THE CLERK: Thank you.

11 THE WITNESS: I apologize about yesterday, Judge.

12 DIRECT EXAMINATION

13 BY MR. MARCHANT:

14 Q Mr. O'Neal, do you live here in Greenville County?

15 A Yes, sir.

16 Q And I see that you're in an orange jumpsuit. Why is
17 that?

18 A Because I didn't show up yesterday.

19 Q Okay. Were you served with a subpoena to show up for
20 court yesterday?

21 A Yes, sir.

22 Q And why didn't you show up?

23 A I forgot, sir.

24 Q All right.

25 A I ain't in no trouble. So I ain't --

1 Q Be sure to speak up so the jury can hear you. Okay.

2 A I said I wasn't in no trouble. So I forgot. Sorry.

3 THE COURT: Speak up.

4 THE WITNESS: I said I was not in any trouble. So I
5 didn't -- you know. I forgot to come, so.

6 BY MR. MARCHANT:

7 Q Okay. But you're here now.

8 I'm going to take you back to December 11th of 2012.

9 Were you over at Landford Drive --

10 A Yes, sir.

11 Q -- the night Joseph Crite was killed?

12 A (Witness nodded.)

13 Q Okay. What were you doing over at the Landford Drive
14 area?

15 A I was at my stepdaddy's house, Mr. Logan.

16 Q And do you know what number Mr. Logan lives at?

17 A [REDACTED].

18 Q Okay. I'm going to show you what's in evidence
19 already as State's Exhibit No. 6. And if you'll look
20 right in front of you, there is a pointer right here on
21 the bar.

22 A Uh-huh.

23 Q Mr. O'Neal, right here. If you would just use that
24 when you're talking to the jury and show them.

25 All right. Using that pointer, would you tell the

1 jury where Mr. Logan's is?

2 A Mr. Logan's house stay right there.

3 Q Okay. And what time were you over at his house that
4 evening?

5 A About 2:00 that night.

6 Q You got there at 2:00?

7 A No. I was there earlier, but I stayed until 2:00.

8 Q Okay. And who else was there with you?

9 A Me and my home brother, Marco.

10 Q And does he have a nickname?

11 A They call him Bubba.

12 Q And what about you, do you have a nickname?

13 A Little B.

14 Q All right. What were you and Mr. Golden doing at
15 your stepdaddy's house?

16 A Playing cards all night.

17 Q Okay. And how long had you been over there that
18 evening before you left?

19 A Probably all day.

20 Q And what time do you think you left his place that
21 evening?

22 A That was at 1:00 -- well, 2:00 when I left that
23 night. But I came over there probably about 12:00 that
24 afternoon, though.

25 Q Why did you decide to leave at that time of the

1 evening, early morning?

2 A My stepdaddy was kicking us out.

3 Q Okay. And where -- and in relation to this -- your
4 stepdaddy's house, where do you live? I don't know that
5 it's shown on this particular aerial. But, generally,
6 what area --

7 A You can go through this cut right here and keep
8 straight. I stay on Bluff Drive. If you keep straight,
9 it's that way. But they ain't got it on here.

10 Q So when you left your stepdaddy's house, which way
11 did you start walking?

12 A Up the sidewalk.

13 Q And what, if anything, caught your attention?

14 A Two dudes standing at Mr. Joe's house.

15 Q And why did that draw your attention over there to
16 Mr. Joe's?

17 A It was 2:00 in the morning and two dudes had on
18 black. And one was standing on the other side of the door
19 while one was knocking at the door.

20 Q I'm showing you what's marked as State's Exhibit
21 No. 11. It's already in evidence. Would you continue to
22 use that pointer and show the jury where one of the
23 individuals was standing?

24 A Right there.

25 Q Okay. And was that person's back up against the

1 wall, or were they facing the door?

2 A Up against the wall.

3 Q And what about the second individual?

4 A He was facing the door.

5 Q And were you able to hear any conversation that was
6 going on?

7 A All we could see was that the first one, he just
8 knocked on the door. And Mr. Joe had opened it. So I
9 guess Mr. Joe knowed [sic] them. So when he walk in, the
10 other one come from behind him.

11 Q And did you see any more of the two people on his
12 porch that night?

13 A No, sir.

14 Q Okay. And at this particular time that we're talking
15 about, were you able to tell whether or not the people on
16 the porch were male or female?

17 A You couldn't tell. It was that dark. Also, like the
18 body form was like a male body form. But when it come
19 down to the faces, you couldn't see no faces because, you
20 know, it was dark.

21 Q Okay. Do you know whether or not anything was
22 concealing or covering up their faces?

23 A I couldn't really tell, sir. You know what I'm
24 saying? If I'm all the way down at [REDACTED] walking up to
25 Mr. Joe's house, it's kind of hard to see.

1 Q Were you able to tell the race of the people standing
2 at the door?

3 A Yeah. They were black.

4 Q All right. I'm going to take you back to State's
5 Exhibit No. 6. Let me zoom in a little bit here.

6 All right. So you're walking up to go through the
7 cut as you referred to it --

8 A Yes, sir.

9 Q -- to get back home. How far did you get up the
10 sidewalk before you stopped?

11 A I got probably like right here.

12 Q And what made you -- well, are you still with Bubba
13 at this time?

14 A Yeah. Me and Bubba was walking out at the same time.

15 Q And what made you stop in front of that duplex next
16 to your stepfather's?

17 A Because I seen a person on the side of Mr. Joe's
18 house -- well, you know, with his back against the wall at
19 Mr. Joe's house while another one was just standing there.
20 And I just looked at my home boy. I just said, Bubba,
21 that don't look right. A car was parked right here, and a
22 car was parked right here.

23 Q All right. Well, let's talk about this spot that you
24 just talked about, the second spot out here on the road.

25 A Right here?

1 Q No. On the road.

2 A Right there?

3 Q Yeah. What sort of car was parked right there, if
4 you recall?

5 A It was a like a gray -- like gray -- you know what
6 I'm saying -- a car with tinted windows.

7 Q Was it a two-door? Four-door?

8 A I really couldn't get the -- I want to say it was a
9 two door. But I really couldn't just really just make out
10 whether it was a two-door or a four-door.

11 But right here --

12 Q Wait a minute. We'll get there in a second. Was --
13 the car out on the road, was it a car, or was it a truck,
14 or SUV, or --

15 A It was a car.

16 Q All right. Now, this other car that you're referring
17 to that's in the parking lot, where was it?

18 A Like right there.

19 Q And what sort of car was that?

20 A Like a Honda Civic with tinted windows.

21 Q Do you recall the color of that car?

22 A White.

23 Q Okay. Do you know who was in that car?

24 A I don't know who was in the car.

25 Q Do you know how many people were in it?

1 A I know when the person got in it, it was one driving
2 it. From both cars, there was one driving.

3 Q All right. So you're walking -- let's go back now.
4 You're walking back up the sidewalk towards Mr. Joe's?

5 A Yeah.

6 Q You stop. And what happens after you stop and told
7 Bubba Golden something's not right?

8 A We stopped. We looked. Then that's when they went
9 in. Probably like two or three seconds later, you hear,
10 pow, pow, pow, and Mr. Joe scream.

11 So when we hear that -- by that time, I ran to my
12 brother Bode's house in [REDACTED]. Bubba done ran behind my
13 brother's house. But the two dudes come out rushing at
14 us. So that's the only reason I ran. But I wasn't
15 standing around anywhere. Because I'm on probation. So I
16 was going home. I ain't got time --

17 Q So you're -- let me make sure we're all clear. The
18 apartment on the very far end on the right is your
19 stepdaddy's?

20 A Yes, sir, [REDACTED].

21 Q And then who lives next door?

22 A My stepbrother, Bode.

23 Q Okay. What's his name? Do you know his full name?

24 A John Duckett.

25 Q Okay. So you went -- Mr. Duckett let you come into

1 the house?

2 A Yeah.

3 Q Okay. Once you went into the house, did you hear
4 anything else? Did you hear any other gunshots?

5 A Huh-uh. All we heard was the door slamming for the
6 cars. And they just was taking off.

7 Q Did you and Bubba Golden meet up after the shots took
8 place and the people left?

9 A Yeah, we met. Bubba came back around. We was in
10 Bode's house. I said, Bubba, I'm about to go. Don't go
11 over there. And I said --

12 Q And when you say, Don't go over there, don't go over
13 where?

14 A Mr. Joe's house.

15 Q Why not?

16 A Because the door was wide open and there was a dead
17 body inside.

18 Q Well, why not go over and see if anybody is okay?

19 A Because we know he ain't okay. We know what's up.
20 And I was saying -- we know he wasn't -- he ain't come to
21 the door after they left. So we knew he was dead.

22 Q Well, did you call law enforcement?

23 A I didn't call law enforcement, sir. Bubba ran across
24 the street to Mr. Joe's son, who stays right here.

25 Q All right. Let me zoom out. So Bubba --

1 A Yeah.

2 Q Let me make sure I'm -- so Elbert Golden, also know
3 as Bubba --

4 A Yes, sir.

5 Q -- went across to Joe's son's house?

6 A Yeah. They've got some little duplexes right here.
7 And Mr. Joe's son was staying in the first duplex. So
8 Lamar went over there and told him that his daddy got
9 shot.

10 Q Okay. How soon after the cars pulled out of the
11 parking lot did Bubba go across the street and talk to
12 Joe's son?

13 A Probably about four to five minutes later.

14 Q Four or five, or 45?

15 A About four to five minutes later.

16 Q Did you see anyone else go in Mr. Joe's house?

17 A No, sir.

18 Q All right. Following Mr. Golden going over to Joe's
19 son's house, where did you go?

20 A I went home.

21 Q Why didn't you stay in the apartment area to tell law
22 enforcement what you saw?

23 A Because I was scared. And I really don't like to
24 deal with the police, so.

25 Q Why not?

1 A Because I'm always getting in trouble. So I just
2 went to the crib.

3 Q And the house that you lived with -- live at, who
4 stays at that house? At the time this happened, who was
5 staying at your house?

6 A My father, Doug Wilson, and my little brother, Travis
7 Wilson.

8 Q Do you know who the people are that went into
9 Mr. Joe's that night?

10 A At that time, I couldn't even tell you who went in
11 Mr. Joe's house.

12 Q And the people that did go inside, what sort of
13 clothing were they wearing?

14 A All black hoodies, all black pants, you know. They
15 just had on all black.

16 Q The last question I have for you, Mr. O'Neal. The
17 person that pulled around on to the road -- can you put
18 the pointer back up there? What is that right there?

19 A A mailbox.

20 Q And were you able to tell who was in that car, or how
21 many people were in that car?

22 A No, sir.

23 Q Okay. You don't know?

24 A I don't know.

25 Q Male or female?

1 A I don't know. I just know --

2 Q White, black, or Hispanic?

3 A Yeah. I just know I seen the back door open up. The
4 person got in. They took off. The other back door opened
5 up when they was right here. He got in. They took off.

6 Q Now, Investigator Campbell came and talked to you
7 about this incident; right?

8 A Yes, sir.

9 Q And did you tell him everything that you knew about
10 it?

11 A Yes, sir.

12 Q Is there anything that you did not tell him that day
13 about this incident?

14 A No, sir.

15 MR. MARCHANT: All right. Thank you, Mr. O'Neal.

16 Please answer any questions Mr. Toney may have.

17 CROSS-EXAMINATION

18 BY MR. TONEY:

19 Q Sir, you raised the issue of your probation. What
20 are you on probation for?

21 A Possession of crack cocaine.

22 Q How many times have you been in Mr. Joe's house --
23 Mr. Joe Crite's house?

24 A None times.

25 Q Pardon?

1 A None times. I always talked to Mr. Joe on the porch.

2 Q Okay. Have you ever purchased crack cocaine from
3 Mr. Crite's?

4 A No.

5 Q Okay. And, that day, had you had anything to drink?

6 A No, sir.

7 Q Did you have any -- did you consume any narcotics,
8 legal or illegal?

9 A No, sir.

10 Q And you were in the house all day playing cards?

11 A Not all day playing cards. But before I left, we was
12 playing cards. We watched TV, watched the game, played a
13 game. But we were playing cards that night when we left.

14 MR. TONEY: Okay. That's all the questions I have
15 for this witness.

16 THE COURT: Redirect?

17 MR. MARCHANT: Nothing else, Your Honor.

18 THE COURT: All right. Is he released from his
19 subpoena?

20 MR. MARCHANT: He is, Judge. I have some things that
21 probably need to be signed by you, but yes, sir.

22 THE COURT: All right. Prepare the paperwork,
23 please.

24 Good luck to you.

25 THE WITNESS: Thank you, sir.

1 THE COURT: You may step down.

2 Solicitor, you may call your next witness.

3 MR. HOLLOWAY: Thank you, Your Honor.

4 The State calls Ms. Adams, Mercedes Adams.

5 THE COURT: All right. If you'd come around and be
6 sworn for us, please.

7 THE CLERK: Ma'am, if you'll, please, place your left
8 hand on the Bible and raise your right hand.

9 WHEREUPON,

10 MERCEDES ADAMS,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 And would you, please, state your name for the
15 record?

16 THE WITNESS: Mercedes Adams.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. HOLLOWAY:

20 Q Ms. Adams, can you tell the jury how you know the
21 Defendant?

22 A That's my brother.

23 Q Ms. Adams, I'm going to take you back to the events
24 that we've been talking about the past couple of days. Do
25 you recall what happened on December the 11th, 2012?

1 A Do I recall it?

2 Q Uh-huh.

3 A I don't.

4 Q You don't. Okay. What do you recall about that day?

5 A I took momma to the hospital.

6 Q Okay. What else?

7 A I stayed there with -- we stayed there at the
8 hospital.

9 Q Okay. Were you ever -- were you with your brother
10 that evening?

11 A That night?

12 Q That night.

13 A I wasn't.

14 Q Okay. Ms. Adams, are you aware -- obviously, you
15 recall pleading guilty to your involvement in this case
16 last year on May the 20th?

17 A Do I recall my lawyer coming to me and telling me
18 that y'all wanted me to say it was a robbery? And I
19 would -- after the fact -- I figured I would get --

20 THE COURT: That wasn't the question, Ms. Adams. The
21 question is not what you recall your lawyer telling you.
22 The question is, do you recall pleading guilty on May 20th
23 of last year?

24 THE WITNESS: Yes, sir.

25 MR. STEELE: Your Honor, my name is Carlyle Steele.

1 And I represent her.

2 May I interrupt these proceedings and ask the Court
3 respectfully to take up an issue out of the presence of
4 the jury?

5 THE COURT: All right. Madam Forelady, and, ladies
6 and gentlemen, if you'll, please, step to your jury room.

7 Do not discuss the case during this brief recess.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 2:35 p.m.)

10 THE COURT: All right. Mr. Steele.

11 MR. STEELE: Yes, sir.

12 THE COURT: Yes, sir.

13 MR. STEELE: May it please the Court.

14 The reason I interrupted is I don't want us to get
15 too far into a divergence of testimony from what she's
16 previously said and what she's about to testify to.

17 Approximately three hours ago, I received a call from
18 Ms. Adams. And in that phone call, she said that she was
19 not going to testify. And I told her that she no longer
20 had that option. That part of our arrangement on the
21 guilty plea and the dismissal of certain charges was that
22 she testify truthfully.

23 She then said, Well, if I do testify, I'm going to
24 take the Fifth Amendment. I told her that under the laws
25 of this state when one pleads guilty, a part of that plea

1 is that you waive your right to plead -- your right to
2 exercise your Fifth Amendment right. She then told me
3 that she no longer wanted me as her lawyer.

4 So I'm on my feet now for several things. One, to
5 protect her from getting too deep into the morass of
6 perjury and contempt.

7 And, secondly, based upon her instructions, I'm
8 respectfully asking the Court to relieve me as her lawyer.
9 And I would cite as an additional sustaining ground to
10 that motion the fact that she is not taking my advice, and
11 she is, in fact, ignoring my advice and going counter to
12 my advice on some rather basic undisputable things that
13 I've just referred to.

14 So that's my situation, Your Honor. And that's my
15 motion.

16 THE COURT: Thank you, Mr. Steele.

17 I think you have stated the law precisely.

18 I do have this question. Why are you still
19 representing her?

20 MR. STEELE: Well, I just had this conversation a few
21 hours ago. And I felt like I -- to tell you the truth,
22 our relationship has been pretty good up until extremely
23 recently, that is today.

24 THE COURT: Has she been sentenced?

25 MR. STEELE: No, sir.

1 And I've advised her of the potential problems with
2 that event, also, in writing, I might add. I gave her a
3 letter here today after I realized I had this problem.
4 And I've, also, told her orally emphatically.

5 THE COURT: Solicitor, you wanted to say something?

6 MR. MARCHANT: I was just going to add, Your Honor,
7 but he answered it. She's not been sentenced yet. The
8 sentence was deferred on the accessory after the fact
9 charge to the plea that she entered back on May the 20th
10 of 2015.

11 Mr. Steele has correctly stated the conversations,
12 negotiations between myself and him about her charges, her
13 cooperation, and the fact that homicide, armed robbery,
14 burg first, all that was dismissed as part of her plea
15 allocution and cooperation with the State. And here we
16 are.

17 THE WITNESS: Can I say something --

18 MR. STEELE: Your Honor, I guess I would respectfully
19 ask the Court to voir dire her from the bench, if Your
20 Honor is inclined to do so, and see if we can confirm the
21 things that I've just told you, at least, those things
22 about not wanting me, not wanting to testify, etc.

23 THE COURT: Yes, ma'am, Ms. Adams. You wanted to say
24 something?

25 THE WITNESS: I was never charged with armed robbery,

1 murder, and kidnapping. I was charged with murder and
2 conspiracy.

3 And I just feel that -- I don't know. I never -- I
4 wasn't even there. And I just feel like they just really
5 told me really what to say. And I just went along with it
6 so I could get home to my child.

7 THE COURT: You heard what Mr. Steele informed me
8 concerning a telephone conversation he received about
9 three hours ago; is that correct?

10 THE WITNESS: Yes, sir.

11 But I knew that I would have to get up here and put
12 my hand on the Bible. And it would really be a lie. And
13 I don't want my brother to go to prison for something I
14 know -- that I don't know he really done.

15 THE COURT: And you told him you were not going to
16 testify. You told Mr. Steele that?

17 THE WITNESS: Yeah. I told him I didn't want to,
18 that it was a lie what I would get up here and say.

19 THE COURT: And back in May of --

20 Was it '15?

21 MR. HOLLOWAY: May 20th, yes, sir, of last year.

22 THE COURT: May of 2015, you entered a plea of
23 accessory after the fact --

24 Is that correct?

25 MR. MARCHANT: Yes, Your Honor.

1 MR. STEELE: Yes, sir.

2 THE COURT: Accessory after the fact; correct?

3 THE WITNESS: Yes.

4 Because I was -- when I got arrested, I was 17 years
5 old. And I was seven and a half months pregnant with my
6 first child. And I stayed in there 20 months really not
7 knowing nothing -- what was going on the whole time. And
8 I just wanted to get home to my baby.

9 So when he came to see me, he said that the Solicitor
10 wanted me to say that it was a robbery, basically, and
11 that I would get my charges dropped down to accessory
12 after the fact. So I said it. And I just made up
13 whatever. Because I figured I would get home to my son.

14 THE COURT: Well, Mr. Steele -- is there anything
15 that Mr. Steele has related to the Court that you disagree
16 with?

17 THE WITNESS: What do you mean?

18 THE COURT: Anything that Mr. Steele said that you
19 disagree with.

20 THE WITNESS: As far as him not wanting to represent
21 me any more?

22 THE COURT: Uh-huh.

23 THE WITNESS: No, sir.

24 THE COURT: And do you recall him saying you have no
25 Fifth Amendment privilege to not testify at this point?

1 You cannot plead the Fifth at this point.

2 THE WITNESS: Yes, sir.

3 THE COURT: So if you were to refuse to testify, you
4 would be held in jail until such time as you decided to
5 testify.

6 THE WITNESS: I mean, I'm sitting here. I don't know
7 what they want me to say.

8 THE COURT: I think a trial is a search for the
9 truth.

10 THE WITNESS: I'm telling the truth.

11 THE COURT: Well -- all right. Solicitor.

12 MR. MARCHANT: Judge, as we find ourselves here at
13 the moment, I think it is necessary that she have
14 representation, whether or not that continues to be
15 Mr. Steele, certainly, is up to Your Honor. But I think
16 the situation she finds herself in is a difficult one and
17 a tough one, one that none of us would be envious of.

18 However, I think it is very important and necessary
19 for her to have some representation. If Your Honor is
20 inclined to relieve Mr. Steele of his representation, I
21 think it would be prudent that we have someone else from
22 the Public Defender's Office or indigent defense here to
23 protect whatever rights she has at this time.

24 I don't know what she's going to say, or if she's
25 going to answer Mr. Holloway's questions. We have a plea

1 transcript from May the 20th where I put in the record the
2 basic facts of the case, and what she indicated she knew
3 about the case with which was recorded on an interview two
4 days prior to the plea.

5 So we sort of find ourselves in the same situation as
6 we found ourselves with Mr. Cobb a few minutes ago. I
7 don't know that we've gotten so far that she's not agreed
8 to answer the questions yet. But I, certainly, think it
9 was prudent and appropriate for Mr. Steele to address the
10 Court.

11 MR. STEELE: Well, I thought I heard her say
12 something along the lines of she wasn't there. Maybe I
13 misunderstood that.

14 MR. HOLLOWAY: Yes, she did.

15 MR. STEELE: And I got a little concerned about that.
16 So that's why I stood up.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. STEELE: Your Honor, may I make a suggestion?

20 THE COURT: Yes, sir.

21 MR. STEELE: If Your Honor wants to, this is -- we
22 don't want to hold the trial up, obviously. You can defer
23 ruling on that motion I just made and let me sit back here
24 and be her lawyer and see what happens. I mean, that's
25 one suggestion I might make to the Court.

1 THE COURT: Do you want to confer with her --

2 MR. STEELE: Well, I've already done that.

3 THE COURT: -- before she continues on the stand?

4 MR. STEELE: But I'll do it again.

5 THE COURT: Do you have objections to that,
6 Solicitor?

7 MR. MARCHANT: I don't, Your Honor.

8 THE COURT: Mr. Toney?

9 MR. TONEY: Absolutely, sir.

10 She's in the middle of testimony. To confer with
11 her, at this point, could be an attempt albeit -- I
12 understand he may feel that it would be acting in his best
13 interest. But to attempt to maybe influence her testimony
14 in the middle of testimony -- in the middle of her
15 testimony and to take time out for additional sessions
16 maybe to influence her testimony would be so beyond the
17 pale, and, in my opinion, so outrageous that I would ask
18 to strike her whole testimony, if that's going to be the
19 case. I just strenuously, strenuously object.

20 THE COURT: Well, I strenuously, strenuously overrule
21 your objection.

22 MR. TONEY: Yes, sir.

23 THE COURT: She has an absolute right to counsel, you
24 know. That's in those things called Amendments.

25 I can't quite recall the name of the case, but Judge

1 Baggett in the late 80s was trying a murder and rape case
2 in Richland County. The Defendant had completed his
3 direct testimony and there was a break between direct and
4 cross. And Judge Baggett refused to allow his lawyer --
5 now, albeit that was the accused, as opposed to the
6 witness. But he refused to allow his lawyer to speak with
7 him. I think that case may have gone to the United States
8 Supreme Court. I'm not certain about that. But he denied
9 his right to counsel.

10 As she said, she was 17 years old in 2011.

11 Is that correct?

12 THE WITNESS: 2012.

13 THE COURT: 2012.

14 Thank you.

15 So you are now 20?

16 THE WITNESS: 20.

17 THE COURT: 20 years old.

18 How much education do you have?

19 THE WITNESS: Well, I'm in school now trying to get
20 my GED.

21 THE COURT: Okay. So you have gone back to try to
22 get your GED?

23 THE WITNESS: Yeah. Because I was locked up
24 28 months.

25 THE COURT: What type of work do you do?

1 THE WITNESS: Huh?

2 THE COURT: Do you work? Are you employed?

3 THE WITNESS: Yes.

4 THE COURT: What type of work do you do?

5 THE WITNESS: I do banquets at -- through Chase. I
6 do -- go to the Hyatt, go the Marriott, the Poinsett Club.

7 THE COURT: Like catering?

8 THE WITNESS: Uh-huh.

9 THE COURT: Caterers?

10 THE WITNESS: Uh-huh.

11 MR. STEELE: For the Court's information, Your Honor,
12 she's a good woman with no prior criminal record.

13 THE COURT: And I don't -- also, I don't coax her as
14 being in the middle of her testimony. If she was in the
15 middle of her testimony, we would have completed her
16 testimony by the time we would have this entire
17 conversation.

18 Mr. Steele is an officer of the Court, as are all the
19 attorneys in here. I have confidence in members of the
20 bar and our profession that they don't influence
21 individual's testimony. They are of the highest regard.
22 And they know that a trial is a search for the truth.

23 And I think she's on very precarious grounds. I
24 would do the same if I were to relieve Mr. Steele and
25 appoint another attorney, allow that other attorney to

1 explain to her what her options are.

2 With that being said, you may step down. You may
3 confer with your attorney. You are still under -- subject
4 to a subpoena and required to be present.

5 All right, Ms. Adams.

6 THE WITNESS: Yes, sir.

7 THE COURT: Do you have any questions you'd like to
8 ask me?

9 THE WITNESS: No, sir.

10 THE COURT: Solicitor, do you want to continue with
11 another witness, or do you want to --

12 MR. MARCHANT: No, Your Honor.

13 We'd like Mr. Steele to have the opportunity to
14 advise her.

15 MR. STEELE: Your Honor, if I could just have a few
16 minutes. It's pretty straightforward.

17 THE COURT: All right. Well, just let me know when
18 you're ready.

19 MR. STEELE: Yes, Your Honor.

20 THE COURT: Thank you.

21 We'll just stand at ease.

22 (WHEREUPON, a break was taken.)

23 THE COURT: All right. Mr. Steele.

24 MR. STEELE: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. STEELE: I've conferred with Ms. Adams. We've
2 talked. I believe we went over all the matters of
3 substance before the Court. She wanted her mother
4 present. I had some reservations about that. But, under
5 similar circumstances, I might want my mother present. So
6 I had her in there. And we've talked. And she's back on
7 the witness stand.

8 THE COURT: Thank you, Mr. Steele.

9 Ms. Adams, do you have any questions you would like
10 to ask me before I bring the jury back in?

11 THE WITNESS: (Ms. Mercedes Adams shook her head.)

12 THE COURT: Is that a "no"?

13 THE WITNESS: I mean, no. I don't got nothing to
14 say, really. I don't know what happened. I wasn't there,
15 I guess, is what I'll tell them.

16 THE COURT: As far as your rights, though, your
17 rights, do you have any questions you want to ask me
18 before the jury comes back in?

19 THE WITNESS: No, sir.

20 THE COURT: Thank you. Thank you very much.

21 (WHEREUPON, the jury came into open court at
22 approximately 3:01 p.m.)

23 THE COURT: All right. Our jury is back in place.
24 Solicitor, you may continue.

25 MR. HOLLOWAY: Thank you, Your Honor.

1 CONTINUED DIRECT EXAMINATION

2 BY MR. HOLLOWAY:

3 Q Ms. Adams, my last question to you, I asked you if
4 you pled guilty to charges as a part of this case on May
5 the 20th of last year?

6 A Did I -- did I plead to them?

7 Q Did you plead to a charge that came out of the
8 incident at Mr. Crite's apartment?

9 A Yes.

10 Q In May of last year?

11 A Yes.

12 Q Okay. And when you pled guilty, your attorney,
13 Mr. Steele, was in the courtroom, wasn't he?

14 A Yes.

15 MR. HOLLOWAY: Your Honor, I have a certified copy of
16 the transcript from that plea hearing. It's been
17 pre-marked as State's Exhibit No. 48. It is a certified
18 true copy. It's self-authenticating. I would ask to move
19 it into evidence at this time.

20 THE COURT: Mr. Toney?

21 MR. HOLLOWAY: And, for the record, I've given a copy
22 to Mr. Toney.

23 MR. TONEY: No objection.

24 THE COURT: And State's -- tell me the number again.

25 MR. HOLLOWAY: State's Exhibit No. 48.

1 THE COURT: State's Exhibit No. 48 is in evidence
2 without objection.

3 (WHEREUPON, State's Exhibit No. 48 was admitted into
4 evidence.)

5 MR. HOLLOWAY: Thank you, Your Honor.

6 BY MR. HOLLOWAY:

7 Q Now, Ms. Adams, I'm going to refer to what happened
8 in that plea hearing. Because you were there; correct?

9 A (There was no response.)

10 Q In the courtroom; correct?

11 A Yes.

12 Q And you were put under oath; isn't that true?

13 A Yes.

14 Q Okay. Now, during that plea hearing, the Court
15 advised you sort of the following, are you pleading guilty
16 because you are guilty; is that true?

17 A (There was no response.)

18 Q The Court did say that to you; correct?

19 A Yes.

20 Q Okay. Has anyone threatened you or put any pressure
21 on you to get you to come to court today and enter your
22 plea?

23 The Court asked you that, didn't they?

24 A (There was no response.)

25 Q Didn't the Court ask you that?

1 A Yes.

2 Q Okay. And your response was, No, sir.

3 The Court then asked, Are you doing this of your own
4 free choice and will; isn't that true?

5 A Yes.

6 Q Okay. And you said, Yes, sir; is that correct?

7 A I feel -- I still feel like y'all coerced me, though,
8 but, yes.

9 THE COURT: I'm sorry. I didn't quite understand
10 that response, Ms. Adams.

11 THE WITNESS: I feel they coerced me to say all that.
12 But, yes, I did say all that.

13 BY MR. HOLLOWAY:

14 Q At that time, then the Court went through all of your
15 Constitutional rights; is that correct?

16 A Yes.

17 Q Okay. And it's a fair statement that your attorney,
18 Mr. Steele, went through those same rights with you prior
19 to pleading guilty?

20 A Yes.

21 Q Okay. And during that plea hearing, the Prosecutor,
22 Mr. Marchant, recited the facts of what happened at
23 Mr. Crite's apartment on December the 11th, 2012; isn't
24 that true?

25 A I wasn't there, so I don't know what happened.

1 Q No. That's not my question. During the plea
2 hearing, Mr. Marchant recited the facts that the State
3 would prove should the case have gone to trial. Didn't he
4 tell you the facts on the record during your plea hearing?

5 A I don't remember.

6 Q Okay. According to the transcript -- and I have it
7 right here. Mr. Marchant says, May it please the Court.

8 On December the 11th of 2012, at ■ Landford Drive
9 here in Greenville County, several defendants associated
10 with this case went to the victim's home, Joseph Crite.
11 And there was a plan to rob him of various items in the
12 house to include money, possibly drugs and alcohol.

13 Mr. Crite ran a house where he sold liquor.

14 The other defendants in this case are Ms. Adams'
15 brother, Brandon Adams, a second co-defendant, Michael
16 Anderson, a third co-defendant, Mr. Harper. All four of
17 these folks have been charged with the homicide and
18 accompanying charges, conspiracy, armed robbery, burglary
19 first degree.

20 In any event, Ms. Adams has talked to us on more than
21 one occasion -- "us" being the State -- and now is ready
22 to testify against others in this case. Her testimony is
23 based off a conversation with herself, Mr. Steele, Ryan
24 Holloway, the investigator, Wayne Campbell, with the
25 sheriff's office on Monday of that -- of this week, which

1 would be May the 18th.

2 Her testimony would be that she, and Brandon Adams,
3 and a fifth person, who is uncharged, Michael Evans, got
4 in the car. She was the driver of the vehicle and drove
5 Brandon Adams and Michael Evans over to Landford Drive to
6 rob Mr. Crite.

7 She was aware that a robbery was getting ready to
8 take place. And she was aware or, at least, had some
9 knowledge that Mr. Adams and Mr. Michael Evans had or were
10 in possession of firearms.

11 She parked the vehicle at the direction of Brandon
12 Adams and Michael Evans, and waited for them as they went
13 to Mr. Crite's door. Those two men, according to
14 Ms. Adams, made entry into Mr. Crite's apartment. And she
15 heard several gunshots, which she would say would come from
16 more than one gun.

17 As a result of the actions inside the home of either
18 Brandon Adams or Michael Evans, Mr. Crite died as a result
19 of those gunshots. Then she took those gentlemen back to
20 the apartment that she lived in with her mother over at
21 Boulder Creek.

22 So she's pleading to accessory after the fact based
23 off her cooperation, and her ongoing cooperation at trial
24 against Mr. Brandon Adams, as well as other co-defendants
25 at this time and/or other co-defendants which may be

1 forthcoming based off additional investigation by the
2 sheriff's office.

3 Do you recall all this being recited in your
4 presence?

5 A Yes. But it wasn't the truth.

6 Q Okay. In January of 2013, do you recall being
7 arrested?

8 A Yes.

9 Q Okay. And --

10 A Say it again.

11 Q I'm sorry. Do you recall being arrested in January
12 of 2013 on those charges --

13 A No. I was locked up in February.

14 Q Okay. In February. Do you recall being interviewed
15 at that time by the main investigator in this case, Wayne
16 Campbell?

17 A Yes.

18 Q Okay. And he asked you what happened?

19 A Yes.

20 Q Okay. And you said, I don't know nothing?

21 A Yes.

22 Q Okay. That was in your interview?

23 A Yes.

24 Q Do you recall that being on video, on camera?

25 A No.

1 Q Okay. Fast-forward to May of 2015. You gave another
2 interview with the State, as mentioned in the transcript;
3 is that correct?

4 A (There was no response.)

5 Q You talked to the State. You talked to Wayne
6 Campbell in May of last year?

7 A Yes.

8 Q Okay. And your attorney was present; correct?

9 A Yes.

10 Q Okay. And he advised -- I imagine -- tell me if I'm
11 wrong here. He advised you of the pro's and cons's, and
12 your rights to talk with the State --

13 A Yes.

14 Q -- about what happened to Mr. Crite, what you knew?

15 A No. He came to me and told me that the Solicitor
16 wanted to say that it was a robbery and that my charge
17 would be dropped down to accessory after the fact. That's
18 what he said to me.

19 Q And you did agree to that; correct?

20 A Yes, I did.

21 Q You pled guilty --

22 A Because I wanted to get home to my son. So, yes, I
23 did agree to that.

24 Q Okay. And during the interview with your attorney
25 present, you told a different story from what you told in

1 January -- in February of 2013, didn't you?

2 A (There was no response.)

3 Q Didn't you?

4 A Can you repeat the question?

5 Q Sure. In May of last year, when you talked to the
6 State, talked to the prosecutors and Wayne Campbell, you
7 said something completely different from what you had told
8 originally about, I don't know nothing; correct?

9 A Yes. Because I really don't know nothing.

10 Q Okay. Well, you went through, essentially, a whole
11 narrative of what happened at Mr. Crite's apartment,
12 including the parking lot three years prior, didn't you?

13 A (There was no response.)

14 Q Didn't you?

15 A Yes.

16 Q Okay. You said that Brandon had told her -- told you
17 that they were going to Landford to rob somebody; isn't
18 that true?

19 A I said that, but it wasn't true.

20 Q Okay. Well, you seemed to indicate to
21 Mr. Campbell -- to Investigator Campbell that you,
22 actually, did know something versus I know nothing?

23 A Yes. Because he said y'all were going to drop my
24 charges to accessory after the fact.

25 Q Which you partook of freely, voluntarily, and

1 intelligently, didn't you?

2 A Yes. But I knew I was going to go home.

3 Q Okay. And, during the interview, for the first time,
4 the name of Michael Evans popped up; isn't that true?

5 A No. His name has been popped up.

6 Q Well --

7 A Y'all just never went out to arrest him, I guess.

8 Q Okay. Did you tell Investigator Campbell -- did you
9 tell your attorney to go tell Investigator Campbell that
10 Michael Evans is involved at any moment in time prior to
11 May 18th, 2015?

12 A Michael Anderson told y'all he was involved. So I
13 just went along with that.

14 Q Okay. And you were under oath when you went along
15 with it on May 20th, 2015, weren't you?

16 A Yes.

17 Q Okay. You said, I grew up around Tab, Jimmy Cobb,
18 and Sweet Pea, Sanchez Allman; isn't that true?

19 A Yes. I do know them.

20 Q In fact, you grew up in the Landford area, didn't
21 you?

22 A No.

23 Q Okay. Well, how many -- did you live out there at
24 some point in time in your life?

25 A Yes.

1 Q Okay. How long?

2 A How long? Like when I was like 14.

3 Q 14. Okay. And you said that -- you said to
4 Investigator Campbell, myself, and Prosecutor Marchant
5 that you knew what was to happen going over there?

6 A I told y'all what y'all wanted to hear.

7 Q Okay. What car did you go to Mr. Crite's apartment
8 in?

9 A I wasn't there.

10 Q Okay. But you said you went in a gray car, didn't
11 you? Didn't you -- that's what you told --

12 A I told y'all what y'all wanted to hear.

13 Q Okay. So those facts just came out of the clear blue
14 thin air?

15 A Yes.

16 Q Okay. And you said it was a gray car, didn't you?

17 A I told y'all what y'all wanted to hear.

18 Q Okay. You said it was a car that you and your
19 sister, Porchae, rented, didn't you?

20 A I told y'all what y'all wanted to hear.

21 Q Okay. You said that your brother asked to borrow the
22 car, didn't you?

23 A I told y'all what y'all wanted to hear.

24 Q Okay. Now, you said to us that you were going to
25 drive the car because you didn't trust your brother to

1 take the car; isn't that true?

2 A Yeah. I told y'all what y'all wanted to hear.

3 Q And when you went outside of your apartment where
4 Brandon was, you saw Michael Evans outside. Isn't that
5 what you said to us?

6 A Yeah. I told y'all what y'all wanted to hear.

7 Q Okay. And there was a discussion that a robbery or a
8 lick was to be done at -- over in the Kennedy Park area?

9 A I only know that's what the coroner said. That's
10 what y'all said that we was to do. So I just went along
11 with what y'all wanted to know and hear.

12 Q Why didn't Michael Evans' name come up back in
13 February of 2013?

14 A What?

15 Q Why didn't Michael Evans' name come up in February of
16 2013? Why didn't you say something?

17 A Because I was never there. But then I got another
18 lawyer. And he came to me and told me that y'all wanted
19 me to say it was an armed robbery. So I was there
20 20 months. I said what y'all wanted to hear just to go
21 home.

22 Q You told us your brother always carries a gun?

23 A Yes.

24 Q And you're aware that when you were interviewed by
25 Investigator Campbell, the State, your lawyer was there

1 and that the interview was being -- was on video. It was
2 being -- a camera was going to record what transpired;
3 isn't that true, what you said in that room?

4 A No. That was not true what I said in that room.

5 Q No. What I'm saying is, you knew there was a camera
6 that was going to record --

7 A Yes.

8 Q -- what you said to us?

9 A Yes.

10 Q Would it help you to refresh what you recall to watch
11 that video?

12 A No.

13 MR. HOLLOWAY: Your Honor, at this time, I would --
14 under Rule 613 and 801(D)(1)(A), the State would ask to
15 publish the video of her interview from May 18th, 2015.

16 THE COURT: Mr. Toney?

17 MR. TONEY: If I could have a minute.

18 (Pause.)

19 MR. TONEY: No objection.

20 THE COURT: All right. That will be State's Exhibit?

21 MR. HOLLOWAY: 36.

22 THE COURT: State's Exhibit No. 36?

23 MR. HOLLOWAY: Yes, sir.

24 Your Honor, at this time, we'd ask to go ahead and
25 have it admitted into evidence as State's Exhibit No. 36

1 under the same rules of evidence.

2 THE COURT: There's no objection to State's Exhibit
3 No. 36. It's in evidence.

4 MR. HOLLOWAY: Okay. Thank you, Your Honor.

5 (WHEREUPON, State's Exhibit No. 36 was admitted into
6 evidence.)

7 MR. STEELE: Your Honor, before we start playing the
8 film, could I have -- would Your Honor allow me another
9 moment with her?

10 MR. TONEY: I object.

11 THE COURT: Step out momentarily, ladies and
12 gentlemen.

13 Please do not discuss the case.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 3:15 p.m.)

16 MR. STEELE: Your Honor, I propose to do it in a
17 whisper right here.

18 THE COURT: Have her step out that door.

19 THE BAILIFF: Sir?

20 THE COURT: Escort her and have her stay out that
21 door --

22 MR. STEELE: So you're allowing it, Your Honor?

23 THE COURT: No, sir.

24 I want her out of the courtroom.

25 MR. STEELE: Oh, okay.

1 THE COURT: I'm just asking her to step out that
2 door.

3 (WHEREUPON, Ms. Mercedes Adams exited the courtroom.)

4 THE COURT: Without violating the attorney-client
5 privilege, can you give me any indication, Mr. Steele --
6 and if you can't, that's fine. I'm just asking the
7 question --

8 MR. STEELE: With all due respect to the Court, I'd
9 prefer not to. I'm sorry.

10 THE COURT: And no disrespect taken.

11 MR. STEELE: Yes, sir.

12 THE COURT: That's why I said --

13 Now, tell me your objection, Mr. Toney.

14 MR. TONEY: He wishes to give her advice on her
15 testimony during the middle of trial. I object to that.
16 We're, clearly, in the middle of testimony now.

17 (Pause.)

18 THE COURT: I'm sorry.

19 MR. TONEY: I didn't know if you were looking at me
20 or them. I'm sorry. I beg your pardon. I thought you
21 were motioning for me. But that's okay. I realize now
22 you were looking at the folks entering.

23 THE COURT: How long do you need, Mr. Steele?

24 MR. STEELE: Two minutes or less.

25 THE COURT: Can you whisper at the bench?

1 MR. STEELE: Yes, sir, I can.

2 (Pause.)

3 THE COURT: Mr. Bailiff, you can have Ms. Adams step
4 back to the witness stand.

5 THE BAILIFF: Sir?

6 THE COURT: You can have her step back to the witness
7 stand.

8 Thank you.

9 (WHEREUPON, Ms. Mercedes Adams entered the courtroom
10 and took the witness stand.)

11 THE COURT: All right. Mr. Steele, I'll allow you a
12 few minutes, subject, of course, to Mr. Toney's objection.

13 MR. TONEY: Yes, sir.

14 Thank you, Your Honor.

15 (Pause.)

16 MR. STEELE: If Your Honor please, I'm finished.

17 THE COURT: That was 45 seconds by my watch.

18 MR. STEELE: I'm sorry, Your Honor.

19 THE COURT: That was 45 seconds by my watch.

20 MR. STEELE: Yes, sir, Your Honor. I finished early.

21 THE COURT: I was just --

22 THE WITNESS: Are we allowed to drink this water?

23 THE COURT: Ma'am?

24 THE WITNESS: Are we allowed to drink this water?

25 THE COURT: Oh, yeah, of course, yes, certainly.

1 Now, you know that's courtroom water.

2 THE WITNESS: Thank you.

3 MR. MARCHANT: Your Honor, if I could have just a
4 moment to make sure the volume is working before they come
5 back in.

6 THE COURT: Yes, sir.

7 (Pause.)

8 MR. MARCHANT: Your Honor, I think we're ready.

9 THE BAILIFF: Are you ready, sir?

10 THE COURT: Yes, sir.

11 (WHEREUPON, the jury came into open court at
12 approximately 3:23 p.m.)

13 THE COURT: All right. Our jury is back in place.
14 You may continue, Solicitor.

15 MR. HOLLOWAY: Thank you, Your Honor.

16 The State will, at this time, publish State's Exhibit
17 No. 36 to the jury.

18 THE COURT: All right. State's Exhibit No. 36 is in
19 evidence without objection.

20 You may publish it.

21 MR. HOLLOWAY: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit No. 36 was played in open
23 court.)

24 MR. HOLLOWAY: Your Honor, that's all I have of this
25 witness at this time.

1 THE COURT: All right. Thank you, Solicitor.
2 Mr. Toney.

3 MR. TONEY: Yes, sir. One second, please.

4 (Pause.)

5 CROSS-EXAMINATION

6 BY MR. TONEY:

7 Q Mercedes, you don't recall -- at the time of the
8 interview and the plea, you were coerced into that
9 testimony, weren't you?

10 A Yes, sir.

11 Q And you said whatever you had to do to get out of
12 there because you were 17 years old and seven months
13 pregnant; correct?

14 A Yes, sir.

15 Q And you were scared to death, weren't you?

16 A Yes, sir.

17 Q And the Solicitor wanted you to say it was a robbery.
18 Is that what you've now said?

19 A (Witness nodded.)

20 THE COURT: Answer out loud.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 BY MR. TONEY:

24 Q And you've made up whatever -- and your testimony
25 today is that you made up whatever you had to in order to

1 get out of jail; correct?

2 MR. STEELE: Your Honor, I'm going to have to object
3 at this point. She does not have a Fifth Amendment
4 privilege regarding what she's already pled guilty to.
5 But she does, in my opinion, I would submit, have a Fifth
6 Amendment privilege as to any subsequent prosecutions.

7 Therefore, I'm objecting to a question which
8 contrasts her testimony then with her testimony now, which
9 could result in a perjury prosecution. I would assert her
10 Fifth Amendment right on her behalf, based on what I just
11 said.

12 THE COURT: All right. Well, let me ask the
13 Solicitor this, do you give her immunity from any perjury
14 prosecution as a result of her testimony today?

15 MR. MARCHANT: Could I have a moment to confer with
16 co-counsel, Your Honor?

17 THE COURT: Certainly.

18 (Pause.)

19 MR. MARCHANT: Your Honor, I hate to ask, but could I
20 have five or 10 minutes to further discuss the matter with
21 my co-counsel?

22 THE COURT: Yes.

23 Well, let me ask -- before we do that.

24 Mr. Toney, restate that question for me.

25 MR. TONEY: I asked her, did she make up what she

1 said earlier to get out of going to jail -- to get out of
2 jail. I think that's what I said. I'm sorry.

3 THE COURT: I understand.

4 MR. TONEY: It's been a long day, Judge.

5 THE COURT: Not yet.

6 Thank you. Thank you very much, Mr. Toney.

7 MR. TONEY: Yes, sir.

8 THE COURT: Ladies and gentlemen, rather than hold
9 you captive out here, step to your jury room momentarily.

10 Do not discuss the case during this brief recess.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 4:04 p.m.)

13 MR. STEELE: Your Honor, while the Solicitor is
14 considering that, I would respectfully ask that he
15 consider, also, immunity from obstruction of justice, or
16 any other related prosecution relating to her testimony.

17 THE COURT: Well, I'm not even suggesting that they
18 do that. I was just going to ask the question. Then if
19 they were not planning that, I was -- that was not a
20 suggestion by the Court. It was just -- would heal that
21 one issue.

22 So I've not -- I don't have an opinion on whether
23 they should or should not one way or the other. And since
24 there are other questions that are not brought -- I take
25 it your position would be that the sworn -- make sure I'm

1 tracking right, Mr. Steele. The sworn statement that she
2 gave in May of 2015, if she says that was a lie, that
3 sworn statement -- if today she made a sworn statement
4 that that statement in May of 2015 was a lie, then that
5 could constitute an element of perjury.

6 MR. STEELE: Your Honor is correct.

7 THE COURT: Comparing the May 15th statement to
8 inconsistent statements today; correct?

9 MR. STEELE: Yes, Your Honor.

10 THE COURT: Okay. I just wanted to make sure I was
11 tracking correctly.

12 MR. STEELE: Yes, Your Honor.

13 MR. MARCHANT: And, frankly, that's where I'm
14 struggling at the moment. I'm afraid that I don't know
15 that I'm going to be able to answer the Court's inquiry,
16 at this point in time, without reviewing the transcript of
17 her testimony this morning [sic] to determine whether or
18 not there is a basis for a potential charge of perjury. I
19 think it would be inappropriate, unprofessional, and
20 premature for me to make that decision one way or another
21 without reviewing the transcript.

22 So I tell you that now. I don't think I can give you
23 an answer one way or another based off of the information
24 I have at the present time.

25 THE COURT: That's an answer, Solicitor.

1 Well, with that being said, then I think she may have
2 a Fifth Amendment privilege as to future prosecutions.
3 Because she does not have transactional immunity, so to
4 speak. I'm not sure that's the proper word or terminology
5 because we don't use immunity a lot in those -- or I don't
6 in those terms.

7 So I think she has a Fifth Amendment privilege in
8 that regard.

9 MR. TONEY: I'd like to take exception, if I could.

10 THE COURT: Sure.

11 MR. TONEY: And put on the record why I take
12 exception.

13 THE COURT: Sure.

14 MR. TONEY: The right to confront witnesses is
15 elemental to our entire system. I have a duty and a
16 right, I believe, to cross-examine this particular witness
17 who's the -- a key witness or may be the key witness in
18 this case on the key issue in this case, which is whether
19 or not her testimony -- they should believe something said
20 back then or now.

21 THE COURT: That's a different question. That's
22 asked all the time on Rule 613, if --

23 MR. TONEY: Maybe I'm in error.

24 THE COURT: No.

25 Isn't that a question asked all the time in -- on

1 cross-examination, is what you're saying true today or was
2 what you're saying true then?

3 MR. TONEY: Yes, sir.

4 THE COURT: Isn't that the basis of Rule 613 and
5 prior inconsistent statements?

6 MR. TONEY: I think so.

7 THE COURT: Here, what you have is a statement today
8 that is inconsistent with her prior statement. It's just
9 a -- typically, it's the reverse. It's the mirror image.

10 MR. TONEY: I think I understand.

11 Could I -- can I ask her if what she's saying today
12 is true? I can do that. That's -- that would be the
13 mirror of the mirror that you're talking about.

14 THE COURT: What --

15 MR. TONEY: Your testimony today is true. I can say
16 that because that would not put her in jeopardy.

17 MR. HOLLOWAY: Your Honor, that goes in the province
18 of the jury. It's their job to figure out what is the
19 truth here.

20 THE COURT: Was she --

21 MR. HOLLOWAY: It goes to the weight of the evidence.

22 THE COURT: Was she -- Ms. Adams -- I don't disagree
23 with you that the truthfulness of the testimony is up
24 to -- up to her -- I mean up to the jury to determine her
25 truthfulness.

1 But Ms. Adams has testified time and time again from
2 both direct -- or whatever that was under 611. But she's
3 said time and time and time again that was a lie, that was
4 a lie. I did it because I wanted to go home. I wanted to
5 go home to my baby. I said what they wanted me to say.

6 So time and time and time again, she has portrayed
7 herself as telling lies to officers, prosecutors in the
8 presence of her attorney. But she's given the reasons,
9 the foundations for why she says, I told a lie. I told a
10 lie because of my baby, because of this, because of that.

11 I don't think she gives the ultimate opinion -- and I
12 believe Mr. Toney asked the question before of a previous
13 witness, is there any -- I'm paraphrasing -- is there any
14 reason whatsoever why anybody should believe anything you
15 say?

16 Well, that, clearly, goes to the ultimate issue.
17 Because they can believe all, part, or none. They can
18 believe all, part, or none of the witnesses testimony. If
19 part of it's corroborating -- I shouldn't -- I've run off
20 on that credibility trail now.

21 Would there be an objection to that question, Mr. --
22 and, procedurally, it's very interesting, though.

23 But would there be an objection to that question,
24 Mr. Steele?

25 MR. STEELE: Yes, Your Honor.

1 And here's the tight rope I'm trying to walk here.
2 On the one hand, I don't want her held in contempt for
3 failing to testify. And she's got immunity from
4 anything -- she's, basically, already pled guilty. And
5 she's been promised that if she tells the truth and
6 testifies truthfully, she's okay. And she waived her Fifth
7 Amendment protection when she pled guilty. So I'm kind of
8 stuck with that.

9 But when we get into such things as definite about --
10 it was a pretty emphatic question coming from Mr. Toney,
11 did you lie for this? I feel like I have to object at
12 that point when she's in jeopardy of further prosecution.

13 But I got -- on the other hand, I felt like I had to
14 advise her that she had to take the witness stand.
15 Otherwise, she was potentially in contempt for failure to
16 testify because she had no Fifth Amendment privilege
17 arising out of this prosecution.

18 So that's the tight rope I'm trying to walk, Your
19 Honor.

20 THE COURT: Well, the tight rope I'm trying to walk
21 is Mr. Adams right to confrontation and a fair trial, and
22 the right to confront the witnesses against him.

23 And I, certainly, appreciate your dilemma,
24 Mr. Steele.

25 MR. STEELE: Yes, Your Honor.

1 Thank you.

2 I don't envy Your Honor's.

3 THE COURT: There should be no reason to, Mr. Steele.
4 If you do, I'll give you a card.

5 MR. STEELE: Thank you, Your Honor.

6 MR. MARCHANT: Your Honor, after consideration and
7 speaking with a colleague that's much more experienced
8 than I, I'm ready to provide her the immunity of any
9 prosecution as it would relate to perjury, obstruction of
10 justice, or anything as it relates to the testimony that
11 she gave under her sworn statement. And I use the word
12 "testimony" as I'm referring to her guilty plea that she
13 entered on May the 20th of 2015, in front of the Honorable
14 Judge Hill. That information as it relates to the
15 information that she's provided today.

16 So any concern that Mr. Steele has as it relates to
17 her testimony, the State is willing to provide her
18 immunity as it relates to those particular types of
19 offenses.

20 Now, if there was, of course, some other offense that
21 was admitted to, another robbery, burglary, something like
22 that --

23 THE COURT: Right. Sure.

24 MR. MARCHANT: -- I'm not seeking to have a complete
25 blanket of immunity. But as it relates to Mr. Steele's,

1 objection -- excuse me, not objection --

2 THE COURT: You know, there's probably more perjury
3 in court than anywhere else. That's why they've got a
4 rule on it --

5 MR. MARCHANT: Yes, sir.

6 THE COURT: -- prior inconsistent statements. Very
7 few people ever prosecute it.

8 MR. TONEY: So I take it I can ask her the question
9 now.

10 THE COURT: I think you can ask the question.

11 Mr. Steele, do you agree now she has a -- she does
12 not have a Fifth Amendment privilege, because she doesn't
13 have any -- as far as potential exposure as to this event,
14 that's now been purged?

15 MR. STEELE: I believe that's right, Your Honor. I
16 don't want to comment too much on it. I'd rather just
17 stay moot.

18 THE COURT: That's always wise.

19 Bring in the jury, please.

20 MR. MARCHANT: Your Honor, Mr. Holloway has a phone
21 call that he needs to make.

22 THE COURT: What?

23 MR. MARCHANT: He has phone call he needs to make.

24 It appears to be some sort of family situation. So if it
25 pleases the Court, if the situation arises that I feel the

1 need to object to some sort of examination by Mr. Toney, I
2 would ask that the Court allow me to object, even though I
3 did not direct the witness.

4 THE COURT: Any objection to him objecting?

5 MR. TONEY: To him objecting? No, sir, none
6 whatsoever.

7 Thank you.

8 THE COURT: Thank you.

9 (WHEREUPON, the jury came into open court at
10 approximately 4:16 p.m.)

11 THE COURT: All right. Our jury is back again.

12 Thank you very much, ladies and gentlemen, for your
13 patience and your continued attention to the trial of this
14 case.

15 Mr. Toney.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. TONEY:

18 Q So, ma'am, in the interview on the video and in the
19 transcript here, you were, essentially, telling a story to
20 them because you were 17 -- you were young. You were very
21 young. You're still very young. When all this started,
22 you were 17 years old and you were seven and a half months
23 pregnant. And you were telling a story because you were
24 trying to get home, and you figured it would help you get
25 home to your son; correct?

1 A Yes.

2 Q And you're saying now that in this -- and the
3 interview on the video, you were lying; correct, in those
4 two?

5 A Yes.

6 MR. TONEY: That's all the questions I have for this
7 witness.

8 MR. MARCHANT: If the Court would allow me to conduct
9 a brief cross --

10 THE COURT: Yes.

11 MR. MARCHANT: -- brief redirect, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MARCHANT:

14 Q Ms. Adams, to be clear, when you were arrested in
15 either January or February of 2013, were you pregnant at
16 that time?

17 A Yes.

18 Q And how far along were you?

19 A Seven and a half months.

20 Q And when was your son born?

21 A April 3rd, 2013.

22 Q 2013. And the interview that we just watched was in
23 May of 2015; correct?

24 A Yes.

25 MR. MARCHANT: Thank you.

1 I have no further questions.

2 THE COURT: Recross?

3 MR. TONEY: None, sir.

4 THE COURT: Thank you. Thank you very much,

5 Ms. Adams.

6 You may step down.

7 All right. Your next witness, Solicitor.

8 MR. MARCHANT: May it please the Court.

9 The State calls Investigator Wayne Campbell.

10 MR. STEELE: Your Honor, before he testifies, does
11 the -- is the Court inclined to rule on my motion to be
12 relieved?

13 MR. MARCHANT: And, Your Honor, I -- I guess, at this
14 point in time, I have another matter to take up outside
15 the presence of the jury, so.

16 THE COURT: Let me -- how long is all that going to
17 take?

18 I don't want to leave the jury sitting back there.
19 If it's going to take a while --

20 MR. MARCHANT: For me, it's two or three minutes.

21 MR. TONEY: Judge, if I could have like five minutes
22 for -- just for a break. I mean, I won't take more than
23 five. I know the Court isn't inclined to grant these 15
24 minute recesses. But I just need like five or four
25 minutes to go downstairs and get something.

1 THE COURT: All right. Ladies and gentlemen, step
2 out. And we'll take no longer than a 10-minute recess.

3 You may step out now.

4 MR. TONEY: Thank you. I'll be right back.

5 THE COURT: I'm going to address Mr. Steele about his
6 motion.

7 MR. TONEY: Oh, I'm sorry.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 4:19 p.m.)

10 THE COURT: Mr. Steele, I'm going to take it under
11 advisement.

12 MR. STEELE: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Steele.

14 MR. STEELE: With the Court's permission, I'm going
15 to leave the courtroom.

16 THE COURT: Yes, sir.

17 MR. MARCHANT: Don't go too far yet.

18 May it please the Court, Your Honor.

19 Ms. Adams did plead guilty on May the 20th of 2015.
20 And, obviously, following what I was under the impression
21 of would be her cooperation and testimony, she was to be
22 sentenced. I'm not asking the Court to sentence her right
23 now. I would like her to be sentenced at the conclusion
24 of this trial.

25 My request of the Court is that back in May of 2015

1 when she pled, she was in the detention center and Judge
2 Gary Hill set a \$25,000 bond on her with which she posted
3 several days or weeks later. And she has been out of the
4 detention center awaiting sentencing on her case.

5 Considering what has happened today, as well as what I
6 perceive to be the position and demeanor of Ms. Adams, I
7 don't have any confidence that she would show back up for
8 sentencing.

9 So I would ask the Court to revoke her bond and hold
10 her in the detention center until she can be sentenced
11 later this week.

12 MR. STEELE: Your Honor, I would strenuously -- is
13 Your Honor ready for me on that?

14 THE COURT: Where is Ms. Adams?

15 (WHEREUPON, Ms. Mercedes Adams raised her hand.)

16 THE COURT: Step back around here by your attorney.

17 MR. STEELE: Stand here next to me.

18 Your Honor, I would strenuously object on these
19 grounds. First of all, today is Tuesday. I advised
20 Ms. Adams that she needed to be in court yesterday
21 morning, Monday, at 10:00. She, actually, called me last
22 week to confirm that time. She was here yesterday morning
23 at 10:00. I was here to meet her. I told her just to be
24 around here until her time for testifying came. She did.
25 She came back this morning. She was here at the appointed

1 time today. She has, actually, come to me every time I've
2 ever needed to talk to her.

3 THE COURT: Let me quote the late Honorable Walter
4 Bristow.

5 MR. STEELE: Yes, sir.

6 THE COURT: I've heard enough.

7 MR. STEELE: All right, sir.

8 THE COURT: She's under a bond.

9 Solicitor, tell Mr. Steele now if you want her to
10 report every day for the remainder of this week. I'm not
11 going to revoke her bond.

12 MR. MARCHANT: All right, Your Honor.

13 THE COURT: I'm not going to revoke her bond.

14 MR. STEELE: Thank you, Your Honor.

15 THE COURT: And I understand the State's position. I
16 don't think it's draconian. However, I understand her
17 position, too, quite frankly, from a point of view of just
18 humanities sake. And, like I say, I don't think the State
19 is being draconian. If she fails to appear when you tell
20 her to be here, I'm going to have you make a motion and
21 I'm going to issue a bench warrant.

22 MR. MARCHANT: Considering that, Your Honor --

23 THE COURT: Just have her report when she's supposed
24 to report. You tell her. And I'm going to see where we
25 go with the remainder of the trial. And I believe she

1 will report. I believe she will.

2 MR. STEELE: I have the same confidence in her.

3 THE COURT: Where's she going to go? She's got a
4 child that's less than three years old, I guess. She's
5 got a job. She's getting her GED. I'm not going to
6 revoke her bond.

7 So just tell her when you want her here, notify her.
8 And if she's not here as directed by the Solicitor to her
9 attorney to her, I'm going to issue a bench warrant.

10 MR. MARCHANT: All right.

11 THE COURT: All right.

12 MR. MARCHANT: Thank you, Your Honor.

13 THE COURT: So I'm going to take your motion for
14 relieving counsel under advisement.

15 Thank you very much.

16 The Court will be in recess for about 10 minutes.

17 MR. TONEY: Five minutes, sir, or a few more?

18 THE COURT: I said about 10. I talked through most
19 of it.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Anything before we bring in our jury from
22 the State?

23 MR. MARCHANT: No, Your Honor.

24 THE COURT: From the Defense?

25 MR. TONEY: Nothing from the Defense.

1 (WHEREUPON, the jury came into open court at
2 approximately 4:31 p.m.)

3 THE COURT: Ladies and gentlemen, I would like to get
4 through one more witness today, if we could. We'll press
5 on.

6 Solicitor, you may call your next witness.

7 MR. MARCHANT: Yes, sir, Your Honor.

8 May it please the Court.

9 The State calls Investigator Wayne Campbell.

10 THE CLERK: Sir, if you'll, please, come forward.
11 Place your left hand on the Bible and raise your right
12 hand.

13 THE BAILIFF: Face the Clerk.

14 WHEREUPON,

15 WAYNE TAYLOR CAMPBELL,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Please be seated.

18 And would you, please, state your name for the
19 record?

20 THE WITNESS: It's Wayne Taylor Campbell.

21 THE CLERK: Thank you.

22 THE COURT: All right. Solicitor.

23 DIRECT EXAMINATION

24 BY MR. MARCHANT:

25 Q Investigator Campbell, where are you employed?

1 A The Greenville County Sheriff's Office.

2 Q And, presently, what are your duties with the
3 Greenville County Sheriff's Office?

4 A They refer to my job as a homicide investigator, but
5 I deal with violent crimes.

6 Q So you have crimes other than homicides you deal
7 with?

8 A Yes, sir. I deal with attempted murders, as well as
9 kidnappings, also.

10 Q And how long have you been in that capacity with the
11 sheriff's office?

12 A Since August of 2009.

13 Q And prior to August of 2009, what were your
14 responsibilities with the sheriff's office?

15 A I came to Greenville County back in December of 1998
16 for three years. I was with the Department of Public
17 Safety as a forensic crime scene technician. Then I
18 transferred to the sheriff's office and have been in
19 investigations since February of 2002.

20 Q Let's talk about your time with the forensics
21 department. What were [sic] your training to be a
22 forensics officer, and what type of things do forensics
23 officers do at crime scenes?

24 A Basically, I was -- went to various schools on how to
25 enhance fingerprints, latent fingerprints, also, read

1 fingerprints, develop them, basically, using chemicals,
2 photography classes, things of that nature.

3 I had worked my way up to sergeant within that period
4 of time. And, basically, what we did in our crime scene
5 unit is document, collect, and preserve evidence.

6 Q Okay. Has that training and experience helped you in
7 the homicide division?

8 A It does.

9 Q And you went to the Criminal Justice Academy?

10 A Numerous times.

11 Q And your certifications are up-to-date, and all that
12 good stuff?

13 A Yes, sir.

14 Q And do you frequently dress like this, or do you,
15 typically, wear a uniform?

16 A I would prefer to wear just a pair of dress slacks
17 and a shirt, but, sometimes, I have to wear a tie.

18 Q Do you have any occasion to wear a uniform?

19 A Not anymore, no.

20 Q Let's go back to this incident. How is it that you
21 were the investigator assigned to this particular case?

22 A In homicide, we have -- I'm one of six investigators.
23 So we have a weekly rotation for what we call on-call
24 week. Every six weeks, I'm on call.

25 In this particular case of December 11th of 2012,

1 that was the week I was on call.

2 Q Okay. And, typically, how many calls do you respond
3 to when you're on call?

4 A It varies. We don't have very many great weeks,
5 which means we don't get a phone call. It's usually
6 anywhere between four or five to it can be up to double
7 digits.

8 Q And when you received the call about this incident,
9 where were you?

10 A The best I remember, at home in bed.

11 Q And did you get up and come to Landford Drive?

12 A I did respond at the response -- the request of
13 Sergeant Bryant, who is a uniform patrol sergeant.

14 Q And what's the purpose and nature of having an
15 investigator respond to the crime scene, as opposed to
16 just having the uniform deputies handle the situation?

17 A When you respond to a call of this nature where
18 someone was violently killed, we respond to work hand in
19 hand with the coroner's office, as well as the forensic
20 personnel, crime scene people to try to preserve and
21 assist them in collecting evidence. And the way you know
22 what to collect is you start asking questions.

23 So as crime scene is working the scene, we and other
24 investigators start asking the questions so that we will
25 know what to ask them to collect, or preserve, or even

1 document so that it can be evaluated at a later time.

2 Q And at #1 Landford Drive back in December of 2012,
3 did you instruct and direct forensics to do certain things
4 at the scene that night?

5 A I did.

6 Q Okay. And we've seen various pieces of evidence, one
7 of them being State's Exhibit No. 33, which is the shell
8 casing that came from the nine-millimeter. Did you
9 instruct them to collect that piece?

10 A They pretty much knew to collect it. Because we did
11 a walk through of the crime scene before they even
12 started -- even pulled out a camera to document.

13 So we went through and discussed what evidence was
14 obvious. And this piece of evidence was obvious.

15 Q Okay. And where exactly did y'all locate what's been
16 marked as State's Exhibit No. 33, but is identified in
17 State's Exhibit Nos. 9 and 10?

18 A Are you talking about the cartridge casing in the
19 picture?

20 Q So what's in evidence as State's Exhibit No. 9, where
21 was this piece of evidence located?

22 A This brass cartridge casing right here was in the
23 doorway of somewhere right over in here. That was right
24 outside the front door of ■ Landford Drive, which was the
25 victim's residence.

1 Q Okay. I'm showing you what's been marked as State's
2 Exhibit No. 11. Can you identify for the jury where that
3 piece of evidence is?

4 A It's right here where this card is located. You can
5 see the doorway, his moped, and then it's right in this
6 area in here.

7 Q Okay. Did you, also, do a walk through of the scene
8 that evening?

9 A We did.

10 Q And in doing a walk through, I want to show you
11 what's been marked as State's Exhibit No. 41. Do you
12 recognize that?

13 A I do.

14 Q Okay. Is it a fair and accurate depiction of how
15 y'all found that piece of evidence --

16 A Yes, it is.

17 Q -- that evening?

18 A Yes.

19 MR. MARCHANT: The State would move State's Exhibit
20 No. 41 into evidence.

21 THE COURT: Mr. Toney.

22 MR. TONEY: No objection.

23 THE COURT: State's Exhibit No. 41 is in evidence
24 without --

25 MR. TONEY: I'm sorry. I meant to stand.

1 (WHEREUPON, State's Exhibit No. 41 was admitted into
2 evidence.)

3 BY MR. MARCHANT:

4 Q All right. Mr. -- Investigator Campbell, do you
5 recall where you located these items that are depicted in
6 State's Exhibit No. 41?

7 A These were on a dresser in the victim's bedroom --
8 Joseph Crite's bedroom. He was lying between this piece
9 of furniture and the bed in the master bedroom. And this
10 was on top of that particular dresser.

11 Q I'm going to show you State's Exhibit No. 27 that's
12 in evidence. Can you identify for the jury where those
13 items are that you're referring to?

14 A They were right here.

15 Q Okay. And moving back to State's Exhibit No. 41, did
16 you have the occasion to count the money that was in that
17 can, as well as the bank bag?

18 A Captain Watley with the sheriff's office, myself, and
19 Forensic Technician Iona Otten counted the amount of money
20 in the bank bag. It's a green bank bag with a zip and
21 then a Frito Lay-type empty container. In the bank bag
22 right here, we had \$36, \$19 in one dollar bills. In this
23 particular Frito Lay container, we had \$11 dollars, 11
24 bills -- one dollar bills, and \$6 in coins.

25 Q Did you turn that evidence back over to the family?

1 A Yes, it was.

2 Q I'm going to show you State's Exhibit No. 15. If you
3 would, identify for the jury what's already in evidence.
4 What does this photograph show?

5 A As you come in the door that we were at earlier where
6 the cartridge casing was found right outside on the patio
7 stoop or door stoop, this would be to your left. As when
8 you come in, this would be to the left. You've got a
9 doorway here.

10 Q Okay. What is the mark above?

11 A Are you talking about this mark --

12 Q Yes, sir.

13 A -- right here.

14 Q Yes, sir. I'm going to show you State's Exhibit
15 No. 16.

16 A This is where we believe a projectile struck the
17 wall. Because there were fragments and dust from this
18 particular concrete cinder wall down on the floor here.
19 So we feel like that that was fairly fresh, because he had
20 a lady that came through and cleaned his house once a
21 week --

22 MR. TONEY: Objection to any testimony about what
23 other people might have felt. He should only testify
24 about what he believes. And then, of course, he should
25 lay his foundations.

1 THE COURT: Well, I'm going to allow that question
2 and answer to stand.

3 MR. MARCHANT: Thank you, Your Honor.

4 BY MR. MARCHANT:

5 Q As it relates to State's Exhibit Nos. 43, 44, 45, 46,
6 and 47, these fragments that James Armstrong has already
7 testified to about, do you recall where these fragments
8 were found?

9 And before you answer that, I'm going to pull up
10 State's Exhibit No. 7 so you can identify for the jury
11 where those items were located. And, if you would, first,
12 identify where that piece of wall is that you just spoke
13 about.

14 A This is the doorway. And this is the television set
15 here. You've got a doorway right here in this area. It's
16 approximately five feet eight inches up the wall. Here is
17 where you saw the mark, the indention in the concrete
18 block.

19 About over in this area, there was a small fragment
20 of metal, which appears to have ricocheted, hit the
21 ceiling, and then over in front of the refrigerator was a
22 fragment. Over in front of the sink here were fragments.
23 So most of the fragments were in the kitchen area here.

24 Q All right. Thank you.

25 How many residents or witnesses were you able to talk

1 to out on the scene at Landford Drive that evening?

2 A That particular evening?

3 Q Yes, sir.

4 A Apartment ■■■, which was next door, I spoke with one
5 of the young ladies there. But I don't recall speaking to
6 anyone other than Kendrick and Antwon Waller, Ms. Gamble,
7 and then the lady in apartment ■■■.

8 Q So the lady in apartment ■■■ was or was not home that
9 night?

10 A She was home that night.

11 Q Okay. Did you, subsequently, do some follow-up
12 investigation and go back and speak to or attempt to speak
13 with other residents of that complex?

14 A Numerous times.

15 Q Okay. And without telling us what any of them said,
16 did you gain or ascertain any information that was useful
17 in your investigation?

18 A It seemed like every time I would go over and locate
19 someone that lived in the apartment complex, they would
20 give a little bit or piece of information that would lead
21 you to something else, which led to something else. So I
22 ended up speaking to several of the residents more than on
23 one occasion.

24 Q And did you, in fact, have the opportunity to speak
25 with someone who was in the parking lot that evening by

1 the name of Jimmy Cobb?

2 A Yes, sir, I did.

3 Q Okay. And did you make any promises to him about
4 what you would do for him if he spoke to you?

5 A Mr. Cobb was concerned about the charges, at that
6 point in time, on him. And, basically, you saw the video.
7 It was -- he was informed that I couldn't do anything but
8 make a recommendation, that it would be up to someone
9 other than I, basically, a solicitor as far as that end.

10 So, no, I mentioned I would speak to them, to which I
11 did. And I just told them that he had given information
12 in a murder. What they did with it from that point on, I
13 am unaware.

14 Q Did you speak with the other gentleman that he
15 referenced earlier, Sanchez Allman?

16 A Yes, sir, I did.

17 Q And where did you speak to Mr. Allman?

18 A I spoke with him at the law enforcement center. In
19 fact, I spoke with Jimmy Cobb on two occasions, the first
20 you witnessed. Mr. Allman I, also, spoke to on two
21 occasions.

22 Q And did they provide you -- without telling what they
23 told you, did they provide you with information to help
24 you advance the investigation?

25 A Yes, sir, they did.

1 Q Sanchez Allman, did you serve Mr. Allman with any
2 papers to be here for court today?

3 A I did.

4 Q Okay. Do you know where Mr. Allman's whereabouts are
5 today?

6 A I have no idea.

7 Q On Monday of this week, was -- what steps did you
8 take to ensure that Mr. Allman was going to be here?

9 A Since he did not show for his subpoena to be in
10 court, a bench warrant was issued for his arrest. And he
11 was sought last night and this morning.

12 Q Okay. At this point in time, being 4:45 in the
13 afternoon on Tuesday, have y'all located him?

14 A My phone hasn't rang yet.

15 Q So following the information that Mr. Cobb,
16 Mr. Allman, and others had given to you, what did you do
17 to direct the investigation towards potential persons of
18 interest or suspects?

19 A Mr. Adams' name came up through the investigation.
20 So we started looking for Brandon Adams so that we could
21 interview him, and see what information he could provide
22 for us. And he was located in a motel just across the
23 county line in Anderson.

24 Q And do you recall the date that he was located in the
25 motel?

1 A January of 2013. But the exact date, I'm not
2 familiar.

3 Q Did you, subsequently, have an opportunity -- let me
4 back up. Did you go to the motel that day?

5 A It was during the early morning hours. And, yes,
6 sir, myself and Investigator Devon Hoover responded to
7 that location.

8 Q And did you, in fact, secure a search warrant for the
9 motel room and locate what's in evidence as State's
10 Exhibit No. 42?

11 A Anderson County Deputy Matt Voigt -- I guess I'm
12 pronouncing his name right -- secured a search warrant
13 from a magistrate in Anderson County. And we searched
14 room 203.

15 Q And did you locate State's Exhibit No. 42?

16 A Yes, sir, the firearm, we did.

17 Q And did you take custody of it at that time?

18 A They completed a return on the search warrant. And
19 it was turned over to me using a property and evidence
20 form.

21 Q So Mr. Adams was placed in detention at that time; is
22 that correct?

23 A He was located at that time.

24 Q Okay. And then let's move forward to February the
25 11th of 2013. Did you have the occasion to speak with

1 him?

2 A Yes, I did.

3 Q Okay. I'm showing you what's been marked as State's
4 Exhibit No. 1. Could you tell the Court if you recognize
5 that piece of information?

6 A This is a Miranda form that we use that at the bottom
7 of it has what we call a waiver of rights section. And,
8 on this particular day, he was informed -- it was -- he
9 and I were in an interview room being recorded. And,
10 basically, I informed him what he was being interviewed
11 for.

12 Q Okay. And was there anybody else present during
13 this?

14 A Just the two of us.

15 MR. MARCHANT: I move State's Exhibit No. 1 into
16 evidence.

17 MR. TONEY: No objection.

18 THE COURT: State's Exhibit No. 1 is in evidence.

19 (WHEREUPON, State's Exhibit No. 1 was admitted into
20 evidence.)

21 BY MR. MARCHANT:

22 Q With respect to this, would you, please, tell the
23 jury what that form is, and why you would review that form
24 with Mr. Adams on that date?

25 A Basically, Miranda is an advisement that anyone that

1 is either not free to leave or being accused of a crime,
2 you, basically, tell them, you have a right to a lawyer.
3 And that whatever we discuss if they decide to talk, it
4 can be used against them in court.

5 So, basically, I read the top part here to them. And
6 then I ask them to read the subsequent waiver part to me.

7 On this particular day, I read it just like I
8 normally do the top part. I put the date and time on it.
9 When it came time for him to read the waiver, basically,
10 he said he had difficulties reading.

11 So, at that point in time, I asked him his education.
12 He said he had gone into the eleventh grade. And I asked
13 where, which he said Carolina High School here in
14 Greenville County.

15 And so I said, So you completed the tenth grade. So
16 you were in the eleventh grade when you quit?

17 He said, Yes.

18 And he, basically, told me that, you know, sometimes
19 the school system sort of moves you along through the
20 grades. And I told him I understood.

21 So with this thing trying to read it upside down, I
22 read the waiver form to him and underlined several
23 specific words on it, which were promises, threats,
24 pressure, and coercion.

25 Q And what -- if you would, start with the very first

1 line of information on there. And tell the jury what you
2 read to him before you read his waiver.

3 A Do you want me to read it?

4 Q Yes, sir. Word for word, please.

5 A Basically, the date was February 11th, 2013. The
6 time was 13:21 hours.

7 Before we ask you any questions, you must understand
8 your rights. You have the right to remain silent.
9 Anything you say can be used against you in court. You
10 have the right to talk to a lawyer for advice before we
11 ask you any questions, and to have him with you during
12 questioning. If you have no money to pay a lawyer's fee,
13 the Court will appoint one to represent you without cost,
14 if you wish.

15 If you decide to have a lawyer present -- excuse me.
16 If you decide to answer questions now without a lawyer
17 present, you'll still have the right to stop answering at
18 any time. You, also, have the right to stop answering at
19 any time until you talk to a lawyer.

20 Q And, at that point in time, did you ask Mr. Adams
21 whether or not he wanted to speak with you?

22 A Yes. I asked him if he understood, and if he was
23 willing to speak to me. And he said the affirmative with
24 a "uh-huh," or a "yes," and a head motion up and down.

25 Q Following that, what is the next step you took?

1 A Since he said he had trouble reading, I read the
2 waiver of rights to him. And, basically, the waiver says
3 this, I have read this statement of my rights. And I
4 understand what my rights are. I am willing to make a
5 statement and answer questions. I do not want a lawyer at
6 this time. I understand and know what I am doing. No
7 promises or threats have been made to me. And no pressure
8 or coercion of any type -- of any kind has been used
9 against me.

10 Q Where -- we've seen several interviews in this case.
11 Where was this interview taking place?

12 A The Greenville Police Department CID interview room.

13 Q And is it, essentially, the same room that we've seen
14 previously here?

15 A The first video that you saw with Mr. Cobb, that was
16 the room.

17 Q Did you deny Mr. Adams the ability to use the
18 restroom?

19 A No, sir.

20 Q Did he ask for a drink of water, or anything that you
21 denied him?

22 A No, sir.

23 Q Did he ask for an attorney?

24 A No, sir.

25 Q So, prior to any questioning you had of him, did you

1 make any threats to him?

2 A No, sir.

3 Q Did you make any promises?

4 A No, sir.

5 Q Did you tell him what would happen to him if he
6 didn't speak with you?

7 A No, sir.

8 Q What -- following the waiver of rights, did he agree
9 to speak with you?

10 A He signed the form. I put an "X" on the form showing
11 where to sign. He signed it. And then I put my scribbly
12 signature beside my name.

13 Q Okay. Did you -- following that, did you inform him
14 of why he was there, and what you were investigating?

15 A He was, basically, informed before I gave Miranda to
16 him of what we were going to be talking about, which was
17 the murder of Joseph Crite, and that his name had come up.
18 And, at that point in time, he wanted to know who or whom
19 had stated his name in the investigation.

20 Q And did you tell him who or whom had included him?

21 A Well, at that point, I told him we had to do the
22 Miranda. When we finished, no, sir, I never told him as
23 far as who implicated him.

24 Q Okay. Well, following the waiver and y'all's
25 conversation, what did he tell you about his knowledge or

1 involvement in this particular incident?

2 A He said he didn't know anything about any murder. He
3 didn't know where Landford Drive was. I, basically, asked
4 him about a firearm -- that particular firearm that was
5 found at the Executive Inn in room #203. He, basically,
6 said he didn't know nothing about it. His brother had
7 been charged with it. He had never had possession of it.
8 In fact, he had never owned a gun before.

9 And then he was asked about a gray-colored car. And
10 he was emphatic, I don't know what you're talking about.

11 So I just asked him point blank, Have you ever been
12 to Landford Drive?

13 No. I've never been to Landford Drive.

14 And then -- I realized then that I was going to get
15 nowhere with this interview. So, as we were concluding,
16 he made a quick remark that, you know, I heard Tab did it.

17 And I looked at him and I said, I don't think so.

18 And then he was escorted from the room.

19 Q Did you have the occasion on that date on the
20 waiver -- when did that interview take place?

21 A February 11th, 2013.

22 Q Did you, subsequently, have a second occasion to
23 speak with Mr. Adams?

24 A I was asked to go and escort Mr. Adams from the
25 Greenville County Detention Center over to the homicide

1 division at the law enforcement center. That was on
2 September 18th of 2014.

3 Q So about 18 months later?

4 A Correct, sir.

5 Q And what was the purpose of bringing Mr. Adams over
6 on September 18th of 2014?

7 A Well, that particular day, his attorney was Matt
8 Canady, a local attorney. He had made contact saying that
9 Mr. Adams wanted to speak with the Solicitor's Office and
10 myself.

11 Q Okay. So who was present for that interview?

12 A In that interview, it was Lucas Marchant with the
13 Solicitor's Office, Mat Canady, and Brandon Adams, and
14 myself.

15 Q Before any discussion or questioning began at that
16 point in time, was there any promises made to the
17 Defendant?

18 A No. He was allowed to meet in private with his
19 attorney for a few minutes before the interview. And once
20 he had had the privilege to meet with his attorney, he --
21 his attorney told me -- told us that he was ready to talk.

22 Q Okay. Tell the jury what he told us that day.

23 A Basically, he said that he was driving and that
24 Mercedes Adams, his sister, and Michael, a black male that
25 he didn't know the last name, were in the car going over

1 to Landford Drive. His intentions -- or their intentions
2 was to purchase \$40 in marijuana.

3 Upon their arrival, they get out of the car, the two
4 males, go to Joseph Crite's apartment, knock on the door.
5 He allows them in. He purchased \$40 worth of marijuana.

6 Then he goes to the restroom or -- and while he's in
7 the restroom, he hears three gunshots. At this time, he
8 starts running from the apartment. He has a firearm in
9 the left hand, which he's exiting the apartment, it
10 accidentally discharges.

11 He runs to the car, gets in the front seat where
12 Mercedes is in the driver's seat. And, a short time
13 later, Michael comes and gets in the car. And they drive
14 off and go to Boulder Creek.

15 When he was asked if they said anything along the way
16 to Boulder Creek, he said they listened to the radio and
17 there was no real communication as far as -- other than
18 the radio.

19 Q In referring to the firearm, did he, also, make any
20 comments to you about the firearm that you found in the
21 motel room, which is State's Exhibit No. 42?

22 A He was asked about that firearm that was recovered at
23 the motel room. And he said that was his firearm. That's
24 the one he had that night.

25 Q What did he tell you about his relationship with

1 Mr. Evans, and physical characteristics, last name, things
2 of that nature?

3 A He didn't know the last name, but he knew him through
4 Mercedes Adams, his sister, through Michael Anderson, a
5 young man that lived with them and he considered to be his
6 brother. That's how he knew Michael Evans, or, at this
7 point in time, Michael is the way he referred to him. He
8 described him as having a short fro and maybe being a
9 little bit taller than he.

10 Q What did he tell you about what occurred at
11 Mr. Crite's apartment before they went inside?

12 A Well, when we were discussing it, he stated that they
13 had talked with Sweet Pea, or Sanchez Allman. I asked him
14 about a cigarette.

15 At first, he said, I had a half a pack of cigarettes.

16 And I said, No. Tell me about the cigarette.

17 And he said that he had given Sanchez Allman 50
18 cents, and asked him to go purchase a cigarette.

19 So Sanchez Allman walks to Joe Crite's apartment,
20 purchases a cigarette, and comes back and gives it to him.
21 And that's right before they walked over to Mr. Crite's
22 apartment.

23 Q What did he tell you about whether or not he had seen
24 Michael Evans with a firearm?

25 A He stated that he never saw Michael with a firearm

1 before, during -- meaning going over there, or during the
2 commission, or after.

3 Q What did he tell you about when he and Mr. Evans
4 first got to Mr. Crite's door?

5 A They knocked on the door -- at first, he said he
6 knocked on the door and went in, as I told you earlier.
7 When he was asked, more specifically, about it, he stated
8 that they knocked on the door the first time. Mr. Crite
9 came to the door, opened it, and then closed it. They
10 knocked on the door a second time and Mr. Crite opened the
11 door, and they went in.

12 Q Did you question him about any items that were taken
13 from the home that evening?

14 A The bottle of liquor had come up in several
15 interviews. So he was asked about it. He was emphatic
16 there was no robbery. He didn't know anything about a
17 bottle of liquor.

18 Q What about any -- anything else of value, money,
19 guns, drugs from the home?

20 A Well, we knew that there was supposed to be \$1,200
21 missing and a 380 firearm. But he stated that he was not
22 aware of that.

23 Q Following that interview, did you have the occasion
24 to speak with Mr. Adams again?

25 A No, sir.

1 Q So we've heard several names here today, one of them
2 is Michael Anderson, one of them is Muniashia Harper. Are
3 they charged in this incident at this time?

4 A Yes, they are.

5 Q There's been a lot of discussion about a gentleman by
6 the name of Michael Evans. Are they charged -- is he
7 charged?

8 A At this time, he's not charged. The investigation is
9 still going. There's no concrete evidence to tie him to
10 this. And until that day, he won't be charged.

11 Q Well, let's talk about how you ended up charging
12 Michael Anderson, as well as Muniashia Harper.

13 A They happened to both be with Mr. Adams in the motel
14 room at the Executive Inn. And Mr. Anderson -- well, both
15 were interviewed. Mr. Anderson was interviewed multiple
16 times. Every time he was interviewed, he gave a little
17 more information that only someone that had been there or
18 talked to somebody that had been there would have known.

19 So we visited him several times. And then on like
20 the third occasion, he admitted to being a passenger in
21 the car. And he gave some pertinent information.

22 Q And are the charges still pending against Michael
23 Anderson today?

24 A Yes, they are.

25 Q All right. Now, let's go back briefly and discuss

1 things that were done by forensics at ■ Landford Drive.
2 Did you request that they -- forensics conduct fingerprint
3 analysis of any surfaces in the home?

4 A Basically, we knew that the doors -- the screen door
5 and the front door had been handled. So, therefore, we
6 asked for DNA swabbing to be done, as well as
7 fingerprint -- to be processed for latent fingerprints.

8 Q And throughout the course of this investigation, were
9 you, also, able to secure a DNA sample from various people
10 involved in this incident?

11 A Yes. If they were implicated at any point, they were
12 asked for a DNA swab.

13 Q And did you, subsequently, have the local DNA lab
14 here in Greenville County conduct analysis of what
15 forensics found and compare it to the various samples that
16 you got from people in this case?

17 A On certain pieces of evidence, yes, we did.

18 Q Okay. And out of all the pieces of evidence that
19 forensics -- the DNA lab conducted their analysis on, was
20 there any result that you received that helped advance
21 this investigation?

22 A You had something that was consistent with -- from a
23 bag that was wrapped around the firearm that we've seen
24 earlier.

25 MR. TONEY: Objection, failed to lay foundation. It

1 calls for hearsay.

2 THE COURT: That's overruled.

3 BY MR. MARCHANT:

4 Q Was there anything else of benefit that you were
5 provided that allowed you to advance the investigation as
6 a result of any DNA analysis or fingerprint analysis?

7 A There was nothing concrete. It was "consistent with"
8 is the way it was put.

9 MR. MARCHANT: Thank you, Investigator Campbell.

10 Please answer any questions Mr. Toney may have.

11 THE COURT: Thank you, Solicitor.

12 CROSS-EXAMINATION

13 BY MR. TONEY:

14 Q So you have no DNA analysis; correct, no DNA
15 evidence?

16 A Everything was checked and there was one item which
17 came back consistent, but nothing concrete where it's
18 absolute, no.

19 Q There's a charge of burglary; correct?

20 A Sir?

21 Q There's a charge of burglary here; correct?

22 A In this case?

23 Q Yes.

24 A He was a charged with burglary.

25 Q There were no signs of forced entry whatsoever;

1 correct?

2 A No, sir.

3 Q And you heard the sons testify that their dad sold
4 crack, liquor, and cigarettes out of the house; correct?

5 A Yes, sir.

6 Q And the father -- they testified their dad had been
7 to prison for crack cocaine. You heard that testimony?

8 A I did.

9 Q And your -- you heard all the testimony from various
10 people who were around. And it seemed like just about
11 everyone -- or almost everyone who came to the scene was
12 either just out of prison for crack or on probation for
13 crack; correct?

14 A I don't know if I would go that far.

15 Q What is a crack house?

16 A It's usually a place that sells crack or, you know,
17 other items.

18 Q Is this a place that sells crack, or other items?

19 A At one time, he did sell crack.

20 Q Okay. There's no indication that he stopped selling
21 crack, even on this night; correct?

22 A He definitely stopped selling it on this night.

23 Q Okay. But there's no indication that he wasn't
24 selling crack earlier that day; correct?

25 A You know, taking the sons -- during the interview,

1 they said that he was out of crack.

2 Q Okay. This is a crack house; correct?

3 A Again, he sold crack.

4 Q Okay. So it's a crack house. He sold crack --

5 MR. MARCHANT: Judge, I think we've asked and
6 answered this multiple times. I object.

7 MR. TONEY: I haven't asked it multiple times. I
8 have to follow through and get a straight answer, Your
9 Honor.

10 THE COURT: You may ask the question, Mr. Toney.

11 BY MR. TONEY:

12 Q Is this -- so this is a crack house; correct?

13 A He sold crack from it. So --

14 Q Okay. And you saw the pictures with all the beer in
15 the fridge?

16 A I saw the pictures and saw it in person.

17 Q And all the cases of beer underneath the kitchen
18 counter, in the back, and -- and lots of beer; correct?

19 A He had beer and liquor there. That's correct.

20 Q And you heard the sons say he bought liquor by the
21 case; correct?

22 A I believe that's what he said.

23 Q So, apparently, they sold -- the testimony is they
24 sold the beer in singles. And they, also, sold loosies,
25 or cigarettes --

1 MR. MARCHANT: Judge, I'm going to object. I mean,
2 this information or line of questioning would be more
3 relevant for the individuals that provided this
4 information. I mean, Investigator Campbell is just simply
5 going to be repeating any answer that he's overheard in
6 the courtroom.

7 THE COURT: Yes, sir.

8 The photographs are in evidence. I mean, it's in
9 evidence.

10 I mean, you may ask the question, Mr. Toney.

11 BY MR. TONEY:

12 Q So this is a crack house that did quite a bit of
13 business; correct?

14 A From what I heard earlier yesterday, I would say yes.

15 Q Okay. And there were people that smoked crack
16 outside the house; correct?

17 A I would assume so.

18 Q And people that sort of lurked in the area, in the
19 neighborhood waiting to buy more crack, or smoking crack;
20 correct?

21 A That's --

22 THE COURT: You need to rephrase that question. I
23 mean, you need a time frame.

24 MR. TONEY: Yes, sir.

25 THE COURT: There's nothing in the record -- you need

1 to --

2 MR. TONEY: I'll just move on. I appreciate it.

3 Thank you

4 BY MR. TONEY:

5 Q You have no receipts or anything showing that \$1,200
6 was taken, do you, or any kind of physical evidence that
7 there was, actually, \$1,200 in that house?

8 A It's just coming from family.

9 Q Okay. And you, actually, showed pictures of money
10 just sitting around in the house; correct, money which was
11 not taken?

12 A It was atop the dresser in the bedroom -- master
13 bedroom.

14 Q Is it possible there may not have even been a robbery
15 since there was money just laying around?

16 A During the investigation, we learned that there was,
17 at least, a bottle of liquor that was removed from the
18 house.

19 Q Okay. And, yet, this is a house that sold liquor;
20 right?

21 A It had liquor there. So I have no reason to doubt
22 that a bottle of liquor didn't walk out the door.

23 Q I mean, let's be honest. Your own witness here has
24 testified they sold liquor out of the house?

25 A And that's why I'm saying it would be easy to say

1 that someone took a bottle of liquor from that house.

2 Q Okay.

3 A Because he sold it. It's there.

4 Q Several people have mentioned a Michael Evans?

5 A Yes, sir.

6 Q And, yet, there's been no arrest of Michael Evans;
7 correct?

8 A That's correct.

9 Q Now, that night, you only spoke to two ladies in the
10 apartment complex the night of the -- that you went there?

11 A The night that -- of the murder. And you've got to
12 think, this is like 2:00 or 3:00 in the morning. And
13 you're in a high crime area, which we've established
14 through you that it's a crack area. Okay. When you pull
15 up the police in marked units, rope off an area, usually
16 the people in the area sort of clear the area.

17 So the number of people left at the scene to talk
18 with were the two Waller boys, Ms. Gamble, who was with
19 one of the Waller boys, meaning Antwon or Kendrick,
20 because they were concerned enough that that was their dad
21 that was -- that had been shot and killed. And Ms. Gamble
22 was dating or living with one of these young men. So she
23 was concerned, also.

24 And the young lady in apartment ■■■, I might add was,
25 also, a relative of, I think, Ms. Gamble. I'm not for

1 sure on that. But I know she was a relative of one of the
2 Waller boys or Ms. Gamble, his girlfriend. So that's why
3 they stuck around and -- where a lot of people left.

4 Q This interview that you say you had with Mr. Canady
5 and Mr. Adams, did you videotape that interview?

6 A No, sir.

7 Q Did you get a written statement of that interview?

8 A I took notes at that interview.

9 Q But you didn't get a written statement signed by
10 Mr. Adams?

11 A No, sir, I did not.

12 Q Did he even sign a waiver of rights?

13 A There was no need to give Miranda.

14 Q Okay. And you questioned Jimmy Cobb in this case?

15 A I talked with him twice, yes.

16 Q Okay. The one we saw -- the interview on the CD, he
17 was speaking fast; correct?

18 A Not really.

19 Q You don't think so?

20 A No.

21 Q All right. And he was leaning against the wall?

22 A Yeah. I agree with you there.

23 Q And he was yawning; correct?

24 A It's 1:30, almost 2:00 in the morning, I was yawning,
25 too. You just couldn't see it.

1 Q And you know all -- his -- he's testified about his
2 background. I'm not going to go beyond what he's
3 testified. But you know, based on that, and you know
4 that -- as he's testified, clearly, several times over and
5 over, he was on crack cocaine; correct?

6 A You and I both watched the interview. And, at the
7 beginning of the interview, I asked his name, which he
8 provided, Jimmy T. Cobb.

9 And I asked, Talmadge for "T"?

10 That's correct.

11 I asked him name and date of birth. He quickly gave
12 it. Where do you lay your head down? The reason you ask
13 that is if I ask an address, they're liable to give a P.O.
14 box. Where do you lay your head down? He was quick to do
15 it. When I misspelled the street, what did he do? He
16 quickly spelled the street out for me and corrected me on
17 it.

18 If someone is on crack cocaine -- and I've
19 interviewed them before -- they are lethargic. They're
20 not crisp. They don't answer questions like he was doing.
21 He was more tired than he was high.

22 Q You didn't take any drug tests or anything that
23 night, did you?

24 A I've dealt with enough drunks and enough people on
25 drugs in the last 30 years to be able to tell when someone

1 is too intoxicated to do an interview.

2 Q And you didn't -- you know he was speaking quickly
3 and incoherently; correct?

4 A This is my first meeting with Jimmy Cobb. I do not
5 know how he talks. I don't know how clearly he speaks.
6 But I do know it was 1:30 in the morning. Because you can
7 look in the bottom left-hand corner of the vide and see
8 the time. It's early morning hours.

9 Q But you -- now that you've heard him speak, for
10 example, here today in court, you now know that he was
11 speaking quickly and incoherently; correct?

12 A Incoherent, no. He was speaking -- let's put it this
13 way. One, he didn't want to be in that room because I was
14 a police officer. You can go ask Jimmy Cobb. He's
15 sitting in the back of the room. And he'll be glad to
16 tell you. Law enforcement is not the place he wants to
17 be. A deputy sheriff is not who he wants to be talking
18 with. And what he can do to get out of there is what he
19 wants, whether it's to act sleepy, whether it's to act
20 like he wants to go to the detention center. Because he
21 wants to lay down and take a nap. Only he can answer
22 that.

23 But, in my opinion, that morning, he was not high.
24 He might have smoked a crack rock. But he was not high
25 enough to be incoherent, no.

1 Q So, in your opinion, he might have smoked a crack
2 rock --

3 THE COURT: That's total speculation --

4 BY MR. TONEY:

5 Q -- and he wasn't high enough --

6 THE COURT: Wait a minute. Wait a minute. That's
7 total, total speculation.

8 MR. TONEY: Okay.

9 BY MR. TONEY:

10 Q But it's your speculation --

11 THE COURT: No --

12 BY MR. TONEY:

13 Q -- you're just speculating; right --

14 THE COURT: Let me finish.

15 MR. TONEY: Oh, I'm sorry. I thought --

16 THE COURT: Speculation is not admissible. It's not
17 evidence.

18 MR. TONEY: Okay.

19 THE COURT: It's like rumor, innuendo, surmise. If
20 there's a basis for believing that, that's one thing. But
21 that's total --

22 MR. TONEY: I'm sorry. I thought --

23 THE COURT: -- speculation --

24 MR. TONEY: Your Honor, I thought it was him talking.
25 I didn't realize it was you. I beg your pardon.

1 THE COURT: Well, our voices are similar.

2 MR. TONEY: Okay.

3 BY MR. TONEY:

4 Q As to the gun, you weren't even able to find any
5 fingerprints on this gun; correct?

6 A That's correct.

7 Q And you, actually, charged someone else with
8 possession of that gun; correct?

9 A That's not correct.

10 Q No?

11 A No.

12 Q Now, how many people were in that hotel room?

13 A Four.

14 Q And Mr. Adams was only one of the people in that
15 room; correct?

16 A That's correct.

17 Q That gun was not found on him; correct?

18 A It was found in an air conditioning system wrapped in
19 a gray piece of plastic.

20 Q Now, the gun was not -- the room was not registered
21 to Mr. Adams; correct?

22 A It was registered to a Clinkscale, which is an alias
23 used by his sister, Porchae.

24 Q So of the four people in the room, the room wasn't
25 even registered to anyone in that room?

1 A They lied.

2 MR. TONEY: That's all the questions I have for this
3 witness.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. MARCHANT:

7 Q Investigator Campbell, who, other than Michael
8 Anderson, who's charged in the case, Mercedes Adams, who
9 is charged in this case, and Brandon Adams, who is charged
10 in this case, has provided you with information that
11 Michael Evans was involved?

12 A Muniashia Harper has mentioned his name. As far as
13 anyone else --

14 MR. TONEY: Objection. Hearsay.

15 THE COURT: Sustained.

16 BY MR. MARCHANT:

17 Q Without telling us who, has anyone else mentioned
18 Michael Evans name?

19 THE COURT: That would just be the same, Solicitor.
20 That would be an unknown hearsay declarant.

21 MR. MARCHANT: Very good, Your Honor.

22 Thank you, Your Honor.

23 The State has no further questions of --

24 THE COURT: Recross?

25 MR. TONEY: No recross.

1 THE COURT: Thank you. Thank you very much.

2 You may step down.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Madam Forelady, ladies and
5 gentlemen, I, perhaps, have gotten the mileage from the
6 jury room to the courtroom I wanted to get out of this
7 fine group for today. Perhaps, now would be a good time
8 to take our evening recess.

9 I remind you, during the recess, do not discuss the
10 case with anyone, fellow jurors, family, friends, or
11 anyone else. Do not read, watch, or listen to any news
12 accounts of the case. Do not do any independent
13 investigation or any investigation on the Internet.

14 You determine the case. You decide the case based on
15 the evidence and the testimony presented before you in the
16 courtroom, and by the sworn witnesses, physical items, and
17 evidence, and the law as I tell you the law is.

18 With that being said, I would ask you to, please, be
19 back promptly at 9:30 in the morning, promptly at 9:30.

20 And I hope that you all have a pleasant evening.

21 Thank you very much.

22 You're excused for the evening.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 5:20 p.m.)

25 THE COURT: All right. Court will be in recess until

1 9:30 in the morning.

2 MR. MARCHANT: Your Honor, briefly, before we break,
3 that is likely the State's last witness. I would rest in
4 the morning.

5 I didn't know if it would be beneficial to the
6 Defendant to have his rights visited with him --

7 THE COURT: I'll do it in the morning.

8 MR. MARCHANT: -- so he can have the evening to --

9 THE COURT: I'll do it in the morning.

10 MR. MARCHANT: Okay. Very well.

11 THE COURT: Thank you.

12 MR. TONEY: We're not going to testify, Judge.

13 THE COURT: Sir?

14 MR. TONEY: We won't be testifying, just for the
15 Court's edification.

16 THE COURT: Well, I'll do it first thing in the
17 morning.

18 MR. TONEY: Yes, sir.

19 MR. MARCHANT: Thank you, Your Honor.

20 THE COURT: Court is in recess.

21 (WHEREUPON, the proceedings were concluded at
22 approximately 5:21 p.m., to be reconvened on
23 Wednesday, January 6, 2016.)
24
25

1 WEDNESDAY JANUARY 6, 2016

2 THE COURT: Mr. Davis, if you'd come around, please.

3 MR. TONEY: Do you mean Mr. Adams?

4 THE COURT: Mr. Adams, if you'd come around, please.

5 I'm sorry.

6 Madam Clerk, would you place Mr. Adams under oath for
7 me, please?

8 THE CLERK: Certainly.

9 Would you, please, raise your right hand.

10 WHEREUPON,

11 BRANDON DASHUN ADAMS,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 THE COURT: Tell me your full name, please.

15 DEFENDANT ADAMS: Brandon Adams.

16 THE COURT: Is that your full name?

17 DEFENDANT ADAMS: Brandon Dashun Adams.

18 THE COURT: And how old are you, Mr. Adams?

19 DEFENDANT ADAMS: 22.

20 THE COURT: Say it again.

21 DEFENDANT ADAMS: 22.

22 THE COURT: How much education do you have?

23 DEFENDANT ADAMS: I went to the tenth grade.

24 THE COURT: Today, are you under the influence of any
25 medication, drugs, or alcohol?

1 DEFENDANT ADAMS: No, sir.

2 THE COURT: Do you have anything that would --
3 mental, physical, or emotional that would negatively
4 affect your thinking ability today?

5 DEFENDANT ADAMS: No, sir.

6 THE COURT: I have some things to go over with you.
7 I do this with all individuals that are on trial. I have
8 their responses under oath. That's why I had the Clerk to
9 place you under oath.

10 Do you understand?

11 DEFENDANT ADAMS: Yes, sir.

12 THE COURT: It is my understanding that the State
13 intends to rest. In other words, the State intends to
14 call no further witnesses. And, therefore, the stage of
15 the trial we're at, the Defense, your side, would be able
16 to present evidence, testimony, witnesses, or you would be
17 able to testify on your own behalf.

18 Do you understand?

19 DEFENDANT ADAMS: Yes, sir.

20 THE COURT: Do you understand the state of the
21 proceedings we're at?

22 DEFENDANT ADAMS: Yes, sir.

23 THE COURT: In that regard, in calling witnesses and
24 in choosing to testify yourself, of course, you may do so.
25 No one can force you to testify. You have an absolute

1 right to remain silent.

2 And if you choose not to testify, I will tell the
3 jury they cannot hold your silence against you in any way.
4 I will tell them that they're not to discuss that in the
5 jury room.

6 Do you understand?

7 DEFENDANT ADAMS: Yes, sir.

8 THE COURT: If your side offers no evidence at all --
9 in other words, if neither you nor anyone on your behalf
10 testifies or offers any exhibits, then Mr. Toney, your
11 attorney, will get to make the last argument to the jury.
12 Otherwise, the Prosecutor gets to make the last argument
13 to the jury.

14 Do you understand?

15 DEFENDANT ADAMS: Yes, sir.

16 THE COURT: Do you understand?

17 DEFENDANT ADAMS: Yes, sir.

18 THE COURT: Mr. Toney, Solicitor, does Mr. Adams have
19 any prior criminal history that would subject him to
20 impeachment under Rule 609?

21 MR. TONEY: He does, Your Honor.

22 THE COURT: All right. And what would that be? Have
23 y'all settled on that record?

24 MR. MARCHANT: Judge, I don't believe that he has any
25 convictions. He has several other pending cases at this

1 time. But he just has a juvenile record.

2 MR. TONEY: I'm sorry. I misunderstood. Yes, that's
3 correct.

4 THE COURT: All right. So he has no convictions that
5 would subject him to impeachment under Rule 609; is that
6 correct?

7 MR. TONEY: Yes, sir.

8 THE COURT: All right. Is that correct, Solicitor?

9 MR. MARCHANT: Yes, Your Honor.

10 THE COURT: All right. Then I will inquire no
11 further in that regard.

12 Mr. Adams, the decision about whether you testify or
13 not is your decision to make, and yours alone. I expect
14 that you have talked with your attorney, Mr. Toney, and
15 with others whose opinions you value on very important
16 decisions. But the decision about whether you testify or
17 not is your call to make, your decision.

18 Do you understand?

19 DEFENDANT ADAMS: Yes, sir.

20 THE COURT: Has anyone exercised any undue influence
21 over you to get you to choose to testify or not to
22 testify?

23 DEFENDANT ADAMS: No, sir.

24 THE COURT: Have you had the opportunity to speak
25 with your attorney about your right to testify or not to

1 testify?

2 DEFENDANT ADAMS: Yes, sir.

3 THE COURT: Do you have any questions you would like
4 to ask me about your right to testify or not testify?

5 DEFENDANT ADAMS: No, sir.

6 THE COURT: All right. Well, since the State has not
7 quite yet rested, I'm going to give you, perhaps, some
8 more time to think about it, rather than ask you your
9 decision now.

10 All right. You have no questions?

11 DEFENDANT ADAMS: No, sir.

12 THE COURT: Thank you. Thank you very much,
13 Mr. Adams.

14 You may return to your seat.

15 MR. TONEY: Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Toney.

17 MR. TONEY: Yes, sir.

18 THE COURT: Anything from the State before we bring
19 in our jury, Solicitor?

20 MR. HOLLOWAY: Yes, sir, Your Honor.

21 I just wanted to make sure -- State's Exhibit No. 38
22 was the video footage of Mr. Cobb's interview. Because we
23 published it to the jury, my understanding is the Court
24 ruled it as an exhibit -- it is in evidence. I just
25 wanted to confirm that.

1 MR. TONEY: I'm not so sure the Court did enter it
2 into evidence at that time. And they did not timely move
3 to enter that into evidence. So I don't think that, at
4 this point, they can enter that in. I would object to
5 that being entered into evidence.

6 MR. HOLLOWAY: And, Your Honor, the reason why I ask
7 is because later on in the day when I sought to move in
8 the video of Ms. Adams, it was already -- the Court had
9 already ruled that I could publish it to the jury. And it
10 seemed it was implicit that that was entered into
11 evidence. And the Court ruled that I could publish it to
12 the jury. And I just -- again, I was a little confused
13 about that. I wanted to make sure it was clear for the
14 record whether this is an exhibit the jury can listen to
15 and watch again, should they decide to come back in the
16 courtroom.

17 THE COURT: I was reading Judge Baxley's decision --
18 not Judge Baxley's decision, but an appellate case that
19 Judge Baxley tried in Anderson County, State v. Lindsey.
20 And my understanding of the proffer of State's Exhibit No.
21 38, the video of Mr. Cobb, was to refresh his
22 recollection. And as I read 803(5) -- and I know you -- I
23 believe you cited both not hearsay and one of the other
24 rules.

25 MR. HOLLOWAY: Yes, sir.

1 I cited to Rule 613 and 801(D)(1)(A).

2 THE COURT: 613, the prior inconsistent statement?

3 MR. HOLLOWAY: Yes, sir.

4 And, also, 801 seems to follow that same pattern of
5 someone makes a prior statement, they're subject to
6 cross-examination, and if what they're testifying to at
7 the day of trial is different than what they've said
8 before. And I -- that's kind of where I thought, well, it
9 became an exhibit at that point, what he said on the
10 video, the substance of his statement --

11 THE COURT: The --

12 MR. HOLLOWAY: I'm sorry.

13 THE COURT: Excuse me. I didn't mean to interrupt.

14 MR. HOLLOWAY: I'm sorry.

15 THE COURT: Go right ahead, Mr. Holloway.

16 MR. HOLLOWAY: I just -- that's -- I was confused.
17 Because it seemed like once the substance of the
18 statement, which is sort of burned in the form of a CD, if
19 the jury wants to hear that statement again, the only way
20 they're able to do that would be to watch the video again.

21 We did, ultimately, publish it to the jury after we
22 took time out of the presence of the jury for Mr. Cobb to
23 listen to and watch his interview again.

24 THE COURT: 613(B) concerns extrinsic evidence.

25 Mr. Cobb --

1 MR. HOLLOWAY: And, Your Honor, because --

2 THE COURT: Mr. Cobb addressed the lack of memory and
3 elicited to mind-altering drug use and/or it could have
4 been, of course, fear, intimidation.

5 I think my ruling -- well, here's my ruling. State's
6 Exhibit No. 38 is not in evidence. However, it is in the
7 record. If the jury wants to review that or any other
8 part of the evidence or testimony presented, they may do
9 so.

10 But my reading of State v. Lindsey and 803(5),
11 recollection recorded is memorandum itself, or the record
12 should not go back to the jury.

13 MR. HOLLOWAY: Yes, sir.

14 THE COURT: So if they -- if they want to see the
15 video, which is part of the record, it'd be, in my mind,
16 the same as if they wanted to rehear testimony. They
17 could do so. But it doesn't go as an exhibit.

18 Now, that may be a distinction without a difference,
19 of course, Mr. Holloway. But a close reading of 803(5),
20 which I've kind of relied on the admission of it, would
21 lead me to that conclusion.

22 MR. HOLLOWAY: And I think because law enforcement is
23 moving toward videotaped interviews versus doing written
24 statements, that's kind of where, I think, the courts may
25 be heading.

1 Thank you, Your Honor.

2 THE COURT: And I don't think there was an objection.
3 I'm not sure Mr. Toney objected, at that time, to
4 Mr. Cobb's video. I just -- I ruled it was just ID only.

5 But I don't think -- and Mr. Toney can correct me if
6 I'm wrong. I don't think he objected to Ms. Adams -- to
7 Mercedes Adams, I believe. I don't think he objected to
8 that video.

9 Is there another video?

10 MR. HOLLOWAY: There's just two, Your Honor.

11 THE COURT: Just those two?

12 MR. HOLLOWAY: Yes, sir.

13 THE COURT: The others were in-camera, the ones of
14 Mr. Adams; correct?

15 MR. HOLLOWAY: Yes. Yes, Your Honor. That's
16 correct.

17 THE COURT: And I take it there's a video of
18 Mr. Sanchez, but there is no Mr. Sanchez; correct?

19 MR. HOLLOWAY: Yes, sir.

20 THE COURT: All right. Is that bench warrant still
21 issued?

22 MR. HOLLOWAY: Yes, sir.

23 THE COURT: And did Mr. O'Neal get released?

24 MR. HOLLOWAY: Yes, sir.

25 THE COURT: Thank you. Thank you very much.

1 MR. HOLLOWAY: Thank you, Your Honor.

2 THE COURT: Anything further, Solicitor?

3 MR. HOLLOWAY: No, sir.

4 Thank you.

5 MR. MARCHANT: Just procedurally, after the State
6 rests here in a minute, are you then going to take a break
7 to hear motions and us discuss --

8 THE COURT: I'll be delighted to hear them now --

9 MR. MARCHANT: -- potential jury charges?

10 THE COURT: If Mr. Toney has no objections, if you're
11 going to rest. And then when they come out -- I mean,
12 depending on my rulings, of course --

13 MR. MARCHANT: Yes, sir.

14 THE COURT: -- if you formally rest. And then I'll
15 tell them where we're at procedurally, at that point, if
16 that suits both the State and Mr. Toney.

17 MR. TONEY: Yes, sir.

18 THE COURT: All right. So you intend to rest, offer
19 no additional evidence or testimony, Solicitor?

20 MR. MARCHANT: Yes, Your Honor.

21 THE COURT: All right. And you have motions,
22 Mr. Toney?

23 MOTIONS

24 MR. TONEY: I do, Your Honor. I move for a directed
25 verdict.

1 THE COURT: All right.

2 MR. TONEY: Certainly, I feel there is insufficient
3 evidence to take this matter before a jury. Quite
4 frankly, I don't think they've put forth a single witness.
5 I don't think they've brought forth any credible evidence.
6 I understand credibility is for the province of the jury.

7 But they weren't able to match the gun with
8 ballistics. They weren't even able to prove through their
9 witnesses that the two people outside the house were
10 related to the robbery.

11 And, in fact, since nobody saw what happened inside
12 and they weren't able to prove the funds were missing,
13 they weren't able to even prove that a robbery occurred.
14 The fact is that this case fails on so many levels and so
15 overwhelmingly that I do not believe this case belongs in
16 the hands of a jury.

17 THE COURT: All right. Thank you.

18 Solicitor.

19 MR. MARCHANT: May it please the Court.

20 Obviously, my opinion is substantially different. Of
21 course, the Court is aware of the standard set forth in
22 Williams back in 1991, that the Court is concerned with
23 the existence or non-existence of evidence.

24 At a minimum, we have several witnesses to include
25 the Defendant who, through Investigator Campbell, places

1 himself inside Mr. Crite's apartment when he alleges that
2 his -- the other passenger in the car, Michael Evans, is
3 the one that shot and, presumably, killed Mr. Crite.

4 Mr. Adams sister, his co-defendant, Mercedes, in an
5 interview with the Solicitor's Office, law enforcement,
6 and her lawyer indicated that the nature and the purpose
7 of her taking her brother, Brandon Adams, and Michael
8 Evans over to Landford Drive that evening was to rob
9 someone. While she did not, specifically, know it to be
10 Mr. Crite, it, unfortunately, turned out to be him who was
11 robbed.

12 As the Court can recall, she indicated that her
13 brother brought back a bottle of liquor to the car, which
14 is what is alleged in the armed robbery indictment.
15 Presumably, according to Joseph Waller and Antwon Waller,
16 Mr. Crite was always in possession of, at least, \$1,200 to
17 re-up his supply, as well as a 380 handgun. Those items
18 were missing once law enforcement arrived.

19 From the testimony of Mr. O'Neal, who saw two
20 individuals going into Mr. Crite's apartment,
21 subsequently, heard gunshots, heard Mr. Crite yell out,
22 and three to four to five minutes later, Mr. O'Neal and
23 Elbert Golden discussed what had happened. Elbert Golden
24 goes across the street to get Mr. Crite's son, Kendrick
25 Waller.

1 The two gentlemen that were at the door -- and it was
2 a little difficult to hear. But in Mr. Cobb's interview,
3 he identified Brandon Adams as one of the individuals that
4 went up to Mr. Joe's door, that the door opened once, the
5 door shut, the door opened again. And they entered
6 Mr. Joe's apartment and were armed with what he says was a
7 handgun.

8 Again, the Defendant himself, through Investigator
9 Campbell, tells us that he was in possession of this
10 nine-millimeter, that he, in fact, discharged that
11 nine-millimeter. There is no dispute through the evidence
12 or medical examiner that the nine-millimeter is not the
13 weapon that caused the death of Mr. Crite.

14 So that is not into ad nauseam detail about the facts
15 of the case, but the State would allege that they went
16 over there with the intent to rob Mr. Crite.
17 Unfortunately, things probably didn't go as planned and a
18 burglary occurred, and the subsequent homicide and murder
19 of Joseph Crite.

20 So the State believes there's a -- more than just a
21 mere scintilla of evidence, and that there is significant
22 evidence to go to the jury for their consideration of
23 armed robbery, possession of a weapon, burglary first
24 degree, as well as murder.

25 THE COURT: Thank you.

1 MR. MARCHANT: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Mr. Toney, anything in response?

4 MR. TONEY: Nothing in reply.

5 THE COURT: All right. As was pointed out, the
6 standard I look at, at this point, is the presence or lack
7 of evidence either direct or substantial circumstantial
8 evidence in the light most favorable to the non-moving
9 party. The Court should grant a directed verdict motion
10 when the evidence presented merely raises a suspicion of
11 guilt.

12 The case should be submitted to the jury when the
13 evidence is circumstantial and if there is any substantial
14 evidence, which reasonably tends to prove the guilt of the
15 accused or from which the guilt may be fairly and
16 analogically deduced. Circumstantial evidence gains its
17 strength from its combination with other evidence and all
18 the circumstantial evidence presented in the case must be
19 considered together to determine whether it is sufficient
20 to submit to the jury.

21 In the chain of circumstances in this case and the
22 dots that may be connected both from Jimmy Cobb and, I
23 think, the other individual who did not testify, but was
24 referred to as Sweet Pea places -- independently places
25 Mr. Brandon Adams at the scene of the crime.

1 Ms. Mercedes Adams places Brandon Adams and Michael
2 Evans at the scene of the crime, which she -- giving a
3 statement both written and a videoed statement -- sworn
4 statements that she drove them there. She knew they were
5 going to rob. And that they exited the vehicle and went
6 to the apartment, the apartment being the apartment of
7 Mr. Crite.

8 Most importantly, Mr. Adams places himself at the
9 scene of the crime armed with and discharging a deadly
10 weapon. So you have the Defendant himself, you have his
11 sister, you have Mr. Cobb placing him at the general area.
12 You have Mr. O'Neal seeing the two individuals in the
13 other vehicle. You do have the statement as far as the
14 liquor and the statement from the sons of Mr. Crite that
15 he would have \$1,200 that he wouldn't spend, except to
16 repurchase his supply of crack cocaine.

17 A close reading -- and I'm relying on the State v.
18 Bratschi, B-R-A-T-S-C-H-I, 770 -- 775 S.E.2d 39 has the
19 analysis of these cases that -- a very good analysis of
20 the cases concerning direct and circumstantial evidence,
21 and the standard for directed verdict that the Court must
22 apply, and that the appellate court must apply.

23 This case is very different from those cases in which
24 the Court has not granted a motion for directed verdict,
25 and the appellate courts have reversed them. For example,

1 State v. Brock, because there's no evidence placing the
2 Defendant at the scene of the crime. Here, there's
3 evidence from his own statement placing him at the scene
4 of the crime armed with a deadly weapon, State's Exhibit
5 No. 32.

6 So both as to murder, burglary in the first degree,
7 armed robbery, possession of a weapon during the
8 commission of a violent crime, the motions for directed
9 verdict are denied.

10 Anything further before we bring in our jury,
11 Solicitor?

12 MR. MARCHANT: Forgive me, Judge.

13 I wasn't clear if you were going to send them back
14 out after we rest and the Defense rests to discuss jury
15 charges or --

16 THE COURT: I'm never clear, Solicitor.

17 Well, here's what I usually do. I bring them out,
18 you rest. I put in the record that motions are noted
19 having been heard.

20 I then tell the jury where we're at procedurally, and
21 tell them that a criminal defendant in South Carolina is
22 never required to prove himself or herself innocent. A
23 criminal defendant is always presumed to be innocent.

24 However, a defendant may present evidence and
25 testimony, if he or she chooses to do so. And I'll turn

1 my attention to Mr. Toney and ask, does the Defendant
2 intend to present any evidence or testimony? If, yes,
3 call your first witness. If, no, I then tell them that
4 the -- they've heard all the evidence and all the
5 testimony they're going to hear in the trial of the case.
6 And we, now, are at the stage of the closing arguments by
7 the attorneys. They may take a while. I would then ask
8 them to step out momentarily. And we would discuss the
9 charges, and bring them back.

10 Mr. Toney, do you need any more time to talk with
11 Mr. Adams concerning his right to testify or not testify?

12 MR. TONEY: No, I don't, Your Honor.

13 Because not only did we discuss it this morning, but
14 we've discussed it on several other occasions. And I'm
15 satisfied that my client is of strong opinion that he does
16 not wish to testify.

17 THE COURT: All right. Stand up for me, please,
18 Mr. Adams.

19 And you may remain there. Just speak up so I can
20 hear you.

21 Again, do you have any questions you would like to
22 ask me about your right to testify or not testify?

23 DEFENDANT ADAMS: No, sir.

24 THE COURT: And what is your decision?

25 Now, this is your call to make.

1 What is your decision? Do you choose to testify or
2 not testify?

3 DEFENDANT ADAMS: I choose not to.

4 THE COURT: And that's your decision?

5 DEFENDANT ADAMS: Yes, sir.

6 THE COURT: Made of your own free will and accord?

7 DEFENDANT ADAMS: Uh-huh.

8 THE COURT: All right. Thank you. Thank you very
9 much.

10 Do you intend to offer any evidence or testimony,
11 Mr. Toney?

12 MR. TONEY: No, I don't, Your Honor.

13 THE COURT: All right. Thank you. Thank you very
14 much.

15 We'll bring them out. We'll go through that
16 procedure. And I'll send them back out. And we'll get
17 the charges. And then we'll start the closing arguments.

18 (WHEREUPON, the jury came into open court at
19 approximately 10:00 a.m.)

20 THE COURT: You're a great-looking group this
21 morning.

22 Good morning.

23 I hope y'all all had a pleasant evening. Welcome
24 back. I hope you had a nice walk from the parking garage.

25 We're continuing the trial of the case, as you know,

1 by the presentation of evidence and testimony from the
2 State in its case in chief. As you have done throughout
3 the trial of the case, if you would, please, continue to
4 give the parties your complete and undivided attention.

5 Solicitor, you may call your next witness.

6 MR. HOLLOWAY: Your Honor, the State does rest at
7 this time.

8 THE COURT: All right. Thank you very much.

9 The State has rested.

10 Motions are noted, Mr. Toney.

11 MR. TONEY: Yes, sir.

12 THE COURT: And I reaffirm my previous rulings.

13 As you've now heard, the State has rested. You've
14 heard all the evidence and all the testimony in the trial
15 of this case from the State in its case in chief.

16 The -- Mr. Adams, the Defendant, may now present
17 evidence and testimony, if he chooses to do so. A
18 criminal defendant in South Carolina, regardless of the
19 serious nature of the charges, whatever they may be, never
20 has to prove himself or herself innocent. A criminal
21 defendant is always presumed to be innocent and has no
22 burden whatsoever, no burden whatsoever to prove himself
23 or herself innocent.

24 However, a defendant may present evidence and
25 testimony, if the Defendant chooses to do so.

1 So we'll now turn our attention to Mr. Toney and ask,
2 does Mr. Adams intend to present any evidence and
3 testimony, Mr. Toney?

4 MR. TONEY: May it please the Court.

5 Respectfully, we have made the decision not to
6 present evidence and testimony, Your Honor.

7 THE COURT: All right. The Defense rests?

8 MR. TONEY: Yes, sir.

9 THE COURT: All right. Thank you. Thank you,
10 Mr. Toney.

11 MR. TONEY: Yes, sir.

12 THE COURT: You've now heard all the evidence and all
13 the testimony you're going to hear in the trial of this
14 case. We're at the stage of the final arguments by the
15 attorneys. The procedure we follow in these arguments is
16 the State would present its closing argument first, being
17 the party bearing the burden of proving its case beyond a
18 reasonable doubt, followed by Mr. Toney on behalf of his
19 client, Mr. Adams.

20 Thereafter, I would instruct or charge you the law
21 that you are to apply to the facts of the cases as you
22 find them to be. Although I have not had the privilege,
23 except as to one of these fine young attorneys, of having
24 the parties appear in front of me before in closing
25 arguments, as I told you in the beginning, I don't

1 consider this a judicial marathon. It's an important
2 case. It's an important case to Mr. Adams. It's an
3 important case to the State of South Carolina. And,
4 sometimes, closing arguments may take an extended period
5 of time.

6 So I'm going to give the attorneys about 15 minutes
7 to prepare for that. And, upon your return, we will go
8 straight into the closing arguments by the State, then by
9 Mr. Toney, and then the instruction on the law by the
10 Court.

11 Thank you very much.

12 If you'd, please, return to your jury room. Do not
13 discuss the case during this brief recess.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 10:04 a.m.)

16 THE COURT: All right. Solicitor, any requests to
17 charge?

18 MR. MARCHANT: Yes, Your Honor.

19 I provided your law clerk with a request for a
20 charge, accomplice liability, as well as a definition of
21 malice. I passed those up to Your Honor yesterday
22 afternoon, as well as provided Mr. Toney a copy.
23 Considering the --

24 THE COURT: All right. Thank you.

25 Mr. -- as to accomplice liability, Mr. Toney?

1 MR. TONEY: I do not believe that accomplice
2 liability should be charged. I don't believe there's
3 sufficient evidence to charge accomplice liability. I,
4 quite frankly -- I understand the hand of one is the hand
5 of all charge is done all the way up in South Carolina. I
6 think the charge is -- I just disagree with the charge. I
7 think it should be overruled at some level beyond the
8 State of South Carolina. I object to that charge. And
9 I've had, at least, one circuit court judge decline to
10 charge it, based on my objection.

11 I wasn't able to cite any South Carolina law in my
12 objection. But I feel it's overly broad and very much
13 misleading. And, quite frankly, I feel that's why the
14 State likes the charge. And I think that it should never
15 be used in any case.

16 In this case in particular, they have failed to,
17 actually, bring an accomplice and failed to identify an
18 accomplice. They've failed to produce any sufficient
19 evidence there was an accomplice. And, in this case, I
20 feel it's particularly inappropriate.

21 As to the instruction on malice, I have no objection
22 to this instruction being included, along with the Court's
23 regular definition of malice. Of course --

24 THE COURT: All right. Thank you.

25 MR. TONEY: Yes, sir.

1 THE COURT: As to accomplice liability, although
2 another circuit judge may think it's an inappropriate
3 charge, this circuit court judge thinks I'm required to
4 charge what law may apply to the facts of the case as the
5 law in South Carolina at the time, whether I agree with it
6 or not. Just like I tell the jury, you have to follow the
7 law that I tell you the law is, whether you agree with it
8 or not.

9 So it's of no moment in my mind of whether I agree
10 with accomplice liability or disagree with it. It is the
11 law in South Carolina. I do not think you have to have
12 identified the accomplice for there to be a charge of
13 accomplice liability.

14 It's clear the hand of one is the hand of all. There
15 are many classic examples. And, of course, our appellate
16 courts, as they did in State v. Belcher on the inference
17 of malice, reversed the Honorable William Keesley, a very
18 thoughtful and intelligent judge of this state. And it
19 reversed cases many years back. And, of course, State v.
20 Torrence reversed cases back to the 1600s, Torrence in the
21 1990s. And the judges were applying what the law was at
22 the time. Judge Keesley was applying the law. So that
23 would be for appellate review.

24 I think the facts of this case, that there are two or
25 more, that there's a conspiracy to commit robbery, that

1 they're present aiding and abetting, there's that
2 testimony from Mr. Cobb that one of them had his -- one
3 individual had his back to the wall, the other one was
4 facing the door that I would charge accomplice liability.

5 And you have no objection to the malice charge?

6 MR. TONEY: No, I don't.

7 THE COURT: Well, when y'all get a chance, read that
8 Kinard case, which I'm sure you've done numerous times,
9 and explain it to me.

10 MR. TONEY: May we have five minutes before we start
11 our --

12 THE COURT: Oh, sure, sure.

13 Do you have any requests to charge?

14 MR. TONEY: No, sir.

15 MR. MARCHANT: Do you give a mere presence charge in
16 every case or --

17 THE COURT: If it's -- isn't it part of the hand of
18 one is the hand of all, the standard charge?

19 MR. MARCHANT: I believe so. I just wanted to --

20 THE COURT: Do we have it printed out, the standard,
21 the hand of one hand of all?

22 THE LAW CLERK: I've got it here.

23 THE COURT: I think it's part of -- I think it's part
24 of the standard charge, Solicitor. Let me see.

25 (Pause.)

1 THE COURT: I do mere presence at the scene is not
2 sufficient to prove someone guilty of a crime. A
3 defendant's presence where a crime is being committed or
4 mere association with persons who commit a crime does not
5 make a defendant an accomplice or an aider or abetter of
6 the person committing the crime.

7 The burden is on the State to prove every element of
8 the crimes charged. If you find, after reviewing all the
9 evidence, that the State has proved that the Defendant was
10 only present at the scene of the crime, that they have not
11 proved beyond any reasonable doubt any other participation
12 of the crime, then you must find the Defendant not guilty.
13 The law is that proof of presence -- mere presence at the
14 scene of the crime is not sufficient to find someone
15 guilty.

16 MR. MARCHANT: The last question I have, Your Honor.
17 With respect to the videos that were played, I had some
18 discussion with your law clerk about the computer and
19 whether or not you wanted it to go back to the jury, or
20 leave it out here. I just wanted to know what your
21 preference was going to be. So when I'm giving my
22 closing, I tell them what will occur.

23 What I expressed to your law clerk, this is a common
24 computer. And when I say common, it is available to every
25 solicitor for their trial use. I can't assure the Court

1 of what's on there, not on there from other cases. I
2 don't know if they may go -- I don't want to use the word
3 fishing, but inadvertently try to access a video.

4 I just bring those things up for the Court's
5 consideration about whether or not you're going to send
6 the laptop back with the jury.

7 MR. TONEY: It's akin to handing the jury a huge,
8 huge, huge box like the size of a dumpster filled with
9 evidence from all other cases, and then saying there's a
10 file in there that you might want to look at. The chances
11 of them fishing are -- there's a potential.

12 And you're, basically, handing them other evidence in
13 the jury room -- or other cases. And I think it's
14 inappropriate to let them go fishing, or give them the
15 opportunity to fish. We wouldn't give them Internet
16 access in the room. We wouldn't give them -- we wouldn't
17 let them go on the Internet, for instance, or look up case
18 law, or things like that.

19 So we shouldn't let them have access to other
20 computers -- to other files.

21 THE COURT: Well, in other cases, what I have done is
22 send a neutral individual into the jury room just to do
23 the technical aspect of it. My grandson is not here
24 today, so we can't use him. But if there's someone y'all
25 can agree on that would just focus -- and not say

1 anything. He's just as a technical aspect, I have done
2 that.

3 MR. TONEY: Your Honor, my boy is at school, so he
4 can't help either. But that would be an acceptable
5 solution, Your Honor.

6 THE COURT: Do y'all have someone you can agree on to
7 run the computer?

8 MR. MARCHANT: The gentleman that came in here
9 yesterday, his name is Anton Turner. He works not for the
10 Solicitor's Office, but works for the Greenville County
11 Information Services Department.

12 THE COURT: Is that fine?

13 MR. TONEY: Of course, sir, yes.

14 MR. MARCHANT: Now, the other, I guess, thing at
15 issue. Since Mr. Cobb's interview is not going back into
16 evidence, should they want to see that --

17 THE COURT: I think they have to see that out here.

18 MR. MARCHANT: Very good.

19 THE COURT: Yes, sir. I think they have to see that
20 out here.

21 MR. MARCHANT: I just want to be sure what I -- what
22 I'm going to tell them about what to request, should they
23 have questions.

24 THE COURT: All right.

25 MR. MARCHANT: Thank you, Your Honor.

1 THE COURT: And Mr. Turner would be available for us?

2 MR. MARCHANT: Yes, sir. I'm going to have my
3 investigator contact him right now.

4 THE COURT: All right. Well, we'll take -- let's
5 take about -- let's say 10:25. That will give you about
6 10 or 12 minutes.

7 MR. MARCHANT: Thank you, Judge.

8 THE COURT: All right. Thank you. Thank you very
9 much.

10 (WHEREUPON, a break was taken.)

11 THE COURT: All right. Solicitor, can you give me a
12 general idea about how long you think you'll be? I always
13 like to ask and then compare.

14 MR. MARCHANT: Yes, sir, Your Honor.

15 My estimation would be no more than 30 minutes, if
16 that's suitable for the Court.

17 THE COURT: Mr. Toney?

18 MR. TONEY: My anticipation is about 12 or
19 13 minutes, sir.

20 THE COURT: All right. Those --

21 Thank you.

22 Those in the gallery, I would advise you that I do
23 not allow any movement in or out of the courtroom while
24 the attorneys are addressing the jury. If you want to
25 leave after the Solicitor's closing argument before

1 Mr. Toney starts, you may, certainly, do so. If you want
2 to leave after Mr. Toney's closing argument and before my
3 instructions begin to the jury, you may, certainly, do so.
4 If you feel like you cannot remain for approximately
5 30 minutes for the Solicitor, 12 minutes, 15 minutes for
6 Mr. Toney, my charge is probably 35, 40 minutes, quite
7 frankly, with the number of charges involved, I would ask
8 you to leave before the proceedings begin.

9 All right. With that being said, bring us our jury.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:32 a.m.)

12 THE COURT: Welcome back, ladies and gentlemen.

13 As you recall, we're now at the stage of the closing
14 arguments by the attorneys. Closing arguments are
15 different from opening statements. The attorneys may
16 comment on the law, may comment on the facts, the
17 reasonable inferences to be drawn from the facts, and the
18 interplay of the law and the facts. If you would, please,
19 continue to give the parties your complete and undivided
20 attention.

21 With that being said, Solicitor, you may address the
22 jury.

23 CLOSING ARGUMENTS

24 MR. MARCHANT: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MARCHANT: Mr. Toney.

2 MR. TONEY: Yes, sir.

3 MR. MARCHANT: Mr. Adams.

4 Good morning, ladies and gentlemen of the jury.

5 Now is the opportunity for the State to come back
6 before you and describe to you what we submit and suggest
7 to you is the evidence at hand. This is going to be the
8 last opportunity that you have to hear from the State.

9 The Defense will get up and give you their spin on
10 the facts, if you will, in a moment. So I'm certain there
11 are going to be a number of things that I'm not going to
12 address, or that I would miss as part of the evidence that
13 has been submitted at trial that the Defense may bring up.

14 What I'd like you to keep in mind is if the Defense
15 is making an argument of some nature about a piece of
16 evidence, or testimony, or something, think to yourself,
17 how would the State respond? I'm not going to have that
18 ability to do so. But think to yourself, what would the
19 State say about what the Defense says?

20 But regardless of what is said by either myself or
21 Mr. Toney, that is not the testimony. The testimony and
22 evidence that is before you and will be in the jury room
23 is all the information that has come from the witness
24 stand.

25 So it really matters not what either I or Mr. Toney

1 tells you what the evidence is. The evidence is what you
2 remember it to be, and how you apply it to the law as the
3 Judge is going to give it to you. You took an affirmation
4 and took an oath that you would follow his charge and
5 apply the facts to the law.

6 When we get to the end, I'm going to tell you the
7 same thing I'm going to tell you right now. If you do
8 that, you will have no choice but to find Brandon Adams
9 guilty of armed robbery, possession of a weapon during the
10 commission of a violent crime, burglary first degree, and
11 murder. I'm going to walk through those in a minute.

12 As you've seen throughout the course of the last day
13 and a half, two days, there have been several witnesses
14 that have testified for the State. Certainly, I, and
15 Mr. Holloway, and Investigator Campbell did not get to
16 hand pick those witnesses. There's a term, a common
17 phrase that we use in this field and it's we take the
18 witnesses as we find them.

19 Would I have picked a different victim than Joseph
20 Crite? Certainly. Would I have picked a different
21 witness than some of the ones that you heard from?
22 Certainly. But that's the information that is brought to
23 us. That's the reality of what occurred in this incident.

24 You are smart people with common sense and life
25 experiences. You're to judge the credibility and the

1 believability of the witnesses. I would submit to you and
2 suggest that you are going to be able to determine whether
3 or not some of these witnesses are believable in their
4 entirety, not at all, or parts of them.

5 And a lot of the witnesses that testified, I would
6 suggest to you, are only credible for part of their
7 testimony. I would suggest that it is very apparent of
8 what was attempted to be accomplished on the stand by
9 several of those witnesses.

10 I've paid attention to y'all throughout the course of
11 the trial. And I want to thank you for your attention to
12 the information that has been presented. You've been very
13 focused on what the testimony has been and the evidence
14 that's been presented.

15 I'm now going to ask you to focus on the issue at
16 hand. That does not mean putting on blinders of other
17 information that's out there. But what are we here for
18 today? And what is up for your consideration? What that
19 is, the focus of today is whether or not Brandon Adams is
20 guilty of armed robbery, burglary, and homicide.

21 The other stuff that's been brought up will be dealt
22 with at a later time. Michael Anderson is not on trial
23 today. Muniashia Harper is not on trial today. Michael
24 Evans isn't on trial today.

25 Brandon Adams is on trial. And he deserves the

1 respect of the jury to consider all the information of
2 whether or not he's guilty of those charges. In the same
3 breath, the State and the family of Mr. Crite deserves it
4 as well.

5 Let's talk about the charges and the elements that
6 the State has to prove. And it is the State's burden to
7 prove those things beyond a reasonable doubt.

8 The first charge, armed robbery. Essentially, armed
9 robbery is the taking of another person's property, either
10 by words, or force, or actions while armed with a deadly
11 weapon. The Judge is going to give you a charge in a
12 minute of what a deadly weapon is. A nine-millimeter is a
13 deadly weapon. There's no doubt about it. He will read
14 that to you, that a pistol or handgun is a deadly weapon.

15 The second part of that is by force, whether by
16 actions, meaning you do not have to say anything. A
17 handgun is shown and you hand over your property. Or by
18 force, a handgun is shown or represented and you take
19 something by force, physically or otherwise by your
20 actions. You pull a handgun out and put it to the head.

21 Now, we all know -- and there's no testimony about
22 what happened inside the home that night. I submit to you
23 that there are three people that know what happened. He's
24 one of them. You've heard what his story is that occurred
25 inside the home that night. There's another individual

1 that both the Defendant and his sister, who was a
2 Defendant in this same incident, tells you is the shooter.
3 And then there's Mr. Crite. And, of course, and,
4 unfortunately, we don't have the ability to hear from
5 Mr. Crite. Again, the focus is on Brandon Adams.

6 Now, you had both of Mr. Crite's sons testify as to
7 what -- for lack of a better word, Mr. Crite's business
8 was. It still does not make Brandon Adams' actions
9 excusable. The fact that Mr. Crite was engaged in illegal
10 activities does not excuse Brandon Adams' actions.

11 Armed robbery. Burglary first. The Judge is going
12 to tell you something to the effect of that the Defendants
13 entered the residence, meaning a place where the victim
14 lays his head to sleep. And that while inside, there were
15 aggravating circumstances that occurred.

16 What is the aggravating circumstance? Well, they
17 either went in during the nighttime -- you've heard some
18 testimony that it was after 10:30 when Joseph Waller left
19 to go home. You've heard from Brandon O'Neal that he
20 thought it was roughly 2:00 a.m. And/or a deadly weapon
21 was used that, at least, one -- and we know that there is
22 another one, although it is unlocated at this time, a
23 32-caliber, most likely, revolver, according to the
24 testimony of the firearms expert, James Armstrong.

25 Why are we not 100 percent sure? Well, there were no

1 shell casings to compare it to, which the inference can be
2 drawn that it is most likely a revolver. Because a
3 revolver does not expel the shell casing after the shot is
4 fired.

5 Someone is injured inside the home during the course
6 of the burglary. It's evident and it's undisputed that
7 Mr. Crite died as a result of four gunshot wounds. Those
8 are the facts that the State must prove for y'all to be
9 confident that he is guilty of burglary in the first
10 degree.

11 The last charge is murder. That is the killing of
12 another person with malice aforethought. Now, His Honor
13 is going to give you the definition of malice
14 aforethought. But, essentially, I would suggest to you
15 that it boils down to this, malice is evil will or evil
16 doing.

17 Aforethought means that it occurred before the action
18 happened. I would suggest to you that there is no
19 required amount of time to occur for aforethought to
20 happen. We can be standing here and one of you do
21 something that upsets me, I pull out a gun and shoot and
22 kill you. I have had enough time to think about my
23 actions.

24 It doesn't have to be planned out like you see in a
25 movie, somebody lying in wait in the bushes waiting for

1 somebody to come down the path in the park to get out and
2 rob them or shoot them. It can happen in a split second.
3 Malice can, also, be inferred if it is during the
4 commission of a felony.

5 The Judge is going to instruct you armed robbery and
6 burglary are felonies. So if someone is killed in the
7 commission of a felony, malice aforethought can be
8 inferred, and you can consider whether or not that element
9 is reached.

10 The Judge is, also, going to instruct you on a
11 theory, a principle of law called accomplice liability.
12 It's more easily and readily referred to as the hand of
13 one. And, essentially, if one or more people go in and
14 conspire to commit an act and in the course of committing
15 that act something else happens by one or the other party,
16 it doesn't mean that the two parties have talked about
17 what that subsequent act is.

18 So, in this particular circumstance, the parties,
19 Mr. Adams and Mr. Evans, if you believe that he's the
20 other individual involved in this case, according to
21 Ms. Adams and Mr. Adams testimony, they conspired. Adams
22 and Evans talked about robbing Mr. Crite. So anything
23 else that happens following the robbery or as a result of
24 the robbery becomes a logical and foreseeable consequence.

25 So the both of them go in with guns to rob Mr. Crite.

1 As a result, Mr. Crite dies at the hands of one or both of
2 them. We don't know who pulled the trigger. But,
3 according to Ms. Adams testimony, as well as Mr. Adams
4 statement to Investigator Campbell, they tell you -- and
5 that's the only information that you have about what
6 happened inside the house -- that somebody named Michael
7 Evans shot him in the face. And that it wasn't supposed
8 to go that way. It wasn't supposed to go down like that.

9 So it matters not whether or not Mr. Adams pulled the
10 trigger or Mr. Evans pulled the trigger. The hand of one
11 is the hand of all, meaning Mr. Adams' hand is acting in
12 concert with Mr. Evans' hand. It doesn't matter who
13 pulled the trigger. They both went in to rob Mr. Crite.

14 The investigation brought in Wayne Campbell with the
15 sheriff's office. He responded out to Landford Drive that
16 night. He attempted to speak with members -- residents of
17 Landford Drive. I think you heard there was not
18 particularly much cooperation, other than from the family.
19 Basically, anybody that did tell us something didn't
20 decide to show up to court this week and bench warrants
21 were issued. I've been unable to provide you Sanchez
22 Allman because he's not been arrested.

23 You heard from Mr. O'Neal. What did he tell you? I
24 saw two men go up to Mr. Joe's door. One of them was
25 standing with his back against the wall while the other

1 one was knocking on the door. I knew something was fixing
2 to go down.

3 So I went over to my brother's -- I think his name
4 was Bode -- when I heard shots. I went inside, waited for
5 the men to leave. He told you they were black males, and
6 that they came out of Mr. Joe's apartment and went over
7 here to the mailbox area, which is where Ms. Adams had
8 parked the vehicle.

9 Talking about the cooperation of folks in that
10 community, he then told you, I told Bubba not to go over
11 to Kendrick's house. Kendrick being Joe's son that lived
12 across the street. Don't go over there. I'm on
13 probation. I don't want to get involved.

14 It's very difficult for law enforcement to have a
15 complete and thorough investigation if folks who are
16 witnesses or have knowledge of a crime are not willing to
17 speak with law enforcement. Law enforcement cannot force
18 them to do so. Law enforcement cannot make them come down
19 to the law enforcement center. They can't lock them up
20 until they decide to speak to them.

21 They go knock on doors. And that's what Investigator
22 Campbell did. He went from door to door to door. And
23 there was little to no information that anyone was willing
24 to provide. It's not to say that they don't have the
25 information. They were just not willing.

1 In any event, Investigator Campbell spoke with
2 Brandon O'Neal. Mr. O'Neal tells us that two guys went up
3 to the apartment. Something was odd. He saw a
4 white-colored four-door vehicle pull off, as well as a
5 gray vehicle.

6 Let's jump ahead just a little bit. What sort of car
7 was Jimmy Cobb driving? He told you a white four-door
8 Honda. What sort of car was Mercedes Adams driving? A
9 four-door gray sedan. Mr. O'Neal identifies both of those
10 vehicles as being present at the scene that night when
11 Mr. Joe's apartment was entered, and he heard shots fired,
12 and heard Mr. Joe scream out.

13 He told you he didn't remember to come to trial this
14 week because he wasn't on probation. Again, the lack of
15 cooperation of witnesses hampers the prosecution and
16 investigation of cases like this. If people don't want to
17 talk, you can't make them talk. Where I'm going with this
18 is that y'all have all of the information that is
19 available for you to consider what happened that night.

20 So let's talk about Mr. Joe's son, Joseph Waller. He
21 tells you that he goes over to his dad's house just about
22 every day. He didn't mix words or try to hide what
23 Mr. Joe was doing. He sold crack cocaine. That's what he
24 did to supplement his income. He told you he'd buy an
25 ounce for about \$1,200. And once he cooked it and cut it

1 up, he'd make about 3,500 bucks off of it. Pretty good
2 deal. Tax free. But he always kept 1,200 bucks in his
3 overalls in his room so he could re-up.

4 What else did he keep in his overalls? A 380 pistol.
5 If it wasn't in the overalls, it was, generally, on the
6 couch in the living room where Mr. Joe would sit.

7 Kendrick, who came over after Bubba told him
8 something happened at his daddy's house, told you the
9 couch was tossed. Law enforcement and the forensics
10 department did a search of the house. Did you hear
11 anything about drugs being found? Did you hear anything
12 about \$1,200 being found? Did you hear anything about a
13 gun being found? They did not locate any of those items.

14 The only evidence of money that Investigator Campbell
15 informed you he counted was, I believe, roughly \$45 in \$1
16 bills that were in the bank bag and it looks like a Fritos
17 cannister from Mr. Joe's bedroom that was on one of his
18 dressers.

19 If you will recall, Mr. Joe was found deceased next
20 to this dresser that had the Fritos and the bank bag. Why
21 is that significant? Well, remember what the Defendant
22 told Investigator Campbell and myself in the presence of
23 his lawyer during his interview? I went in there to buy
24 \$40 worth of weed. What did Joseph Waller tell you? His
25 daddy didn't sell weed. Why? He didn't make enough money

1 off of it. It wasn't easy to quickly turn and increase
2 your profits. He didn't mess with weed because it wasn't
3 a good money making operation.

4 Well, let's assume for a minute that what Mr. Adams
5 told Investigator Campbell that day is true. Where is the
6 \$40? I guess it could be argued that the reason Mr. Crite
7 went to his bedroom was to put the dollar bills in the
8 bank bag, as well as the Fritos container. I suggest to
9 you that's not plausible.

10 One of two things probably happened that night that
11 you can draw an inference from the evidence. He was
12 either going to get his gun or trying to get his gun out
13 of his overalls. Maybe he was trying to go get his cell
14 phone off the bed to call for help.

15 Because, if you will remember, a projectile struck
16 the living room wall here. And in the kitchen area,
17 there's a blood trail leading to that side door. If
18 you'll take a closer look at that side door, that side
19 door is locked. That side door can only be opened with a
20 key. The same for the front door. You'll see the keys
21 are still sitting in the front door.

22 So Investigator Campbell talked with Brandon O'Neal.
23 He talks with Sanchez Allman. He talks with other people.
24 And he, eventually, gets a lead to Jimmy Cobb. You saw
25 the interview with Mr. Cobb. You saw Mr. Cobb's testimony

1 on the stand, or lack thereof.

2 Again, you're smart, intelligent people. It's for
3 your decision and determination whether or not Mr. Cobb
4 was credible on the stand? Is he believable on the stand?
5 Is he credible in his interview? Is he believable in his
6 interview? Was he so intoxicated, the Defense would have
7 you believe, that he didn't really see what happened that
8 night or know or recall? If he didn't know, where did the
9 information come from that he was giving Investigator
10 Campbell? He places himself in the parking lot.

11 His nickname is Tab. He's known Brandon Adams and
12 Mercedes Adams for years. He's known their father, D.J.,
13 for years. He's known their mother, Val. He told you
14 they grew up in that area, Kennedy Park, KP. He knows
15 them. What did Mercedes and Brandon tell us as well? I
16 saw Tab and Sweet Pea in the parking lot that night.

17 So out of all the information that the three of those
18 people have provided you, what has been consistent?
19 Mercedes says, I went over there with Brandon and Michael
20 Evans. I saw Sweet Pea and Tab. How do you know? I've
21 known them a long time. What does Brandon say? I went
22 over there with Mercedes and Michael Evans. Who was
23 there? Sweet Pee and Tab. What did Jimmy Cobb say? I
24 was in the parking lot when Mercedes and Brandon was over
25 there, and some guy I didn't know. Who were you with?

1 Sweet Pea.

2 So it's up for you to determine whether or not
3 Mr. Cobb didn't remember what he said in his interview
4 with Investigator Campbell, or whether or not he is
5 attempting to remove himself from the situation. He told
6 you that he didn't remember, that Investigator Campbell
7 was supposed to help him out. You heard Investigator
8 Campbell say that he passed the information on to the
9 prosecutor that was prosecuting Mr. Cobb, that he was
10 helpful and had given information on a homicide case.

11 And you heard Investigator Campbell in an interview
12 with Mr. Cobb, it's not his decision about what to do with
13 the charges. It's our office. And, in fact, in
14 Mr. Cobb's opinion, he didn't get any help.

15 Along with the credibility of the witnesses and their
16 believability, look at their demeanor. I would suggest
17 and submit to you that every single person that comes in
18 this courtroom's demeanor is different than what it is
19 when they're outside of the courtroom. This is a formal
20 setting. Maybe it's a little more intense. Maybe it's
21 not as relaxed as they would be or comfortable down in the
22 detention center or interview room. Maybe it's the other
23 way around. It doesn't necessarily mean someone is high,
24 or intoxicated, or what they told law enforcement during
25 the course of an interview is untrue, or incomplete, or

1 forced, or coerced.

2 You watched roughly 30, 45 minutes of Ms. Adams. If
3 that's coercion, if that interview with myself, Ryan
4 Holloway, Investigator Campbell, and her lawyer is
5 coercion, I mean, I don't even know what to say about
6 that.

7 She is the one that wanted to speak with us. We came
8 to her. I said, You've got something to say, let's hear
9 it. And what details does she go through about what
10 happened that night?

11 Well, let's go back to her first interview with
12 Investigator Campbell when she was arrested, February of
13 2013. Essentially, I don't know nothing about nothing.
14 Frankly, that's not unusual. Somebody gets charged with a
15 crime, they're not ready and willing to talk. They don't
16 know all the evidence against them. And law enforcement
17 is not required, frankly, to tell them anything about the
18 information against them.

19 She got a lawyer. And over two years later, in May
20 of 2015, is when that other interview occurred. What does
21 she tell you then? She denies every bit of it on the
22 stand today [sic].

23 But on May 20th, 2015, she entered a plea to
24 accessory after the fact of murder. And we dismissed the
25 charge of murder against her, based off her truthful

1 information and cooperation in the prosecution of her
2 brother. And that puts her in one tight spot, doesn't it?
3 I cannot imagine the household of the Adams family, how
4 comfortable or uncomfortable it is.

5 What's her demeanor on the stand? Is she credible?
6 Is she believable? Is what she told you yesterday the
7 truth, or is what she told Investigator Campbell, myself,
8 her lawyer, and Holloway the truth?

9 Read the transcript. She pled to accessory. She
10 acknowledged to Judge Hill in this courtroom, in fact,
11 this exact courtroom that she knew her brother and Michael
12 Evans were going over there to rob somebody, and that they
13 had guns. And that when everything was said and done, she
14 knew that he had died.

15 Is she just as responsible for his death?
16 Absolutely. The principle of accomplice liability applies
17 to her as well. But as in 99 percent of the cases that we
18 deal with, deals are made and negotiations engaged with
19 defense counsel. And I was willing to allow her to plead
20 to accessory after the fact, because we did not have any
21 information, nor did we believe that she was the one that
22 pulled the trigger.

23 So here we find ourselves today with her on the stand
24 and her testimony that she was coerced. Again,
25 credibility, believability of the witness. Do you believe

1 her now, or do you believe the coerced interview about
2 what she told you happened?

3 So what did she tell you that happened? She knew a
4 robbery was going to take place. And she didn't want to
5 give Brandon the car, because she knew she probably
6 wouldn't get it back.

7 Now, whose car is it? You heard Porchae Adams, her
8 sister, is the one that had the car. And it was a rental
9 car. I would suggest to you that that is of significance.
10 You have a rental car that does not belong to the person
11 that is driving it, Mercedes Adams. It doesn't even
12 belong to the person who she got the car from, Porchae
13 Adams. It belongs to somebody else who rented it for
14 Porchae.

15 So they had distanced themselves from the vehicle
16 that is used in this crime. They have attempted to
17 distance themselves. They thought about it. They talked
18 about it. Would you drive your own car to go commit an
19 armed robbery? The license tag is going to come back to
20 you real quick, ain't it?

21 Who does she tell you she saw when they got there?
22 Tab and Sweet Pea. I grew up around them. I grew up in
23 the Kennedy Park area. I moved out when I was 12. This
24 happened when she was 17 -- 17 and a half.

25 Let's talk about that coercion one more time.

1 February of 2013, when she was arrested, she told you she
2 was seven months pregnant. It was over two years later
3 after her child was born that she decided to come forward
4 with that information that we coerced out of her.

5 She talked about what she understood the relationship
6 between Brandon and Michael Evans was, that they were just
7 friends. They weren't quite homeboys. They just kind of
8 hung around together. But she didn't really know how
9 close or how tight they were. I mean, he bought a little
10 weed from him here or there. But they weren't
11 particularly close.

12 If you're not particularly close with somebody, don't
13 particularly have a close relationship with him, are you
14 going to wait over two years, almost 30 months to come
15 tell law enforcement, first of all, I didn't have anything
16 to do with it, but neither did my brother? No. Because
17 she knew she couldn't say that, because that's not the
18 truth.

19 She told you she drove them over there. They parked.
20 Brandon and Evans went inside. She heard a couple of
21 shots. It took 30 or 45 seconds, a minute. Brandon comes
22 out. He gets in the car with a bottle of liquor. And she
23 tells you she heard a couple more shots after that.

24 She tells you Mike Evans comes out and gets in the
25 car. She asked him, What happened? What happened? I

1 don't know. I don't know. It wasn't supposed to go down
2 like that. It went sideways. He started reaching for his
3 gun, or he pulled his gun, or something to that effect. I
4 shot him in the face.

5 What was the testimony from Dr. Ward? Where was the
6 fatal blow on Joe Crite? In the face. What did Dr. Ward
7 tell you Joe Crite's condition would have been with that
8 blow? He would not have been ambulatory, meaning he
9 wouldn't have been able to walk around any further. He,
10 basically, dropped right there and passed away. He, also,
11 told you he doesn't know the sequence of shots, which one
12 came when.

13 What I would suggest to you is that the shot to the
14 face had to be the last shot, based off of the position of
15 Mr. Joe. He was lying face down. His other injuries were
16 on the front of his body, not in the back.

17 We don't know what exactly happened. But I would
18 suggest to you that it is possible, based off the
19 information that you have, that somebody came through the
20 front door and discharged their weapon, initially, to let
21 Joe Crite know this was serious business.

22 Where was that projectile found? It shatters and
23 goes all over the kitchen. Where is the shell cartridge
24 found? Right outside the front door. Where's the blood
25 in the house? He's trying to get out the side door. The

1 shell casing is a 100 percent match to this gun.

2 Brandon Adams talked with Investigator Campbell when
3 he was, initially, arrested. I don't know nothing about
4 nothing. I don't know where Landford Drive is. I ain't
5 never been to Landford Drive. I don't know nothing about
6 a gray car. I don't own a gray car. I don't know who did
7 this. I heard Tab did it.

8 Who's Tab? We know who Tab is. Why does he put
9 Tab's name in it? Because he knows other people have seen
10 Tab out there. He saw Tab out there.

11 His second interview, September of 2014, what does he
12 tell us? Me, Mercedes, and the little Mike dude -- he
13 claims that he doesn't even know Mike's last name. He
14 doesn't exactly know who he is. He just knows him from
15 Boulder Creek, City Heights. We get in the car to go over
16 to Mr. Joe's house to buy some weed.

17 Boulder Creek, Cherrydale, Kennedy Park, Landford
18 Drive, White Horse Road. I don't have the mileage, but
19 10, 15 miles apart. That's a heck of a long way to go buy
20 \$40 worth of weed. Is it credible? Is that part of his
21 story true? Do you believe that?

22 He tells you he went inside the front door. He
23 bought \$40 worth of weed. He went to use the restroom.
24 What does Joseph Waller tell you, his son? Ain't no way
25 Mr. Joe is going to let anybody use the restroom. He

1 don't even let me use the restroom.

2 For as long as Mr. Joe has been doing this, do you
3 really think he's going to let somebody he doesn't know
4 that comes into his house go into his restroom, which is
5 between the bedrooms? You've heard his bedroom has all
6 the money and a gun. Do you really think he's going to
7 let him go into the bathroom? Are you going to let
8 somebody go into your bathroom that you don't know that
9 comes in the front door?

10 There's been no discussion or information about this
11 being a smoke house, meaning people go there to smoke
12 crack cocaine. They're only talking about purchasing it.
13 There's been no discussion whatsoever.

14 Is it reasonable to believe that he would have
15 allowed him into his bathroom? I suggest to you it's not.

16 The Defendant, finally, admits that he did see Tab
17 and Sweet Pea there that night. That, in fact, he asked
18 Sweet Pea to go buy a cigarette for 50 cents from Mr. Joe.
19 Why did he do that? Maybe to make sure Mr. Joe was in
20 there by himself. Maybe that's why Sweet Pea ain't showed
21 up.

22 He, of course, denies taking a bottle of liquor out
23 of there. Because what he's trying to do is protect
24 himself and mitigate his involvement. Okay. Okay. I was
25 there. In fact, the gun accidentally discharged as I'm

1 running out of the house once I heard shots. You're
2 running out of the house, the gun is in your left hand.
3 It accidentally discharges. How does the projectile
4 strike the wall behind you? It doesn't make sense.

5 Well, what he's trying to do -- and the Judge is
6 going to give you a charge on this, because it's included
7 in the accomplice liability charge, is a charge of mere
8 presence. If you had gone and been the other person in
9 this scenario and you did not know that the person you
10 were with was going to rob somebody, and you go in the
11 house, and you're there to buy weed -- okay -- or whatever
12 else. But you did not know and you did not discuss
13 robbing that person, and then whoever you're with turns
14 around and commits a robbery and a subsequent homicide,
15 the fact that you were present -- merely present in the
16 house does not make you guilty of anything. You had no
17 knowledge that the robbery was going to occur, much less
18 homicide.

19 Now, I don't think we're up here trying to tell you
20 that they went over there to kill Joseph Crite that
21 morning. I don't think that was their intention.
22 Unfortunately, for Mr. Crite, that is the result that
23 occurred.

24 But who goes and buys weed with a loaded
25 nine-millimeter? Who drives all the way across town to

1 buy \$40 worth of weed? So he's trying to mitigate his
2 involvement. He puts himself there in the house. Why?
3 Why does he tell us that? He does it because he knows
4 Jimmy Cobb has told us that already. Again, he denies the
5 robbery or that anything else was going to take place.

6 So let's go back through the charges very briefly.
7 Armed robbery, taking something from another by force or
8 intimidation while armed with a deadly weapon. He's
9 admitted to having a nine-millimeter. Mercedes Adams told
10 you that he came back with a bottle of liquor.

11 He's in possession of a weapon during the commission
12 of a violent crime, which is armed robbery. Burglary is,
13 also, a violent crime, as is murder. Burglary first
14 degree is the entering unlawfully of a dwelling that has
15 an aggravating circumstance with it.

16 What is one of those potential aggravating
17 circumstances that you can find? You do not have to find
18 all of them. And you only have to find one. But I would
19 suggest to you that all three of them are present in this
20 case. One, the entering occurred during the nighttime
21 hours. You've heard the testimony, it was well past
22 10:30, somewhere before 2:00 in the morning. Two, while
23 armed with a deadly weapon. Three, someone caused
24 physical injury to a person who was not a participant of
25 the crime, Mr. Joe.

1 The most significant and, of course, serious charge
2 is murder. That's the killing of another with malice
3 aforethought. Remember, aforethought can occur in a split
4 second. Malice, during the commission of another felon,
5 evil will, ill spirit. It can be inferred because it
6 happened in the commission of the armed robbery or the
7 burglary, and that the victim died as a result thereof.

8 Accomplice liability, the hand of one is the hand of
9 all. It matters not if you were to believe that he didn't
10 shoot Joseph Crite. It matters not who shot him. Because
11 they went over there to rob him, their continuous actions,
12 regardless of who accomplished them, are the same of every
13 person that's involved. That includes Mercedes Adams.
14 She is just as guilty of murder as Brandon Adams is, and
15 of the third person, who could be Michael Evans.

16 And I've asked you to focus. Today is about Brandon.
17 It's not about all this other who else could have been
18 involved. What is his involvement? And what is he
19 responsible for?

20 I suggest to you that we have proven beyond a
21 reasonable doubt, which is the standard that we have to
22 reach. That doesn't mean any doubt. You don't have to be
23 100 percent convinced. You have to be comfortable and
24 confident in your decision. I suggest to you that we have
25 reached that burden and we have exceeded that burden. And

1 if you take the oath that you took to follow the law as
2 the Judge gave you -- gives it to you in a minute, there
3 is no other resolution that you can reach other than to
4 find him guilty of all counts.

5 We've attempted to search for the truth here today.
6 A lot of that weighs on the credibility and the
7 information that you have before you. What's the common
8 information between Adams -- Mercedes Adams, Brandon
9 Adams, Jimmy Cobb? They all tie themselves into this
10 thing somehow of being present out there when Joseph Crite
11 was killed.

12 I would suggest to you that it is insulting that they
13 would get up here and attempt to mislead, misconstrue,
14 misinform you of what, actually, happened that day. They
15 placed their hand on the Bible and swore to tell the
16 truth, the whole truth, and nothing but the truth.

17 Some of them have attempted to manipulate the
18 information in an effort to either remove themselves from
19 some potential wrongdoing or involvement in the case. Or
20 they've given law enforcement information and, now, they
21 don't want to have to turn around and tell you, the jury,
22 the family of the victim, the family of the Defendant what
23 they've done, and where they went that night. But if you
24 were to allow them to manipulate yourselves and the
25 information the way they want you to, the system is going

1 to fail us all.

2 Brandon Adams is guilty of all charges in this case.
3 And I would respectfully ask that you return a verdict
4 that speaks the truth. And that's a verdict of guilty on
5 all counts.

6 The Judge is going to talk to you in a few minutes
7 and give you the charge. You're going to have this
8 information to take back. I'd ask that you consider it,
9 review it closely. If you have any questions, give the
10 bailiff a note. If you need to watch a video, we'll
11 either bring you back out here or send the computer back.
12 If you're unsure of what anybody's testimony may have
13 been, the court reporter will be happy to replay it for
14 you.

15 I thank you for your time.

16 THE COURT: Thank you, Solicitor.

17 Does anyone in the gallery want to leave before
18 Mr. Toney begins his closing argument? If so, do so now.

19 (Pause.)

20 THE COURT: All right. Mr. Toney.

21 MR. TONEY: Your Honor.

22 Mr. Solicitor.

23 Ladies and gentlemen, thank you very much for your
24 attention.

25 I appreciate you listening very carefully. I know

1 you did.

2 I'm very proud to represent Brandon Adams. I'm here
3 with him and his family. He's a fine young man. I've
4 come to know him. I like him. And I've spent a lot of
5 time with him and his family, his mom, his cousins, his
6 grandma. These are all people here today that love him
7 and they are with him.

8 Their heart is, also, broken for Mr. Crite. But they
9 don't want their son, and grandson, and their nephew, and
10 their cousin mindlessly sacrificed for something he didn't
11 do. Mr. Adams has put his life in your hands. He'll
12 certain -- he's certain that you'll look carefully at this
13 case.

14 The Judge is going to instruct you on what reasonable
15 doubt is. If anything I say contradicts anything -- what
16 this man -- His Honor says, then you're to listen to His
17 Honor.

18 But I'm going to tell you right now that reasonable
19 doubt is a heavy burden to bear. If this was a civil
20 case, for example, let's say we were arguing over a car
21 accident, then you'd have two parties. Just like my hands
22 maybe represent the scales of justice. You just have to
23 tip the scales one way or the other. Whichever side was
24 tipped in that person's favor, that side would be the
25 winner.

1 But, in this case, the State has a huge, huge burden
2 to prove. They have to tip the scales very greatly. They
3 have to show that there's no doubt beyond a reasonable
4 doubt that this man is guilty. And I submit to you that
5 not only have they not met their burden, they have
6 spectacularly, and overwhelmingly, and completely, and
7 utterly failed. There's no question in this case.

8 The State brought a firearms expert in this case who
9 said there was nothing conclusive as to whether the gun
10 matched the casings. He said the analysis had negative
11 results. Not only couldn't they match the gun to the
12 casings used, they couldn't even tell if it was a
13 revolver, an automatic, or even -- I don't know if you
14 remember hearing this, or even possibly a rifle.

15 With 300 million guns in this country and you exclude
16 the shotguns out of there, I would suggest that leaves 200
17 million potential guns. They never matched the gun that's
18 in evidence with the gun that did the shooting.

19 As a matter of fact, there is no dispute in this case
20 that this gun was not the weapon -- but that this gun was
21 not the weapon that was used to kill Mr. Crite. That, in
22 itself, is a kind of evidence that my client is not
23 guilty.

24 Mercedes Adams got up. She testified under oath in
25 front of you -- in front of this jury with her hand on the

1 Bible that she was coerced. Does anybody in this room
2 have any doubt that she was under tremendous pressure?
3 Even the Solicitor said she was in a tight spot. There's
4 no question, at her age with a baby, she was scared out of
5 her mind.

6 You can see that they've just charged a whole bunch
7 of people with murder. It just looks like they just went
8 through and charged everybody they could think of with
9 murder. And they're like, we don't know who did it, but
10 we've charged four people.

11 Now, I will say this. When they came in this room,
12 they said, there's two people responsible. I don't know
13 where this Mr. Evans is. He, apparently, hasn't been
14 charged. They've charged a bunch of other people. It
15 looks like they just went and charged everybody they could
16 find, and then tried to purchase their testimony, saying
17 we'll let you out if you'll say something.

18 I don't know if anyone here can remember what it's
19 like to be 17, 18 years old. But, surely, you would have
20 been scared out of your mind and you would have said
21 anything.

22 In this case, we don't have to speculate that she was
23 scared out of her mind and said anything. Why? Because
24 she retracted her statement under oath. And she said that
25 she was scared out of her mind. She was 17 years old.

1 And she said whatever she had to say to get out of jail.

2 This is not one of these cases that you see on TV
3 where the lawyer gets up and says, ladies and gentlemen,
4 this witness, I submit to you, was lying because they had
5 these motives. This is a case where the witness has said,
6 I said whatever I had to to get out of jail. I wasn't --
7 she said, I wasn't even there. I wasn't even present. I
8 don't know what happened. That's their witness. That's
9 the evidence you have before you. Anything she might have
10 said in the interview room -- she wasn't even under oath
11 there.

12 There are two sons that came in. They both testified
13 that there were drugs, cigarettes, and liquor sold out of
14 this house. You have pictures. These pictures show --
15 I'm not -- tremendous amounts of beer, every one of which
16 was for individual sale. Cigarettes were sold, several
17 packs a day. Loosies, one or two at a time. I don't know
18 how many packs -- cigarettes are in a pack, at least, 12,
19 or 24, something like that. You can imagine that 40
20 people easily a day could have bought cigarettes out of
21 here. There could have been 30 people buying drugs.

22 This was an open air drug, alcohol, and cigarette
23 market. You don't have to speculate about that. There's
24 no dispute. The investigating officer himself testified
25 this was a crack house.

1 This house here was full of dangerous people. There
2 were dangerous people all around. They were lurking there
3 all hours of the day and night. They were all drug
4 addicts. They were all high. You don't know who they
5 were. We just know there was tons of crime going on
6 there.

7 Now, a guy named Jimmy Cobb came here. He testified
8 he was smoking crack in the car. There's no question.
9 And everybody here knows that that man was high. There's
10 no reason for that man to be outside of a crack house and
11 not be high.

12 But one of the neat things about Mr. Cobb is you
13 don't have to sit and go, I sure wonder if Mr. Cobb was
14 high. I don't know. I wonder what it's like when
15 Mr. Cobb is high. Because you, actually, got to look at a
16 video of Mr. Cobb being high. He was talking fast. He
17 was acting crazy. He was yawning. Mr. Cobb testified
18 that he had been up for weeks.

19 I don't if any one of you has been up for even two or
20 three days. But if you've been up for two or three days,
21 you're about incoherent. If you stay up one night, your
22 mind is not working. If you even get three hours of sleep
23 on a given night, you don't really know what you're doing
24 the next day. You're not safe to operate heavy equipment,
25 or do anything important.

1 This man said he had been up for weeks. He has a
2 long-standing addiction to crack cocaine. He has talked
3 about it. In that video, he was leaning against the wall.
4 He was yawning. He had slurred speech. He was talking
5 fast. If you were a cop or if you were a highway
6 patrolman, you would have arrested him for DUI if you
7 found him like that. That man there was completely and
8 utterly incoherent. He was talking gibberish.

9 If a guy like that came up to you on the road or at a
10 gas station begging for money, you'd be afraid. You'd say
11 this man is on something, get away from me, you know. You
12 would be scared. You don't know him.

13 But that's the witness they brought in. That man
14 there has gotten up today and said he didn't know what
15 happened. He can't remember. His eyes were blurry during
16 the meeting. He was high when it happened. He was high
17 in the interview. I respectfully submit to you that that
18 man is so far from being a reliable witness as to be a
19 completely, and utterly, absolutely unreliable witness.
20 Would you let him baby-sit your child? Would you let
21 him --

22 THE COURT: That's not proper argument.

23 MR. TONEY: I'm sorry.

24 THE COURT: That's not proper argument.

25 MR. TONEY: I beg your pardon. I withdraw that.

1 As to Mr. O'Neal. He got up and he said that the
2 night that something happened, there were two people
3 standing outside the house. You don't know who they were.
4 They could have been some of the crack heads that lurked
5 around this house. He said they were black. Their
6 hoodies -- they had hoodies. They had their backs to him.
7 He couldn't even testify if they were male. He said they
8 may have been male or female. He didn't know. That is a
9 completely and utterly unreliable witness. I saw two guys
10 with hoodies or women. I don't know. That's not the kind
11 of evidence that I believe -- I respectfully submit that
12 you should even consider.

13 The bottom line in this case -- I'm sorry. I've got
14 to address the issue of the sons. The son testified, he
15 helped his dad. He said he -- he admitted he was a drug
16 dealer.

17 He did not testify that he saw any money on his
18 father that day. I'm going to respectfully submit to you
19 that since there was money laying around in clear view,
20 there is no evidence. And since there's no receipts, no
21 one testified there was money on Mr. Crite, there is no
22 evidence that a robbery even occurred. That was -- there
23 were bullets fired, but there's no evidence that even a
24 robbery occurred. There is nothing here.

25 In this case, the bottom line is there wasn't one

1 single witness that would testify in court that Mr. Adams
2 had anything to do with it, or that he was even present.
3 There was nothing reliable. We have so far exceeded any
4 possible bounds of reasonable doubt that not only was
5 there reasonable doubt here, they have spectacularly
6 overwhelmingly, and completely, and utterly failed to make
7 their case.

8 When this case started, the Solicitor promised you
9 there were two people that robbed Mr. Crite. They haven't
10 even shown that one person robbed Mr. Crite.

11 We simply don't know what happened. They have left
12 more questions unanswered than they have answered. They
13 don't even tell you why -- apparently, there's some other
14 name out there, Mr. Evans, or Todd Evans, or Michael Todd
15 Evans. They don't say why he hasn't been charged. They
16 don't say anything.

17 I don't believe that this case was proven. I would
18 ask -- when you go back there, I would ask that you ask
19 the question among yourselves, do you honestly have even
20 one single reliable, honest witness that you can rely on?
21 And if you get back there and if in five minutes you
22 decide, look, I'm not sure we have a single reliable
23 witness we can rely on, at that point, I respectfully
24 submit to you that you should say we don't have a single
25 witness I trust. That's reasonable doubt. I'm going to

1 find him not guilty.

2 This decision is important. If you live a thousand
3 years, you will never possibly have a chance to make a
4 decision as important as this. Believe me, you cannot
5 imagine how important this is to my client. He has people
6 that love him, that are here for him. He has put his
7 future, his life into your hands. I'm going to ask that
8 you treat that with the respect that it deserves.

9 His Honor is going to give detailed instructions on
10 reasonable doubt. I ask that you pay very close attention
11 to those instructions.

12 A young man has come before you. He's a man that I
13 believe in, a man that has a future. He's a man that has
14 people that love him, and people he loves. I ask that you
15 not take the risk of sending an innocent man to prison --

16 THE COURT: No, sir. No, sir. Punishment is not an
17 issue for this jury.

18 MR. TONEY: Yes, sir. I withdraw that. I beg your
19 pardon.

20 THE COURT: The jury's issue is the facts and the
21 verdict.

22 MR. TONEY: Yes, sir.

23 THE COURT: Punishment, if any, is imposed by the
24 Court.

25 MR. TONEY: Okay.

The bottom line is the State has produced no witnesses, no gun, no weapon, zero evidence. I ask you to return a verdict of not guilty.

THE COURT: Thank you. Thank you, Mr. Toney.

MR. TONEY: Yes, Your Honor.

Thank you, sir.

THE COURT: If anyone in the gallery wants to leave before I begin my instructions to the jury, I'd ask you to, please, do so now.

Madam Forelady, and, ladies and gentlemen of the jury, my instructions will probably take 35 to 40 minutes. It's difficult to track sometimes, I will say.

If anyone needs a break, raise your hand now. We'll take a break. If not, I'm going press on.

(WHEREUPON, there was no response.)

CHARGE ON THE LAW

THE COURT: All right. Thank you very much.

The way I charge a jury is I charge the general criminal law that applies to all criminal cases in South Carolina first. I will give you the caption of the subject matter when I change from one subject matter to the next, I will give you that next caption. Thereafter, I will charge the specific charges in the indictments. And, finally, I will charge the form of the verdict.

Charge, arrest, and indictment are not evidence. The

1 indictments charge the Defendant with burglary first
2 degree, armed robbery, possession of a weapon during the
3 commission of a violent crime, and murder. I remind you
4 that the fact the Defendant was arrested, charged, and
5 indicted in this case is not evidence and cannot be
6 considered by you as evidence of guilt in this case, nor
7 does it create any presumption or inference of guilt.

8 The indictments are simply the formal written
9 instruments which contain the charges made against the
10 Defendant. They are the formal documents which brought
11 this case before the Court.

12 Multiple indictments. The indictments in the case
13 allege several different offenses against the Defendant.
14 Again, burglary first, armed robbery, possession of a
15 weapon during the commission of a violent crime, and
16 murder.

17 Each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on
19 the evidence and the law applicable to it uninfluenced by
20 your decision as to any other indictment.

21 The Defendant may be convicted or acquitted on any or
22 all of the offenses charged. You will be asked to write a
23 separate verdict of guilty or not guilty as to each
24 indictment. Obviously, he could not be convicted of
25 possession of a weapon during the commission of a violent

1 crime unless he were, also, convicted of having committed
2 a violent crime. I will explain more to you about that
3 later in my charge.

4 Presumption of innocence. The Defendant has pled not
5 guilty to these indictments. And that plea puts the
6 burden on the State to prove the Defendant guilty.

7 A person charged with committing a criminal offense
8 in South Carolina is never required to prove himself
9 innocent. I instruct you that it is an important rule of
10 the law that a defendant in a criminal trial, no matter
11 what the seriousness of the charge may be, will always be
12 presumed to be innocent of the crime for which the
13 indictment was issued, unless guilt has been proven by
14 evidence satisfying you of that guilt beyond a reasonable
15 doubt.

16 This presumption of innocence does not end when you
17 begin your deliberations, but it accompanies the Defendant
18 throughout the trial until you reach a verdict of guilt,
19 based on evidence satisfying you of that guilt beyond a
20 reasonable doubt. The presumption of innocence is said to
21 be like a robe of righteousness placed about the shoulders
22 of a defendant, which remains with the Defendant until it
23 has been stripped from the Defendant by evidence
24 satisfying you of the Defendant's guilt beyond a
25 reasonable doubt.

1 The presumption of innocence is not a mere legal
2 theory. It is not just a legal phrase. It is a
3 substantial right to which every defendant is entitled,
4 unless you, the jury, are satisfied from the evidence of
5 the Defendant's guilt beyond a reasonable doubt.

6 What is a reasonable doubt in the law? A reasonable
7 doubt is the kind of doubt that would cause a reasonable
8 person to hesitate to act. The State has the burden of
9 proving the Defendant guilty beyond a reasonable doubt.

10 Some of you may have served as jurors in the past in
11 civil cases where you were told that it is only necessary
12 to prove that a fact is more likely true than not true,
13 such as by the greater weight or the preponderance of the
14 evidence. In criminal cases, the State's proof must be
15 more powerful than that. It must be beyond a reasonable
16 doubt.

17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the Defendant's guilt. There are
19 very few things in this world that we know with absolute
20 certainty. And, in criminal cases, the law does not
21 require that proof overcome every possible doubt.

22 If, based on your consideration of the evidence, you
23 are firmly convinced that the Defendant is guilty of the
24 crime or crimes charged, you must find the Defendant
25 guilty. If, on the other hand, you think there is a real

1 possibility that the Defendant is not guilty, you must
2 give the Defendant the benefit of the doubt and find him
3 not guilty.

4 Duties of trial jury and trial judge. I remind you,
5 during this trial, you and I have certain distinct
6 separate duties to perform. As the trial judge, it is my
7 responsibility to preside over the trial of this case.
8 And I, also, have the duty to rule on the admissibility of
9 the evidence offered during the trial.

10 You are to consider only the competent evidence
11 before you. If there was any testimony ordered stricken
12 from the record in this case during the trial, you must
13 disregard that testimony. You are to consider only the
14 testimony which has been presented from the witness stand
15 and any exhibits which have been made part of the record.

16 I have the additional duty to instruct you on the law
17 applicable to this case. As the presiding judge, I am the
18 sole judge of the law of this case. And it is your duty,
19 as jurors, to accept and apply the law exactly as I state
20 it to you.

21 If you already have any idea as to what the law is or
22 what the law ought to be and it does not agree with what I
23 now tell you the law is, you must abandon your idea.
24 Because you were sworn and you have taken an oath to
25 accept the law and apply it exactly as I state it to you.

1 In every case tried in this Court before a jury, the
2 jury becomes the sole and exclusive judge of the facts in
3 a case. A trial judge cannot intimate, state, comment on,
4 or make any statement to a trial jury about the facts in a
5 case.

6 Since you, the jury, are the sole judge of the facts
7 in this case, you are not to infer from what I have said
8 during the progress of the trial in ruling upon the
9 admissibility of evidence, or otherwise, or anything that
10 I say now during the course of this instruction to you
11 that I have any opinion about the facts in this case. The
12 law does not allow me to have an opinion about the facts
13 in this case. This is a matter solely for you, the jury,
14 to determine. As jurors, it is your duty to determine the
15 effect, the value, the weight, and the truth of the
16 evidence presented during the trial.

17 Direct and circumstantial evidence. There are two
18 types of evidence which are, generally, presented during a
19 trial, direct evidence, circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 claims to have actual knowledge of a fact, such as an
22 eyewitness or an ear witness. It is evidence which
23 immediately establishes the main fact to be proved.

24 Circumstantial evidence is proof of a chain of facts
25 and circumstances indicating the existence of a fact. It

1 is evidence which immediately establishes collateral facts
2 from which the main fact may be inferred. Circumstantial
3 evidence is based on inference and not on personal
4 knowledge or observation. The law -- our law makes
5 absolutely no distinction between the weight or the value
6 to be given to either direct or circumstantial evidence,
7 nor is there a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 You should weigh all of the evidence in the case. If
10 you are not convinced of the guilt of the Defendant beyond
11 a reasonable doubt, you must find the Defendant not
12 guilty. If you are convinced of the guilt of the
13 Defendant beyond a reasonable doubt, you must find the
14 Defendant guilty.

15 Credibility of witnesses. Necessarily, you must
16 determine the credibility of the witnesses who have
17 testified in this case. Credibility, as you all know,
18 simply means believability. It becomes your duty, as
19 jurors, to analyze and evaluate the evidence and determine
20 which evidence convinces you of its truth.

21 In determining the believability of witnesses who
22 have testified in this case, you may believe one witness
23 over several witnesses. Or you may believe several
24 witnesses over one witness. You may believe a part of the
25 testimony of a witness and reject the remaining part of

1 the testimony of that same witness. You may believe the
2 testimony of a witness in its entirety or reject the
3 testimony of a witness in its entirety, provided you have
4 a good reason in the record for so doing.

5 You may consider whether any witness has exhibited to
6 you any interest, bias, prejudice, or other motive in this
7 case. You may, also, consider the appearance, the manner,
8 the demeanor of the witness while testifying on the
9 witness stand.

10 You consider all these in your determination of the
11 credibility, the believability of the witnesses using your
12 individual and collective good judgment and common sense,
13 and those factors we use in making life's important
14 decisions.

15 The rules -- and you've heard an abbreviated version
16 and I'll try -- this won't be lengthy, but I'll try to
17 move it along.

18 Expert witnesses. The rules of evidence ordinarily
19 do not allow witnesses to testify to opinions or
20 conclusions. An exception exists for witnesses we call
21 expert witnesses. A witness who by education and
22 experience has become an expert in some art, science,
23 profession, field, or calling may state an opinion as to
24 relevant and material matter in which the witness claims
25 to be an expert and may, also, state the reasons for

1 holding that opinion or opinions.

2 You should consider any expert opinion received in
3 evidence in this case and like any other evidence give it
4 the weight you think it deserves. If you decide the
5 opinion of an expert witness is not based on sufficient
6 education and experience, or if you conclude that the
7 reasons given in support of the opinions are not sound, or
8 that the opinion is outweighed by other evidence, you may
9 disregard the opinion entirely.

10 Obviously, an expert witnesses testimony is to be
11 given no greater weight than that of other witnesses
12 simply because we call the witness an expert. Further,
13 you are not required to accept an expert's opinion, even
14 though it may be uncontradicted.

15 I instruct you and emphasize that the fact that the
16 Defendant did not testify is not a factor to be considered
17 by you in any way in your deliberation and in your
18 consideration on the question of the guilt or the
19 innocence of the Defendant. It must not be considered by
20 you in any manner whatsoever.

21 A defendant has the Constitutional right to remain
22 silent, and the assertion of this right must not be
23 considered by you in your deliberations. I repeat, under
24 your oath, you are to draw no conclusions whatsoever from
25 the fact that the Defendant in this case did not testify.

1 Madam Forelady, the fact that this Defendant did not
2 testify should not even be discussed in the jury room.
3 The burden of proof, as I have stated to you, is on the
4 State. The Defendant is not required to prove his
5 innocence. The burden of proof remains on the State to
6 prove guilt beyond a reasonable doubt.

7 Statement of defendant. A statement alleged to have
8 been made by the Defendant has been admitted into evidence
9 in this case. While the Court has determined that the
10 statement is admissible, I instruct you that you make the
11 ultimate decision of whether or not the Defendant made the
12 statement.

13 If the Defendant did make the statement, you must
14 determine whether the statement was made by the Defendant
15 voluntarily and of his own free will and accord. This
16 means that the statement was not caused by pressure,
17 force, fear, threats, coercion, intimidation, hope, or
18 promise of leniency or reward of any kind.

19 In determining whether the statement was voluntary,
20 you should consider both the characteristics of the
21 Defendant and the details of the questioning. Some
22 factors that you must consider are the age of the
23 Defendant, the Defendant's education or lack thereof, the
24 Defendant's mental ability or capacity, the Defendant 's
25 IQ or intelligence, the Defendant's background or

1 environment, the place and length of detention, the nature
2 of the questions, and the advice or lack thereof to the
3 Defendant of his Constitutional rights, including, but not
4 limited to, the right to remain silent, that any statement
5 could be used against him in a court of law, the right to
6 have a lawyer present, that if he could not afford a
7 lawyer, a lawyer would be appointed to represent him
8 without any cost, and that he could stop making a
9 statement at any time. You must carefully consider all of
10 these surrounding circumstances before you give any weight
11 to any alleged statement.

12 The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary.
14 If you determine it was, you may give the statement any
15 other consideration that you deem proper and appropriate.

16 You must decide what weight, if any, should be given
17 to the alleged statement. If you determine that the
18 alleged statement was not the free and voluntary statement
19 of the Defendant, you should not consider the statement at
20 all.

21 That concludes the general criminal law. I will now
22 cover the charges and the specific indictments. If you
23 would, please, continue to give me your complete and
24 undivided attention.

25 Burglary first degree is a statute in South Carolina,

1 16-11-311. The Defendant is charged with first degree
2 burglary. The State must prove beyond a reasonable doubt
3 that the Defendant entered a dwelling without consent. A
4 dwelling is defined as any building or portion of a
5 building in which a person ordinarily sleeps.

6 In order to prove that the Defendant entered the
7 dwelling, the State does not have to show that the
8 Defendant's entire body entered the dwelling. The
9 smallest entry is sufficient. It may be any part of the
10 body, such as a hand, or a foot, or even an instrument
11 such as a hook or other instrument. In addition, the
12 State does not have to prove that force was used to gain
13 entry.

14 Next, the State must prove beyond a reasonable doubt
15 that the Defendant intended to commit a crime, either a
16 felony or a misdemeanor, at the time of the entry. The
17 mere entry into a dwelling without consent is not
18 burglary. If the intent to commit a crime is formed after
19 the entry, it is not burglary.

20 On the other hand, if the Defendant intended to
21 commit a crime at the time of the entry, it is a burglary,
22 even if the intent was abandoned after the entry. It does
23 not matter that the intended crime was not completed.
24 Intent may be shown by acts and conduct of the Defendant
25 and other circumstances from which you may naturally and

1 reasonably infer intent.

2 Finally, the State must prove beyond a reasonable
3 doubt that, number one, when entering, or while in the
4 dwelling, or when fleeing, the Defendant or an accomplice
5 was armed with a deadly weapon. A deadly weapon is any
6 article, instrument, or substance which is likely to cause
7 death or great bodily harm. The following are examples of
8 instruments which may be deadly weapons: A pistol, a
9 shotgun, a rifle, a dirk, a dagger, a knife, metal
10 knuckles, a razor. A gun may be a deadly weapon even if
11 it is not operating. That's number one.

12 As I stated, when entering, or while in the dwelling,
13 or when fleeing, the Defendant or an accomplice was armed
14 with a deadly weapon, or the State may prove when
15 entering, or while in the dwelling, or when fleeing, the
16 Defendant or an accomplice caused physical injury to a --
17 to anyone not a participant in the crime. And I said
18 "or," it can be and/or.

19 And, next, and/or when entering, or while in the
20 dwelling, or when fleeing, the Defendant or an accomplice
21 displayed what was or appeared to be a knife, pistol,
22 revolver, rifle, shotgun, machine gun, or the Defendant
23 entered and remained -- and/or the Defendant entered and
24 remained in the dwelling in the nighttime. Nighttime is
25 defined as that period between sunset and sunrise during

1 which there is not enough daylight to recognize a person's
2 face, except by artificial light or moonlight. That is
3 the charge of burglary first degree.

4 Next, armed robbery. The Defendant is charged with
5 armed robbery. In order to prove this offense, the State
6 must first prove beyond a reasonable doubt the Defendant
7 took personal property from the person or presence of
8 another person.

9 Property is in the presence of another person if it
10 is within the person's reach, inspection, observation, or
11 control so that the person could, if not overcome with
12 violence or prevented by fear, keep possession of the
13 property. The State must, also, prove beyond a reasonable
14 doubt that the Defendant carried the property away
15 intending to permanently deprive the owner of the property
16 and to keep the property for the Defendant's own use. The
17 taking and carrying away of the property must have been
18 done with violence or by putting the owner of the property
19 in fear of violence.

20 Finally, the State must prove beyond a reasonable
21 doubt that the Defendant was armed with a deadly weapon
22 during the robbery. Again, I have previously defined
23 deadly weapon under burglary as any article, instrument,
24 or substance which is likely to cause death. Examples: A
25 pistol, a shotgun, a rifle, a dirk. That is the charge of

1 armed robbery.

2 Next, I am charging possession of a weapon during the
3 commission or attempt to commit a violent crime. The
4 Defendant is charged with possession of a weapon during
5 the commission of or attempt to commit a violent crime.
6 The State must, first, prove beyond a reasonable doubt
7 that the Defendant was in possession of a firearm, or
8 visibly displayed what appeared to be a firearm during the
9 commission of a violent crime. A firearm, under this
10 statute, means a machine gun, automatic rifle, revolver,
11 pistol, or any weapon which is designed to or may be
12 readily converted to expel a projectile.

13 In order to find the Defendant guilty of possession
14 of a weapon during the commission of a violent crime, you
15 must, first, find the Defendant guilty of either
16 committing a violent crime or attempting to commit a
17 violent crime.

18 I would charge you that burglary first degree, armed
19 robbery, and murder are all violent crimes. The State
20 must prove beyond a reasonable doubt that the weapon
21 furthered, advanced, or helped in the commission of the --
22 or attempted commission of a violent crime.

23 And, finally, murder. And I assure you, ladies and
24 gentlemen, the end of my instruction is in sight.

25 Murder. The Defendant is charged with murder. The

1 State must prove beyond a reasonable doubt that the
2 Defendant killed another person with malice aforethought.
3 Malice is hatred, ill will, or hostility towards another
4 person. It is the intentional doing of a wrongful act
5 without just cause or excuse, and with an intent to
6 inflict an injury, or under circumstances that the law
7 would infer an evil intent.

8 Malice aforethought does not require that malice
9 exist for any particular time before the act is committed.
10 But malice must exist in the mind of the Defendant just
11 before and at the time the act is committed. Therefore,
12 there must be a combination of the previous evil intent
13 and the act.

14 Malice aforethought may be expressed or inferred.
15 These terms "expressed" and "inferred" do not mean
16 different kinds of malice, but merely the manner in which
17 malice may be shown to exist. That is, either by direct
18 evidence or by an inference from the facts and the
19 circumstances which are proven.

20 Expressed malice is shown when a person speaks words
21 which express hatred or ill will toward another person, or
22 when the person prepared beforehand to do the act which
23 was later accomplished. For example, lying in wait for a
24 person or any other act of preparation going to show that
25 the deed was within the Defendant's mind would be

1 expressed malice. Malice may be inferred from conduct
2 showing a total disregard for human life.

3 Inferred malice may, also, arise when the deed is
4 done with a deadly weapon. Again, the same definitions of
5 deadly weapon that were used under the burglary first
6 statute and the armed robbery statute. As far as malice
7 from the inference of the use of a deadly weapon, that is
8 simply whatever weight and value the jury wants to give to
9 that, if that is the finding of the jury.

10 Malice may be inferred if one kills another during
11 the commission of a felony. If facts are proven beyond a
12 reasonable doubt sufficient to raise an inference of
13 malice to your satisfaction, this inference would simply
14 be an evidentiary fact to be taken into consideration by
15 you, the jury, along with other evidence in the case. And
16 you may give it such weight as you deem it should receive
17 and is appropriate.

18 And, finally, ladies and gentlemen, the theory of the
19 hand of one, hand of all. If a crime is committed by two
20 or more people who are acting together in committing a
21 crime, the act of one is the act of all.

22 A person who joins with another to commit an unlawful
23 act is criminally responsible for everything done by the
24 other person which happens as a probable or a natural
25 consequence of the acts done in carrying out the common

1 plan and purpose. For example, two people can be guilty
2 of killing another person when only one of the two had a
3 knife, and there was only one thrust of a knife, and only
4 one of the two thrust the knife that caused the death. If
5 two or more people are together, acting together,
6 assisting each other in committing the offense, the act of
7 one is the act of all. And it is sometimes said, under
8 our law, the hand of one is the hand of all.

9 Prior knowledge that a crime is going to be committed
10 without more is not sufficient to make a person guilty of
11 that crime. Mere knowledge that another person is going
12 to commit a crime, even if the Defendant is present when
13 the crime is committed, is not sufficient to convict the
14 Defendant as a principle.

15 Guilt as a principle is shown by actual or
16 constructive presence at the scene as a result of a prior
17 arrangement. Therefore, a finding of a prior arranged
18 plan or common scheme is necessary for a finding of guilt
19 as a principle.

20 The State must prove beyond a reasonable doubt
21 competent evidence that the theory of the hand of one is
22 the hand of all. A principle in a crime is one who
23 either, actually, commits the crime or who is present
24 aiding, abetting, or assisting in committing the crime.

25 When a person does an act in the presence of and with

1 the assistance of another, the act is done by both. Where
2 two or more are acting with a common plan, or intent, or
3 present at the commission of a crime, it does not matter
4 who, actually, commits the crime, all are guilty. The
5 hand of one is the hand of all. Present at the commission
6 of the crime means to be sufficiently near to aid, and
7 abet, and assist in the commission of a crime. However,
8 mere presence at the scene of the crime is not sufficient
9 to convict one as a principle on the theory of aiding and
10 abetting.

11 Intent is, also, a necessary element. For there must
12 have been a common design or intent to commit the crime.
13 And the crime must have been committed pursuant thereto
14 with the person aiding and abetting by some overt act.

15 Intent means intending the result which, actually,
16 occurred, not accidentally or involuntarily. Intent may
17 be shown by acts and conduct of the Defendant and other
18 circumstances from which you may naturally and reasonably
19 infer intent. The State must prove these elements beyond
20 a reasonable doubt.

21 Mere presence at the scene is not sufficient to prove
22 someone guilty of a crime. A defendant's presence where a
23 crime is being committed or mere association with a person
24 who commits a crime does not make a defendant an
25 accomplice, or an aider, or abetter of the person

1 committing the crime.

2 That would conclude my charge to the exception of the
3 form of the verdict, Madam Forelady.

4 Regarding the charges, ladies and gentlemen, you will
5 have a verdict form in there, Madam Forelady.

6 There are, obviously, four charges, burglary first
7 degree, armed robbery, murder, possession of a weapon
8 during the commission of a violent crime. As to each of
9 these charges, there's one of two verdicts you may reach.
10 And you consider them separately and distinctly, as I have
11 previously told you.

12 As to murder, guilty or not guilty. As to burglary,
13 guilty or not guilty. As to armed robbery, guilty or not
14 guilty.

15 If not guilty on burglary, and armed robbery, and
16 murder -- in other words, if not guilty of any violent
17 crime, then he could not be convicted of possession of a
18 weapon during the commission of a violent crime. But if
19 guilty of, at least, one or more violent crimes, the
20 verdict would be guilty or not guilty. The order in which
21 I stated those verdicts has no significance whatsoever.
22 It's simply one must be stated first.

23 Now, as to your verdicts, all 12 of you must agree.
24 They must be unanimous.

25 You determine what the facts are separately and

1 distinctly as to each charge, whether you start with the
2 burglary, or the armed robbery, or the murder. That's
3 totally a decision of the jury. You determine the facts.
4 And you can determine all the facts before you reach your
5 verdict. But you determine the facts. And if after you
6 determine the facts -- let's say, as to the murder, you
7 find the State has met proving its case beyond a
8 reasonable doubt, your verdict must be guilty. If you
9 find the State has failed to prove its case beyond a
10 reasonable doubt, your verdict must be not guilty. The
11 same as to burglary first. The same as to armed robbery.
12 Again, I don't need to explain to you again the possession
13 of a weapon during the commission of a violent crime.

14 Once you have reached those unanimous verdicts -- you
15 have this form. It's got the charge here, guilty or not
16 guilty, and a line to the left. If your verdict is
17 guilty, check to the left of the word "guilty." Circle it
18 both with a check mark and the word guilty. If your
19 verdict is not guilty, check to the left of the two words.
20 Circle your check mark.

21 Once you've reached all those unanimous verdicts, you
22 sign and date the form. There is a -- this is a two-page
23 form. The murder indictment is just on the second page.
24 There just wasn't enough -- that's just the form of the
25 particular verdict.

1 Ladies and gentlemen, as to your verdicts, your
2 verdicts must be based on the evidence. They cannot be
3 based on passion, prejudice, speculation, surmise,
4 emotion, or any other improper consideration not in the
5 record in this case. You are the fact finders. You are
6 searching for the truth. You find the facts. You apply
7 the facts to the law, as I told you the law is, and you
8 reach those unanimous, true, and just verdicts.

9 If you have any questions during the course of your
10 deliberations, if you would, please, write out a note for
11 me, and knock on the jury room door, and the bailiff will
12 get it to me. And I will, certainly, attempt to respond
13 in a timely manner.

14 If you want the -- I think there's a couple, one,
15 maybe two videos that you would like to view that were
16 made a part of the record, if you would, please, let me
17 know. The parties have agreed on a technical individual
18 that -- with Greenville County, not associated with either
19 parties, officers that can, certainly, play those items
20 for you.

21 All right. Do not begin your deliberations until I
22 instruct you to do so, or the clerk. The law requires I
23 meet with the attorneys one final time outside your
24 presence in case I have forgotten anything. If I have
25 not, what will happen is everybody looks great, the

1 evidence will be presented to you. Our two alternates
2 would come out. And then you may begin your deliberations
3 once you're instructed to do so by the clerk.

4 Thank you. Thank you very much, ladies and
5 gentlemen, for your patience and your attention throughout
6 the trial of the case and my instruction to you.

7 You may now go with your bailiff.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 12:08 p.m.)

10 THE COURT: All right. Exceptions, Solicitor?

11 MR. MARCHANT: None from the State, Your Honor.

12 MR. TONEY: None from the Defense, Your Honor.

13 THE COURT: All right. Thank you very much.

14 Y'all want to check the evidence?

15 (Pause.)

16 THE COURT: Just tell them -- Madam Clerk, tell the
17 jury that if they want to see the live rounds, they'll
18 have to come out. I should have told them that. It got
19 tracked off my radar.

20 Are y'all good with the evidence --

21 MR. TONEY: Yes, sir, Your Honor.

22 THE COURT: -- Mr. Toney?

23 All right. Solicitor, are you good with the
24 evidence?

25 MR. MARCHANT: Yes, Your Honor.

1 THE COURT: All right. Are you good with the form of
2 the verdict?

3 MR. MARCHANT: Yes, Your Honor.

4 THE CLERK: Mr. Toney has seen it.

5 THE COURT: Do y'all bring the alternates out and
6 release them?

7 THE BAILIFF: Okay.

8 THE COURT: Do y'all bring them out and release them?

9 THE BAILIFF: Bring them out and let them go.

10 THE COURT: All right. That sounds great to them,
11 I'm sure.

12 THE BAILIFF: Yes, sir.

13 THE COURT: All right. If nothing further, we'll be
14 awaiting our juries verdict.

15 (WHEREUPON, the proceedings were recessed at
16 approximately 12:31 p.m.)

17 QUESTION FROM THE JURY

18 THE COURT: The jury has sent out a question.

19 Question, "How old was Brandon at the time of the
20 crime?"

21 How would y'all like for me to respond?

22 MR. MARCHANT: Your Honor, I don't think that
23 information was ever put into the record.

24 THE COURT: Is it on the statement of rights form?
25 Generally, they put name, address --

1 MR. MARCHANT: I'm trying to recall whether it's got
2 date of birth on there or not.

3 THE COURT: I mean, I'm not going to be their ring
4 master --

5 MR. MARCHANT: Right.

6 THE COURT: -- and tell them how to figure that out.
7 But if it's not in evidence, there's nothing you can do.
8 It's not in evidence.

9 MR. TONEY: Seems like it's relevant. But if it's
10 not in evidence, then there's nothing you can do about it,
11 even though it may be relevant.

12 THE COURT: I don't even know if I can tell them to
13 look at the form.

14 MR. TONEY: I don't think so. It wouldn't seem like
15 so. I'm not sure, though.

16 THE COURT: But I hate to tell them it's not in
17 evidence, you know, if it's on the form.

18 THE COURTROOM DEPUTY: Some people put it on there
19 and some people don't, if my memory is right.

20 THE COURT: That's kind of been my experience.

21 MR. MARCHANT: I know that Investigator Campbell
22 wrote tenth grade on there. I just can't remember what
23 was written below it. I believe it may have just been
24 Carolina High School.

25 So it may very well be that they do not have that

1 information back there. But I do not believe that there
2 was any testimony elicited from any witness that
3 indicated his age, or date of birth, or anything of that
4 nature.

5 THE COURT: There may have been some -- I don't know.

6 All right. I can respond, The evidence and testimony
7 has been presented to be -- as you remember it to be.

8 MR. TONEY: Yes, sir.

9 MR. MARCHANT: Thank you, Your Honor.

10 THE COURT: You don't think Ms. Adams testified to
11 it, how much older he was than her? I don't think so,
12 but...

13 MR. TONEY: Your Honor, I intend to be about 10
14 minutes away eating a sandwich. Is that okay?

15 THE COURT: Say it again.

16 MR. TONEY: I intend to be about 10 minutes, five
17 minutes away eating a sandwich. Is that --

18 THE COURT: Yes. That's okay. I mean, you may be
19 running back and forth --

20 MR. TONEY: That's fine. Yes, sir.

21 THE COURT: -- with things like this.

22 MR. TONEY: Yes, sir. That's fine.

23 (Pause.)

24 THE COURT: All right. My response is, "The evidence
25 and testimony would have to be as you remember it to be.

1 I cannot answer any factual questions."

2 Now, it may increase when I send this in, their
3 deliberation time, because it will take them quite a while
4 to decipher my handwriting.

5 THE BAILIFF: Your Honor, do you want to hold on to
6 that note?

7 THE COURT: Yes, sir. I'm going to staple this and
8 then you can give them that.

9 All right. Thank y'all very much.

10 (7WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked
11 for identification and admitted into evidence.)

12 (WHEREUPON, the proceedings were recessed at
13 approximately 12:36 p.m.)

14 THE COURT: I understand the jury has reached
15 verdicts in this case.

16 I would remind those in the courtroom that this can
17 be a very emotional time for both sides, or one side, or
18 the other. I do not allow the show of any emotion upon
19 the return of the verdict. I consider the showing of any
20 emotion, whether an agreement or disagreement, contempt of
21 court.

22 I would ask the deputies, if anybody shows any
23 emotion, any outburst, anything of that nature, if you'd
24 take that person into custody. I will then have an
25 immediate contempt hearing after taking the verdict.

1 And, for contempt, you can receive a sentence of up
2 to six months and a fine up to \$1,500 without the right to
3 a jury trial summarily in front of me.

4 If you do not feel like you can control your emotion,
5 I would ask you to, please, leave now. If you remain --
6 and I would take it by your remaining in the courtroom
7 that you would comply with my directions.

8 Thank you very much.

9 (WHEREUPON, the jury came into open court at
10 approximately 2:00 p.m.)

11 THE COURT: Madam Clerk.

12 THE CLERK: Yes, sir.

13 Have you reached a unanimous verdict, ma'am?

14 JUROR #181, DAWN SCHLUETZ: Yes, we have.

15 THE CLERK: And you have the paperwork?

16 JUROR #181, DAWN SCHLUETZ: (Juror #181, Dawn
17 Schluetz nodded.)

18 THE CLERK: Would you, please, hand it to the
19 bailiff?

20 THE COURT: Thank you.

21 THE BAILIFF: Yes, sir.

22 THE COURT: All right. It appears the verdict has
23 been reached on all four counts, signed by our presiding
24 juror, dated today's date.

25 Madam Clerk, would you publish our verdicts, please?

VERDICT

THE CLERK: Yes, sir.

Your Honor, in the case of 2013-GS-23-5554, 5556, the
State of South Carolina v. Brandon Adams. Number one,
indictment number 2013-GS-23-5554, as to first degree
burglary, we, the jury, unanimously find the Defendant
guilty.

Number two, indictment number 2013-GS-23-5556, as to
armed robbery we, the jury, unanimously find the Defendant
guilty.

Number three, indictment number 2013-GS-23-5556, as
to the possession of a weapon during the commission of a
violent crime, we, the jury, unanimously find the
Defendant guilty.

Number four, indictment number 2013-GS-23-5553, as to
murder, we, the jury, unanimously find the Defendant
guilty.

And this is signed by Ms. Schluetz, our foreperson.

Ladies and gentlemen, if you agree these are the
verdicts you reached in your deliberation room, would you,
please, raise your right hand?

(WHEREUPON, all jurors raised their right hand.)

THE CLERK: I thank you.

THE COURT: And let the record reflect all hands were
raised.

1 Anything further for the jury from the State,
2 Solicitor?

3 MR. MARCHANT: Nothing from the State, Your Honor.

4 THE COURT: From the Defense, Mr. Toney?

5 MR. TONEY: Nothing, Your Honor.

6 THE COURT: All right. Thank you. Thank you very
7 much.

8 Madam Forelady, ladies and gentlemen of the jury, I
9 never criticize nor commend a jury for the verdict they
10 reach. Because it is the verdict of the jury. It's the
11 verdict of 12 citizens that fairly and impartially have
12 set to determine the facts of the case confined to the
13 law, and reach those verdicts as they think speak the
14 truth, that are true and just verdicts.

15 I will say it has been my pleasure and privilege to
16 be with y'all this week. And I have observed you, and
17 your work ethic, your patience, your attention, your
18 consideration that you've given all the parties and all
19 the witnesses in the trial of this case.

20 It's very difficult to many times sit and listen and
21 sit through the various testimonies of the various
22 parties. You're new to this. But you've been preparing
23 for it your entire life with your common sense and your
24 good judgment. That's why we have jury trials. There is
25 no greater system in the world. And I personally trust

1 the American people.

2 So it's just like folks like yourself day in and day
3 out, not only in Greenville County, but in each and every
4 county throughout this state that these folks would not be
5 able to be about the very important business of
6 administering our, your civil and criminal justice system.

7 Madam Clerk, what further instruction would this
8 panel need?

9 THE CLERK: Your Honor, they may be excused for the
10 week. And the bailiff has their work statements, if they
11 need an employer statement.

12 THE COURT: The Clerk informs me that you will now be
13 excused for the week. You do not have to call. You do
14 not have to come back. This fulfills your jury service in
15 circuit court, at least, for the remainder of this year.
16 Because you're, actually, disqualified from jury service
17 for the remainder of this calendar year. If you serve,
18 then you'd have an exemption for the next two calendar
19 years if you were called, if you chose to exercise that
20 exemption, only for circuit court.

21 With that being said, again, thank you very much for
22 your service. It has been my pleasure and honor to be
23 with y'all this week.

24 You may go with your bailiff. He has work excuses
25 that I believe some, if not all of you, need.

1 Thank you. Thank you very much.

2 (WHEREUPON, the jury was excused from open court at
3 approximately 2:05 p.m.)

4 MOTIONS

5 THE COURT: Any motions, Mr. Toney?

6 MR. TONEY: A motion for a new trial.

7 THE COURT: All right. Any response, Solicitor?

8 MR. MARCHANT: Judge, we respect the jury's verdict.

9 And we respectfully ask the Court to deny that motion.

10 THE COURT: I would respectfully deny the motion for
11 a new trial. I think there was sufficient evidence for
12 which the jury could reach the verdict which they did in
13 this case.

14 Any reason sentence may not be imposed at this time,
15 Mr. Toney?

16 MR. TONEY: None, Your Honor.

17 THE COURT: All right. Do you have sentencing
18 sheets, Solicitor?

19 MR. MARCHANT: I do, Your Honor.

20 THE COURT: All right. Anything additional from the
21 State, Solicitor?

22 MR. MARCHANT: No, Your Honor.

23 I've spoken with the victim's family. And they don't
24 have anything additional for the Court's consideration.
25 They just ask that you be just and fair in this case. And

1 they appreciate Your Honor's sentence, whatever it may be.

2 THE COURT: Thank you. Thank you very much.

3 Mr. Toney.

4 MR. TONEY: I would like to be heard just a little
5 bit on the sentence.

6 THE COURT: Sure. Certainly.

7 MR. TONEY: Are you ready right now or --

8 THE COURT: Yes, sir.

9 MR. TONEY: When this occurred, my client was
10 19 years of age. And you've heard about his limited
11 education.

12 I would respectfully ask that you impose a 30-year
13 sentence. The reason for that is the Solicitor did make
14 the statement outside the presence of the jury -- there's
15 no question that this weapon was not the murder weapon.
16 There's every indication that my client did not directly
17 shoot Mr. Crites [sic]. Given those facts, and given his
18 age, and lack of education, I would ask for a 30-year
19 sentence.

20 THE COURT: Thank you.

21 Would you, please, stand for me, Mr. Adams.

22 Anything you'd like to say, Mr. Adams?

23 DEFENDANT ADAMS: No, sir.

24 THE COURT: All right. And the murder carries
25 30 years to life without parole; correct, Solicitor?

1 MR. MARCHANT: Yes, Your Honor.

2 THE COURT: Burglary first degree carries 15 years to
3 life?

4 MR. MARCHANT: Yes, Your Honor.

5 THE COURT: Assault -- no, excuse me. Armed robbery
6 carries up to --

7 MR. MARCHANT: 10 to 30.

8 THE COURT: 10 to 30.

9 And possession of a weapon during the commission of a
10 violent crime carries up to five?

11 MR. MARCHANT: It is a five-year penalty, Your Honor.

12 THE COURT: All right. I do take into account, of
13 course, Mr. Adams age, his educational level, that he did
14 not finish high school. I believe the testimony was he
15 finished the tenth grade. I take that into account.

16 I take into account, also, he has had family support
17 in the courtroom throughout the course of this proceeding.
18 Both -- I don't know who all the parties were, but I know
19 it was referred to as his mother, grandmother. I know his
20 sister was here and, perhaps, other family and friends
21 within that group.

22 I take into account that he has been respectful
23 throughout these proceedings, also, as far as
24 non-disruptive. That's not always the case.

25 I, also, take into account the severity of the crimes

1 charged. That this was a nighttime non-forcible burglary
2 with a premeditated intent to commit an armed robbery.
3 And, of course, they would have had to have committed the
4 burglary first as a rouse allegedly to purchase marijuana.

5 And of all the testimony that was presented, there
6 was never any testimony that Mr. Crite dealt in marijuana,
7 only the other substances, as testified to truthfully, I
8 think, throughout the course of this proceeding. There
9 were, at least, two individuals in the early morning hours
10 both armed with deadly weapons. There's no question in my
11 mind that Mr. Adams was one of them.

12 There's no question in my mind that Ms. Adams
13 testimony on her video and in her written statement a
14 couple days preceding was truthful. You could observe the
15 video and tell that she was not coerced, that she did not
16 appear to be in any fear or threatening -- being
17 threatened in any manner.

18 You know, a life's a life, regardless. Mr. Crite,
19 nor anyone else, deserved that, to go in an individual's
20 house, a living breathing individual in the middle of the
21 night and within seconds with just little graze [phonetic]
22 of lead turn a human life into a corpse for his child to
23 find.

24 SENTENCING

25 THE COURT: Having taken all that into account,

1 2013-GS-23-5553, Brandon Dashun Adams, having been
2 convicted by the jury of murder, the Defendant is
3 committed to the State Department of Corrections for a
4 determinant term of 40 years.

5 As to 2013-GS-23-5554, Brandon Dashun Adams, having
6 been convicted of burglary first degree, the Defendant is
7 committed to the State Department of Corrections for a
8 determinant term of 30 years.

9 As to 2013-GS-23-5556, Brandon Dashun Adams,
10 possession of a weapon during the commission of a violent
11 crime, the Defendant is committed to the Department of
12 Corrections for a determinant term of five years.

13 As to 2013-GS-23-5556, Brandon Dashun Adams, armed
14 robbery with a deadly weapon, the Defendant is committed
15 to the State Department of Corrections for a determinant
16 term of 30 years.

17 Those sentences are concurrent.

18 MR. TONEY: Thank you, Judge. Thank you.

19 THE COURT: Good luck to you, Mr. Adams.

20 *****END OF TRANSCRIPT OF RECORD*****
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 General Sessions for Greenville County, South Carolina, on the 4th, 5th, and 6th days of January, 2016.

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

May 23, 2016

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2013GS2305553,
	)	2013GS2305554,
State of South Carolina,	)	2013GS2305556
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Brandon D. Adams,	)	
	)	
Defendant.	)	
_____	)	

May 15, 2015
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

LUCAS MARCHANT, Esquire
Attorney for the Plaintiff

IVAN TONEY, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

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Motions	4
Certificate of Reporter	10

EXHIBITS PAGENO.DESCRIPTIONID EV**PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 15th day of May, 2015 at approximately 11:57 a.m.)

THE COURT: All right. Yes, sir.

MR. TONEY: It's my motion for a competency exam.

THE COURT: All right. Yes, sir.

MR. TONEY: Well, my client, when he went to high school, was listed as learning disabled. He had some juvenile cases, which we have not been able to get a hold of yet. I just found out about those. But they had enough concerns about him at the time to send him to evaluation on his juvenile cases. Granted, this was 2009, six years ago. However, I have some concerns.

THE COURT: Was he sent for competency evaluation?

MR. TONEY: Competency.

THE COURT: Okay. I just want to make sure we weren't talking about R&E. Okay. Go ahead.

MR. TONEY: My request -- he's got serious -- the most serious charges you can get. Because of that, I would ask that he receive a competency exam.

1 **THE COURT:** All right. Yes, sir.

2 **MR. MARCHANT:** Good morning, Your Honor.
3 May it please the Court.

4 **THE COURT:** Yes, sir.

5 **MR. MARCHANT:** Mr. Adams is charged, in
6 the case that I'm handling, with Homicide and
7 related offenses. He's got probably roughly six
8 other armed robbery cases. He's been in the
9 detention center 848 days. My case dates back
10 to December the 11th of 2012.

11 At that point in time, Robert Ianaurio's
12 office was appointed to the case, and I began
13 dealing with Matt Canady. Mr. Canady is
14 associated with Mr. Ianaurio. We've had
15 multiple conversations over the course of 16,
16 18 months about Mr. Adams' cases, trying to
17 resolve them, prior to Mr. Toney being involved
18 in the case.

19 At least through the representation of Mr.
20 Canady, he met with Mr. Adams a half a dozen to
21 a dozen times. Mr. Adams actually sat down with
22 myself, Investigator Wayne Campbell, and Matt
23 Canady and attempted to explain to us what the
24 situation was that occurred that night. In my
25 opinion, based off of the probably hour-long

1 conversation that we had with him, I did not
2 see anything, of course, that brought to light
3 any concern with me that he had any problem
4 communicating with Mr. Canady, with myself,
5 with Investigator Campbell about this case, the
6 seriousness of the charges, or his involvement.

7 This is the first that I've heard of any
8 competency issue or situation that may involve
9 Mr. Adams. I have no knowledge of any juvenile
10 offenses. But it certainly was not brought to
11 light until Mr. Toney was retained on the case
12 back in, I believe, February of this year.
13 We're almost 900 days down the road. Mr. Canady
14 and I were very close to setting a February to
15 March trial date before Mr. Toney was retained.
16 I just tell you that so you can understand the
17 entire landscape.

18 I don't believe that enough showing has
19 been made to represent that he can not
20 effectively communicate with Mr. Toney about
21 the charges or preparing his own defense. The
22 fact that he may have been evaluated at some
23 point in time in the past, I don't believe is
24 enough to warrant an evaluation just based on
25 that in and of itself.

1 **THE COURT:** Mr. Toney, if you'd respond
2 about your conversations with him and any
3 concerns that you have?

4 **MR. TONEY:** I do think he's intelligent
5 and I do have meaningful conversations.
6 However, there's no question that he was listed
7 as learning disabled. He also went to
8 Greenville -- West Greenville alternative
9 school. I've had a few concerns during our
10 conversations. It's nothing -- I can't go into
11 those obviously, but --

12 **THE COURT:** Well, can you tell me
13 generally what those concerns would be, without
14 divulging anything you've discussed factually
15 with him? Is it not understanding certain
16 things you've talked to him about?

17 **MR. TONEY:** Well, part of it is the
18 ability to comprehend right versus wrong and
19 appreciate the consequences of actions.
20 There's some correspondence I have in the file
21 that I'm not prepared to -- I can't talk about
22 it. I will say this. He went to West Greenville
23 alternative school. He was listed as learning
24 disabled. His mom said he had -- he was tested
25 with an IQ test and then they gave him learning

1 disabled classes.

2 This is not for purposes to delay. If this
3 goes to trial, it may not be -- I've been told
4 it may not even be until August. I think
5 everybody would probably agree that I would be
6 remiss and possibly setting myself for a PCR if
7 I failed to bring this in front of the court
8 after I was told he's had a prior one as a
9 juvenile ---

10 **THE COURT:** Yeah.

11 **MR. TONEY:** He's learning disabled and
12 went to alternative school. I've got a duty to
13 come here and bring this before the court.

14 **THE COURT:** All right. Here's what I'm
15 going to do, I don't think at this point
16 general concerns are enough for me to order an
17 evaluation; and certainly just being classified
18 as learning disabled, I don't think, is. It is
19 concerning that he's had a competency
20 evaluation but we don't know the -- we don't
21 know the results of that.

22 **MR. TONEY:** And I will get that.

23 **THE COURT:** And so -- and I'll -- and I'll
24 order DJJ to release that -- that competency
25 evaluation to you and for that to be released

1 within 30 days.

2 **MR. TONEY:** If I could prepare an order
3 and submit it.

4 **THE COURT:** Certainly.

5 **MR. TONEY:** And then I will send it to
6 DJJ.

7 **THE COURT:** Certainly.

8 **MR. TONEY:** If I have meaningful or
9 substantial concerns based upon that, if I'm
10 allowed to bring to -- certainly, I'm going to
11 consult with Mr. Marchant.

12 **THE COURT:** Why don't you just do this, if
13 it turns out -- why don't -- rather than filing
14 a Brady motion, if you get this competency
15 evaluation and it brings to light some issues
16 and y'all want to just have a conference call
17 about it, I'm fine to do that too.

18 **MR. TONEY:** Yes, ma'am. That will be
19 perfect.

20 **THE COURT:** Why don't we just do that?
21 That will be easy.

22 **MR. MARCHANT:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 **(WHEREUPON,** the proceedings conclude at
25 approximately 12:05 p.m.)

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)BRANDON DASHUN ADAMS)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2017-CP-23-07332

FILED-CLERK
PAUL A. WILSON
2017 NOV 14 PM 3:17INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 the applicant was convicted.

1. Place of detention 1316 WILBORN AVE, RIDGEVILLE S.C. 29477
AT THE LIEBER CORRE INST
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COURT OF GENERAL SESSION,
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2013-GS-23-005553 / 2013-GS-23-005556
(a) 2013-GS-23-005554 / 2013-GS-23-005557
(b) 2013-GS-23-005555

(c) JAN 6 2016 40 YEARS

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

(a) _____

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL DENIED

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL (See attached paper)
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): (See attached papers)
- (a) STRICKLAND V. WASHINGTON, 446 U.S. 668 (1984)
- (b) EVITT'S V. LUCY, 4169 U.S. 387 (1985)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) APPLICANT FIRST TIME TO RAISE ISSUES ON P.C.R
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (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 applications with respect to this conviction, which you filed?
- _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. TRIAL: IVAN TONEY 600 EAST WASHINGTON ST.
SUITE 616 GREENVILLE SC...-29611
- ii. APPEAL: SUSAN B. HACKETT ~~DELO~~
PO BOX 11589 COLUMBIA SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

CONVICTION AND SENTENCE REVERSED AND REMAND TO
TRIAL COURT FOR NEW TRIAL OR VACATE SENTENCES
AND CONVICTIONS

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

NO

STATE OF SOUTH CAROLINA)

County of GREENVILLE SC)

VERIFICATION

I, BRANDON ADAMS, 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.

B. Adams

SWORN to and subscribed before me this 24th
 day of October, 2017.

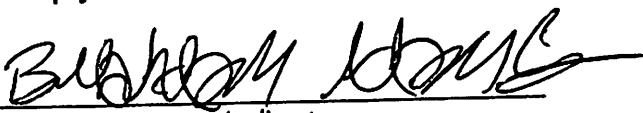
Ludeman Bryant (L.S.)
 Notary Public

My Commission Expires: May 21, 2020

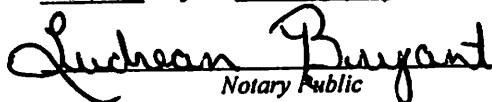
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, BRANDON ADAMS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
24th day of October, 2017.


Notary Public

My Commission Expires: May 26, 2020

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was denied the right to effective assistance of counsel for his complete defense; and applicant's conviction or sentence violates: Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronk, 466 U.S. 648 (1984); Rogers v. State, 261 S.C. 288 (1973); Evitts v. Lucy, 469 U.S. 387 (1985); Southerland v. State, 337 S.C. 610 (1999); the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.

Trial and Appellate Counsel(s) performance regarding applicant was both unreasonable and prejudicial. Furthermore, the circumstances surrounding the representation of applicant mandates an inference that Trial or Appellate Counsel(s) was or were unable to discharge his or her duties. The Supreme of South Carolina & The United States has well-established that the right to counsel is the right to the effective assistance of counsel.

Trial and Appellate Counsel(s) acts or omissions included, but are not limited to, the following:

1. Failing to assist applicant in timely moving to set aside indictment(s) for denial of Speedy Trial; and applicant's conviction or sentence was obtained in violation of State v. Waites or Barker v. Wingo; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
2. Failing to assist applicant in timely moving for a hearing to determine applicant's present competency to stand trial; and applicant's conviction or sentence was obtained in violation of State v. Locklair or Drope v. Missouri; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
3. Failing to assist applicant in timely moving to compel the prosecution to reveal or disclose ALL material evidence that would in its nature be exculpatory of guilt and/or mitigation of punishment and that the duty to reveal or disclose such material be a continuing one throughout the case; and applicant's conviction or sentence was obtained in violation of Brady v. Maryland or State v. Kennerly; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.

4. Failing to assist applicant in timely moving to challenge the veracity of the warrant affidavit(s) after the warrant(s) had been issued and executed; and applicant's conviction or sentence was obtained in violation of Franks v. Delaware or State v. Missouri; the 4th, 6th, and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
5. Failing to assist applicant in timely moving to challenge indictment(s) as insufficient or defective before the jury is sworn and not afterwards; and applicant's conviction or sentence was obtained in violation of State v. Gentry or United States v. Lovasco; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
6. Failing to assist applicant in timely moving to conduct a reasonably substantial investigation on the totality of all the circumstances surrounding any statements alleged to have been made by applicant and recorded by any prosecution witness or not during the length of custody; and applicant's conviction or sentence violates Jackson v. Denno or Dickerson v. United States; the 4th, 5th, 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3, 10, 12, and 14 to the S.C. Constitution.

7. Failing to assist applicant in timely moving to present evidence and witnesses in applicant's own defense; effectively cross-examine prosecution witnesses to show a prototypical form of bias on the part of the witnesses; guarantee applicant the right to a meaningful opportunity to present a complete defense; and applicant's conviction or sentence was obtained in violation of State v. Lyles or Washington v. Texas; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
8. Failing to assist applicant in timely moving to hold the prosecution to its heavy burden of proving beyond a reasonable doubt the existence of every fact necessary to constitute the crime(s) charged; and applicant's conviction or sentence was obtained in violation of In Re Winship or Jackson v. Virginia; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.

9. Failing to assist applicant in timely moving to challenge any prosecutorial misconduct typically involving a prosecutor's improper efforts or unfair trial tactics; and applicant's conviction or sentence violates *Donnelly v. DeChristoforo*; *Berger v. United States*; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
10. Failing to assist applicant in timely moving to challenge a jury charge instructing that malice may be inferred from the use of a deadly weapon; and applicant's conviction or sentence was obtained in violation of *State v. Belcher* or *Hyman v. Aiken*; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.
11. Failing to assist applicant in timely moving to reasonably challenge the reasonableness of a district court's sentencing decision; and applicant's conviction or sentence violates *Gall v. United States* or *Rita v. United States*; the 6th and 14th Amendments to the U.S. Constitution; ~~Article I~~, Article I, §§ 3 and 14 to the S.C. Constitution; and S.C. Code Ann § 24-26-20.

12. Failing to assist applicant in timely moving to conduct a reasonably substantial investigation into mitigating circumstances; and applicant's conviction or sentence violates Wiggins v. Smith; the 6th and 14th Amendments to the U.S. Constitution; Article I, §§ 3 and 14; and S.C. Code Ann §16-3-20 (c)(b).
13. Failing to assist applicant in timely moving to secure access to or perfect appeal; communicate with applicant on non-frivolous issues and raise a specified issue on appeal; and applicant's conviction or sentence violates Evitts v. Lucy or Jones v. Barnes; the 6th and 14th Amendments to the U.S. Constitution; and Article I, §§ 3 and 14 to the S.C. Constitution.

Note: Applicant believes there are additional grounds for claims of ineffective assistance of counsel but does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these claims.

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

- (a) In support of the relief desired, applicant does have the necessary affidavits, records, or other material evidence to provide for collateral assistance in order to demonstrate truthfully as to how the denial of effective assistance of counsel and a fair trial prejudiced applicant.

To the best of applicant's knowledge, the facts which support each of the grounds set out in 10 (a)(1)-(13) are:

1. Applicant's arrest, indictment; or other formal accusation and trial was sufficiently long and characterized as to be "presumptively prejudicial".
2. Applicant's mental condition is such that applicant lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense.

3. Applicant believes there are Facts to support (10)(a)(3) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or Funds for expert services to investigate these Facts.
4. Applicant believes there are Facts to support (10)(a)(4) of this Application, however, applicant does not yet have collateral assistance, ~~as~~ access to the discovery process, or Funds for expert services to investigate these Facts.
5. Applicant is suffering from a pre-indictment delay that has caused such substantial prejudice to the defendant as to outweigh the State's reasons for delay.
6. Applicant's age, background, and intelligence, included in the totality of all the circumstances, were not presented to the court to properly determine the voluntariness of any statements alleged to have been made by applicant.

7. Applicant believes there are Facts to support (10) (a)(7) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.
8. Applicant believes there are Facts to support (10) (a)(8) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.
9. Applicant believes there are Facts to support (10) (a)(9) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.
10. Applicant believes there are Facts to support (10) (a)(10) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.

11. Applicant believes there are facts to support (10) (a)(11) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.
12. Applicant believes there are facts to support (10) (a)(12) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.
13. Applicant believes there are facts to support (10) (a)(12) of this Application, however, applicant does not yet have collateral assistance, access to the discovery process, or funds for expert services to investigate these facts.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	IN THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Brandon Dashun Adams, #366619,	)	Case No.: 2017-CP-23-7332
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 14, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In July of 2015, the Greenville County Grand Jury indicted Applicant for murder (2013-GS-23-5553), burglary in the first degree (2013-GS-23-5554), kidnapping (2013-GS-23-5555), armed robbery (2013-GS-5556), and possession of a weapon during the commission of a violent crime (2013-GS-23-5556) and conspiracy (2013-GS-23-5557). Ivan Toney, Esquire, represented Applicant. Lucas Marchant, Esquire and W. Ryan Holloway, Esquire represented the State. Starting on January 4, 2016, Applicant proceeded to trial before the Honorable R. Knox McMahon. The trial concluded on January 6, 2016. The jury found Applicant guilty of murder, burglary in the first degree, armed robbery and possession of a weapon during the commission of a violent crime. Applicant's charges for kidnapping and conspiracy were dismissed. Judge McMahon sentenced Applicant to imprisonment for forty years for murder, thirty years for burglary in the first degree, thirty years

for armed robbery, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders v. California¹ on June 1, 2017. State v. Adams, Op. No. 2017-UP-277 (S.C. Ct. App. filed July 5, 2017). The remittitur was returned to the circuit court on July 21, 2017.

Attached to this Return are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. 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 Trial Counsel
 - a. Attached pages 8-17
2. Ineffective Assistance of Appellate Counsel
 - a. Attached pages 8-17

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be

¹ 386 U.S. 738 (1967).

relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel 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 in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact 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 also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S.

387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that she was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

V.

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), SCRCP. 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, SCRCP. 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), SCRCP.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

March 9, 2018

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2017-CP-23-7332
)
)
)
BRANDON ADAMS)
) APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
) DEFENDANT)

November 8, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN, Judge.

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

ELIZABETH WIYGUL, ESQ.
Attorney for the Applicant

LILLIAN MEADOWS, ESQ.
Attorney for the State

APRIL HERRON
Official Court Reporter

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BRANDON ADAMS

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IVAN TONEY

Direct By Ms. Meadows 43
 Cross By Ms. Wiygul 45

» > ○ < «

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APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Transcript 5-15-15	7	7
2	'09 Forensic Evaluation	7	7
3	'19 Forensic Evaluation	7	7
4	Disability Letter	7	7

1 (WHEREUPON, the following proceedings were held
2 via WebEx.)

3 COURT REPORTER'S NOTE: Due to remote platform
4 interruption and video/audio interference throughout the
5 hearing, those instances are denoted with [audio
6 distortion] in the transcript.

7 THE COURT: Good afternoon, everybody. What
8 we're trying to figure out is because Mr. Adams is on
9 a analogue phone, so because he's on a analogue
10 phone, he can't be put up -- we can't join him in.
11 He can hear --

12 THE LAW CLERK: Yeah, so he can hear the same
13 way, like, that everybody's whose been in the whole,
14 like, the kind of holding area has been able to hear.
15 And I can unmute him so that he can talk. But, like,
16 there's really no way, like, I don't know if he can,
17 like, let us know if he, like, wants to talk. I
18 mean, like, does that make sense? Like, we only can
19 control everything. I can control it but we won't be
20 able to really, like, add him as a panelist, does
21 that make sense?

22 MS. WIYGUL: My only concern is that if we're
23 connecting by phone, Lieber has been having work done
24 on their phones since Friday. And so there has been
25 a lot of issues with being able to hear. And static

1 and getting disconnected.

2 THE LAW CLERK: So should we --

3 MS. WIYGUL: My understanding was that they had
4 the ability to let him appear by video.

5 THE LAW CLERK: So somebody at Lieber -- so
6 somebody at Lieber is telling me that they can hear
7 but they can't get the video up.)

8 (WHEREUPON, a short break was taken while
9 technical issues were being worked out.)

10 THE COURT: Solicitor, we're here on the matter
11 of Brandon Adams. And I'll recognize you,
12 Ms. Meadows, to call the case and we'll go from
13 there.

14 MS. MEADOWS: Thank you, Your Honor, may it
15 please the Court. This PCR matter is Brandon Adams
16 vs. State of South Carolina, docket number
17 2017-CP-23-7332. Mr. Adams was indicted in July of
18 2015 for murder, armed robbery, first degree burglary
19 and possession of a weapon during the commission of a
20 violent crime. On January 4, 2016, Mr. Adams
21 proceeded to a jury trial before the Honorable R.
22 Knox McMahon. Ivan Toney, esquire, represented
23 Mr. Adams and Assistant Solicitor Ryan Holloway and
24 Lucas Marchant prosecuted the case. Mr. Adams, was
25 convicted as indicted and Judge McMahon sentenced him

1 to concurrent terms of 40 years for murder, 30 years
2 for burglary, 30 years for armed robbery and five
3 years for the weapons charge. And his convictions
4 were affirmed by the Court of Appeals.

5 On November 14, 2017, Mr. Adams filed a timely
6 application for PCR. And he is present today
7 represented by Ms. Wiygul. And we discussed several
8 times the allegations she's planning to go forward on
9 but I just ask her to put those on the record before
10 we get started.

11 THE COURT: All right, thank you.

12 All right, Ms. Wiygul.

13 MS. WIYGUL: Your Honor, before we proceed can
14 we make sure that Mr. Toney is back with us?

15 THE COURT: Mr. Toney, are you there?

16 MR. TONEY: Yes, sir. I was listening, didn't
17 know if you wanted my video on.

18 THE COURT: Okay. All right. I think we're all
19 here ready to go.

20 Yes, ma'am, Ms. Wiygul.

21 MS. WIYGUL: Thank you, sir. We are only
22 proceeding on the failure to follow up on Mr. Adams'
23 competency issues and ability to understand. And how
24 that affected the trial in its totality.

25 THE COURT: All right. I'll hear from you

1 further and you can proceed with any witnesses.

2 MS. WIYGUL: Your Honor, we would call Mr. Ivan
3 Toney to the stand.

4 MS. MEADOWS: And, Elizabeth, I don't know if
5 you want to deal with the exhibits now and kind of
6 see how the Judge wants us to do those.

7 MS. WIYGUL: We can go ahead and do that,
8 Ms. Meadows, that's fine with me.

9 Your Honor, I believe that Ms. Meadows and I are
10 in agreement as to the exhibits that would be
11 appropriate in this case.

12 THE COURT: It looks like I got four exhibits;
13 is that it?

14 MS. WIYGUL: That's correct, Your Honor. And I
15 sent them to the court earlier and, I believe,
16 Ms. White was able to print those out for Ms. Herron.

17 THE COURT: They have been printed and marked as
18 exhibits.

19 MS. WIYGUL: Thank you very much, Your Honor.

20 (WHEREUPON, Applicant's Exhibits Nos. 1-4 were
21 marked for identification and received into
22 evidence.)

23 THE COURT: All right, Mr. Adams, you are able
24 to see me, Mr. Adams?

25 MS. WIYGUL: If Lieber can turn off their mute

IVAN TONEY-DIRECT BY MS. WIYGUL

1 button so that Mr. Adams can comment if he needs to.

2 THE COURT: Mr. Adams, can you hear me?

3 MR. ADAMS: Is this mute?

4 THE COURT: All right, raise your right hand.

5 BRANDON ADAMS, after being duly

6 sworn{,}testified as follows:{F}

7 THE COURT: All right, Ms. Wiygul.

8 MS. WIYGUL: Thank you, Your Honor. We would
9 call Ivan Toney to the stand.

10 THE COURT: All right, if you would raise your
11 right hand.

12 IVAN TONEY, after being duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. WIYGUL:

16 Q Mr. Toney, were you retained on this case?

17 A Yes.

18 Q And you were not the first attorney; is that
19 correct?

20 A There was a public defender.

21 Q All right. And when were you retained?

22 A I mean, I don't know. I mean, a while into the
23 case. I had lots of time to prepare, a year.

24 Q Okay.

25 A I don't know the date, you want me took it up?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 Q No, that's okay. When did you first meet with
2 Brandon Adams?

3 A 2/5/2015.

4 Q Okay. All right. And Mr. Adams was charged
5 with the murder on February of 2015; is that correct?

6 A That sounds about right. I don't have the file
7 in front of me, the entire file, it's huge. It's, like,
8 enormous. I've got it with me but it's -- you want me to
9 start referring to documents -- if you know the date, that
10 sounds about correct.

11 Q All right, sir.

12 A Start pulling documents out, this is going to be
13 lengthier, you know.

14 Q No, sir, I'm not concerned about the specifics.
15 You testified that you were retained about a year prior to
16 the trial. And then first met with Mr. Adams on -- around
17 February 5th of 2015; is that correct?

18 A Yes, that sounds about right.

19 Q Okay. So--

20 A Because, actually, the trial was in. . .

21 Q I believe it was January 4th, 5th and 6th of
22 2016.

23 A Well, low and behold, that's about a year.

24 Q Yeah, all right. Now, at some point during your
25 representation of Mr. Adams, did you become concerned

IVAN TONEY-DIRECT BY MS. WIYGUL

1 about his competency?

2 A Well, I don't know what you mean by concerned.

3 I mean, I had no real personal concerns. But his mom had

4 raised the issue that he had a IEP in school. And I

5 thought well, you know, I think I better file a motion for

6 a competency exam. But when we went to the hearing with

7 Judge Verdin, she asked if I had any problems with him.

8 Have you had any problems understanding? And I said, No.

9 And, you know, I think she left the door opened, maybe, to

10 come back later. But in your letter, in your Court Order

11 where you got a competency exam, when you were appointed,

12 you said, This competency exam will be dispositive of the

13 issue. And you got him a competency exam and it was found

14 that he was competent.

15 So I understand he may have had one earlier

16 in juvenile, when he was a juvenile too he was found

17 competent. So the quite honest truth is I found him to be

18 highly intelligent. And in our meetings, which were many,

19 many, many meetings, maybe 30 or 40. I got all the dates

20 if you want them. He knew exactly what he was doing, he

21 could describe -- he earned my respect with his insights

22 into his case. And so, you know, the question did I

23 become concerned? Well, you know, they're certain things

24 maybe you do in a case where you feel you should file a

25 competency motion. So I did. I was turned down. So, you

IVAN TONEY-DIRECT BY MS. WIYGUL

1 know, the issue of what -- did I do a competency motion,
2 the answer is I filed one. I was rejected. And you've
3 had one for him. And so now he's competent so. That
4 should answer your question.

5 Q Mr. Toney, I appreciate all of that information.
6 Did you appear at a hearing before Judge Verdin on May
7 15th of 2015, requesting that a competency evaluation be
8 ordered in this case?

9 A I can't remember the exact date but that sounds
10 about right. I don't know what the date was, you would
11 know.

12 Q All right.

13 And, Your Honor, I believe The Court has
14 that transcript in as an exhibit. And I believe the date
15 is May 15th of 2015.

16 THE COURT: I believe that's exhibit number one.

17 MS. WIYGUL: Thank you, Your Honor.

18 BY MS. WIYGUL:

19 Q Mr. Toney, at that hearing, did the Judge tell
20 you that she would order DJJ to release Mr. Adams'
21 competency evaluation to you within 30 days? And that
22 when you got that, if it shed any light on the issues,
23 that she would be happy to have a conference call about
24 that?

25 A You know, I have reviewed the exhibits. It's

IVAN TONEY-DIRECT BY MS. WIYGUL

1 been a little while. And this PCR's been going on like
2 three years. But if that's what you're saying she said,
3 I've got -- I think I can pull them up here. I mean, you
4 know what she said. I'm trying to pull them up.

5 MS. MEADOWS: And I just forwarded to you,
6 Elizabeth, an email from earlier to the court
7 reporter with the four exhibits.

8 MS. WIYGUL: Thank you, Ms. Meadows.

9 MS. MEADOWS: Uh-huh.

10 THE WITNESS: All right, let me look at my
11 email. I will say this, the transcript speaks for
12 itself, I'm sure. I haven't received it yet.

13 BY MS. WIYGUL:

14 Q Well, Mr. Toney, would you agree that if the
15 transcript reflects that the Judge told you that, that
16 that's probably what she told you?

17 A No, I would agree that if that's what the
18 transcript says, that is what she told me.

19 Q Thank you, sir. Did you -- and you did not
20 bring to the Judge's attention that Mr. Adams had been
21 receiving social security administration benefits for a
22 learning disability since 2004, did you?

23 A Well, I didn't know that. That's for a learning
24 disability, right?

25 Q Yes, sir.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 A That's unusual, I didn't know that, no. So, of
2 course, I didn't.

3 Q Mr. Toney, did you ever request the juvenile
4 competency evaluation from 2009?

5 A No.

6 Q Did you ever follow up with any further
7 investigation into Mr. Adams competency or ability to
8 understand?

9 A I don't think I did. I remember thinking about
10 it a long time.

11 Q Can you hear us, Brandon?

12 Your Honor, I don't believe that Mr. Adams
13 is able to hear us judging from the--

14 MR. ADAMS: I can hear you now, the phone went
15 out.

16 MS. WIYGUL: Okay.

17 THE COURT: Can you hear okay now, Mr. Adams?

18 MR. ADAMS: Yes, sir.

19 THE COURT: Okay.

20 MS. WIYGUL: If at any point you cannot hear, if
21 you'll just say something loudly to bring it to our
22 attention, please.

23 MR. ADAMS: Okay, yes, ma'am.

24 THE WITNESS: So when you -- when I look at the
25 thing, she asked if I had any questions about his

IVAN TONEY-DIRECT BY MS. WIYGUL

1 intellectual ability. And I did say I do think he's
2 intelligent, we had meaningful conversations. But I
3 did have some concerns about his ability to
4 comprehend right from wrong and appreciate the
5 consequences of his actions. I mean, I had some
6 thoughts about that. I had no proof that he was
7 psychopath or anything like that, sociopath. But
8 that's different than if he's intelligent. Because
9 we had meaningful conversations. He was intelligent.
10 That he is intelligent.

11 Q Mr. Toney, would it surprise you to know that
12 Mr. Adams full scale IQ is 63?

13 A Yeah, I would believe that.

14 Q Okay.

15 Your Honor, I would ask that the Court take
16 note that the exhibits of Mr. Adams competency
17 evaluations, both in 2009 and 2019, indicate that he has a
18 full-scale range IQ of six -- I'm sorry, of 68. Not 63 of
19 68.

20 THE COURT: Okay.

21 BY MS. WIYGUL:

22 Q Mr. Toney, during the trial of Mr. Adams, there
23 was a very kind of hotly contested Denno hearing, wasn't
24 there? With investigator Wayne Campbell?

25 A I don't know if you call it hotly contested.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 Q Well, you argued against the introduction of the
2 statements, didn't you?

3 A Well, you're asking if there's a hotly contested
4 hearing. And I would state it was a contested hearing. I
5 mean, it was -- it was civil. It was not hotly contested.
6 It was a normal sort of civil motion.

7 Q Okay.

8 A It was professional, you know.

9 Q All right. And the Judge made a determination
10 to let Mr. Adams statement in based on a totality of the
11 circumstances; didn't he?

12 A Uh.

13 Q I would draw your attention to the transcript of
14 the trial, Page 65.

15 A Is that one of the exhibits?

16 Q No, sir.

17 A Well, you want to email me the transcript again?

18 Q Well, if the transcript reflects that the Judge
19 made his decision based upon the totality of the
20 circumstances, you would not question that?

21 A Would you publish what he said, please? I know
22 it's not for me to ask a question but.

23 Q Sure. Line -- Page 64, Line 4. THE COURT: It's
24 always the totality of the circumstances.

25 A Well, look, any time a Judge does a Denno

IVAN TONEY-DIRECT BY MS. WIYGUL

1 hearing, I don't know if it's always the totality of the
2 circumstances, there are guidelines. But I think what the
3 Judge was referring to was the way they take all the facts
4 into consideration and they make a judgment call. And I
5 think that's what the Judge was referring to.

6 Q Mr. Toney, do you feel that you should have
7 obtained the juvenile competency hearing as permitted --
8 or competency evaluation as permitted by Judge Verdin?

9 A No.

10 Q Prior to trial?

11 A No.

12 Q Okay. Do you feel that having the information
13 from that competency evaluation may have benefited
14 Mr. Adams in the trial, specifically, as to your
15 questioning of Mr. Campbell in the Denno hearing?

16 A No, Your Honor.

17 No, ma'am.

18 Q Mr. Toney, I would draw your attention to Page
19 65 of the trial transcript, Line 2. And with your
20 permission I'll just read that into the record, Lines 2
21 through 8. This is The Court speaking.

22 If you have an individual that may have an
23 IQ of 70, 65 or below, I mean, that weight may weigh more
24 if you have an individual that has a higher intellectual
25 level. And, of course, you can have individuals with very

IVAN TONEY-DIRECT BY MS. WIYGUL

1 high intellectual levels and very low educational levels.
2 You know, the educational level doesn't measure the
3 intellectual ability.

4 A Well, I -- the fact is he was found to be
5 competent to stand trial. And I really don't believe that
6 IQ score any ways. I think that's the kind of thing that
7 you go in and you try to flunk if you know you're going
8 for a competency exam. And I found him to be very
9 intelligent and know exactly what he was doing. And in my
10 opinion, it would not have altered the Judge's decision.

11 Q Mr. Toney, do you feel like it would have been
12 important for the Judge to know when making the decision,
13 that Mr. Adams could not read a simple sentence?

14 A That is not true. I will tell you right now, he
15 had his discovery, he had his copy. He went over it. I
16 would point out different things. And he would, actually,
17 flip over, you know, 200 pages later and say, what about
18 this and what about this. Not only can he read a simple
19 sentence, Mr. Adams is able to look through hundreds of
20 pages of exhibits, most of which -- a lot of which, in his
21 case, were not correlated, bring them out at the right
22 time. And, you know, analyze them and explain their
23 effect. I'm going to tell you right now, if he's not as
24 smart as anyone in this room or, you know, I think he's
25 close to it. He's highly intelligent. He can look

IVAN TONEY-DIRECT BY MS. WIYGUL

1 through hundreds of pages of exhibits and read them and
2 understand them. And in his own way I came to respect his
3 intelligence. And it is what it is. That's how
4 intelligent he is. The idea that he can't read a simple
5 sentence is -- it's just a -- I don't know what the right
6 word is, it's just false.

7 Q Mr. Toney, would it surprise you to know that
8 these evaluations reflect that Mr. Adams cannot tell time
9 from an analogue clock?

10 A Certainly doesn't prevent him, if that is true,
11 which I do not for a moment believe that, when looking
12 through hundreds of pages of exhibits and interviews and
13 incident reports and commenting on them in great detail,
14 analyzing things. By the way, you say he can't read a
15 sentence, he had written plans, which they seized from his
16 house or somewhere, of how he was going to run his
17 business. I mean, I remember those plans. One of them
18 was he set limits. Said don't bring so much money in with
19 you everyday. Said you're blowing too much on drugs,
20 using your own stash, getting high on your own supply.
21 Another one was something to the effect of don't be
22 packing a weapon when murder's on your mind. So he knew
23 he had murderous rage. And he had enough insight to
24 realize, I have a self-control problem, I need to not
25 carry, you know, in these particular circumstances.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 He had written goals. Like, I'm going to
2 set up a grow house, a greenhouse, is what he called it.
3 And what he wanted was a house with some lights where he
4 could grow his own stash and increase his business. So I
5 had his record with his own written business plans. So if
6 you tell me that he can't read a clock and he can't read a
7 sentence, you have to sort of figure out a way to explain
8 his written business plans, which would, actually,
9 probably pass mustard down at the SBA when he's applying
10 for a loan, if it wasn't for an illegal thing. He knows
11 what he's doing, he can read and write and articulate. He
12 can correlate hundreds of pages. And he's able to write
13 corrigibly. As you've seen in his PCR application, I
14 might add.

15 Q Mr. Toney, are you aware that Mr. Adams
16 routinely has other inmates write documents for him and
17 read those documents to him?

18 A That would be for you to call the witnesses to
19 prove.

20 MS. MEADOWS: Your Honor, I object. I mean,
21 we're talking about the evaluation that was done by,
22 you know, the department of mental health. He was
23 found competent. I'm not sure what, you know, going
24 into these specific matters--

25 THE COURT: I'll--

IVAN TONEY-DIRECT BY MS. WIYGUL

1 MS. WIYGUL: Your Honor, it's the belief of the
2 Applicant that not only the determination of
3 competency versus incompetency is important, but also
4 the information that is contained within the
5 evaluation.

6 THE COURT: I'll give you some leeway. I'll
7 give you some leeway. I'll overrule for right now.
8 I'll give you a little leeway.

9 MS. WIYGUL: Thank you, sir. I'll try and
10 backtrack and lay a little bit more foundation.

11 BY MS. WIYGUL:

12 Q Mr. Toney, it is true that you visited Mr. Adams
13 nine times in person during the course of your
14 representation? And five times by video.

15 A Okay. I did not visit him by video. I visited
16 him, Brandon Adams, on 2/5 for an hour. On another time
17 on 2/5 for another hour. I saw him in a meeting for two
18 hours.

19 Q What date, sir?

20 A On 2/5. Another two hours. I saw him another
21 time for 60.67 points of an hour. So on that day I saw
22 him a lot. I saw him on 2/6 for 40 minutes. I saw him
23 on--

24 Q Mr. Toney, I have the jail records as to your
25 visits. Would you like me just to read those to you and

IVAN TONEY-DIRECT BY MS. WIYGUL

1 see if they match your recollection?

2 A You can say it all want, I don't know what you
3 have. But I know this, I have written I met him on 2/16
4 in the jail. I met him in the old jail on 2/16, also.
5 Let me see. I met him in the jail on March the 1st. I
6 met him in the jail on March the 7th. I met him in the
7 jail again on March 27th. I met him in the jail on -- I
8 hope someone is counting this for me -- on 4/11. I met
9 him in the jail on, let me see, 5/15. This is all of
10 2015. Let's see. I have another meeting 7/21/2015, on
11 8/5/2015, on 9/16/2015, on 10/28/2015, on 12/10/2015,
12 2/13. Okay, that's someone else I met with in this case.
13 I met him on 2/13. Okay, I got two meetings there.

14 Q I'm sorry, Mr. Toney, on February 13th?

15 A No, that was another date. That was 12/13, I'm
16 sorry. On 12/28 I met him in the jail. 12/28, I met him
17 in the jail again. These are long meetings. That one was
18 for three hours, the other was for two. I had him on New
19 Year's day, I met him for three hours. And then back
20 again the next day for another hour. Then before the
21 hearing I met him in jail on 1/5. Then the trial was 1/6.
22 Those are my dates.

23 Q I believe the trial started on January 4th,
24 Mr. Toney, but. So, it is your testimony that you never
25 met with Brandon via video at the jail?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 A I don't think I ever met with him on video, no.

2 Q Okay.

3 A I don't think I ever met with a inmate on video
4 at the jail. Could be wrong but I don't recall ever doing
5 that. To me it's easier to go down there.

6 Q Now, Mr. Toney, you agree that you were
7 concerned about Mr. Adams competency as of May of 2015,
8 correct?

9 A That is the answer I gave you. And if you look
10 at the transcript with Judge Verdin, there was some
11 concerns I had about his ability to distinguish right from
12 wrong. But I told Judge Verdin that the meetings were
13 good and he was intelligent. So I had some concerns about
14 his ability to understand right from wrong. He's very
15 nice. He's very respectful.

16 Q All right. Mr. Toney, a hearing was held on May
17 15 of 2015, would agree with that?

18 A I've already agreed to that. And we've already
19 established that.

20 Q And at that hearing the Judge gave you the
21 ability to order a competency evaluation that had been
22 previously performed on Mr. Adams; is that correct?

23 MS. MEADOWS: Your Honor, I just object to
24 leading. And I would ask that Mr. Toney be able to
25 finish answering the question.

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE WITNESS: -- what she said, repeat the
2 question again.

3 BY MS. WIYGUL:

4 Q Mr. Toney, I just ask that you pull up that
5 transcript that Ms. Meadows sent you and you can reference
6 it.

7 A I just had it. Now it's popped off my screen.
8 Hang on.

9 MR. ADAMS: Hello.

10 MS. WIYGUL: Yes, sir, can you hear us?

11 THE COURT: Mr. Adams, you need something? Can
12 you hear us, Mr. Adams?

13 MS. WIYGUL: Can you hear us, Mr. Adams?

14 (There was no response.)

15 THE COURT: Hold on.

16 MS. WIYGUL: I don't think he can hear us.

17 THE COURT: Mr. Adams, can you hear us?

18 MS. WIYGUL: Mr. Adams, if you can hear us,
19 please unmute yourself and say something so we'll
20 know.

21 THE WITNESS: Ms. Wiygul, the best thing for you
22 to do, perhaps--

23 MS. WIYGUL: Your Honor, would you like me to
24 email Lieber and let them know that Mr. Adams cannot
25 hear?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE COURT: Mr. Adams, can you hear?

2 (There was no response.)

3 THE COURT: Mr. Adams.

4 (There was no response.)

5 THE COURT: Yeah, if you would email them. I
6 tell you, go ahead, my law clerk is going to call
7 right now.

8 MS. WIYGUL: Okay.

9 THE COURT: Mr. Adams, we can hear you, can you
10 hear us?

11 (There was no response.)

12 MS. WIYGUL: Your Honor, I've emailed Ms. Brit
13 Houser at Lieber and. . .

14 THE COURT: Okay, we're also calling.

15 (WHEREUPON, a short break was taken while
16 technical issues were being worked out.)

17 THE COURT: Mr. Adams, can you hear us?

18 MS. WIYGUL: Brandon.

19 MR. ADAMS: Yeah.

20 MS. WIYGUL: Okay.

21 BY MS. WIYGUL:

22 Q Mr. Toney, do you recollect appearing in front
23 of Judge Verdin in May of 2015, regarding a motion that
24 you filed relative to Mr. Adams competency?

25 A You know, we've got a transcript introduced into

IVAN TONEY-DIRECT BY MS. WIYGUL

1 the record. We've not only admitted that but we're now
2 discussing the details of it. Quite respectfully, that is
3 asked and answered and we're well beyond the [audio
4 distortion] in the hearing. I'm sorry.

5 Q Mr. Toney, I'm going to take that as a yes and
6 move on. I was trying to make sure that Mr. Adams knew
7 what we were referencing, since he has not been able to
8 hear all of this hearing. After that hearing, did you do,
9 as the Judge instructed, and request a copy of Mr. Adams
10 juvenile competency evaluation?

11 A I deny the Judge instructed me or requested that
12 I get--

13 MR. ADAMS: Hello. Yeah, the phone was good for
14 a while then the phone was just disconnected, we got
15 to call back.

16 MS. WIYGUL: I'm sorry, sir, can y'all hear us
17 right now?

18 THE COURT: My law clerk stepped out to talk to
19 him.

20 (WHEREUPON, a short break was taken while
21 technical issues were being worked out.)

22 THE COURT: Can you hear us?

23 MR. ADAMS: Yes, we can hear you guys.

24 MS. WIYGUL: Sir, can you hear us now? Hello,
25 can you hear us?

IVAN TONEY-DIRECT BY MS. WIYGUL

1 THE COURT: Can you hear us?

2 THE LAW CLERK: Can you hear us?

3 MR. ADAMS: Yeah, I can hear you.

4 MS. WIYGUL: I believe, Your Honor, they might
5 be able to hear your law clerk via the phone. I
6 don't think they're hearing the actual hearing.

7 THE LAW CLERK: So I'm going to keep my phone on
8 and on speaker so that you can hopefully hear what's
9 going on in the hearing, okay.

10 THE COURT: All right, we're going to put her
11 phone by the speaker on my computer and, hopefully,
12 that will take care of it.

13 MS. WIYGUL: Thank you very much, ma'am, I
14 appreciate that.

15 THE LAW CLERK: No problem.

16 BY MS. WIYGUL:

17 Q Mr. Toney, did you have the information from the
18 juvenile competency hearing during the Jackson v. Denno
19 hearing?

20 A No.

21 Q In which you requested Mr. Campbell?

22 A No.

23 Q And you never requested a conference call with
24 Judge Verdin, did you?

25 A No.

IVAN TONEY-CROSS BY MS. MEADOWS

1 MS. WIYGUL: I don't have any further questions.

2 THE COURT: All right.

3 Ms. Meadows.

4 CROSS-EXAMINATION

5 BY MS. MEADOWS:

6 Q Mr. Toney, what was your understanding of Judge
7 Verdin's ruling at the end of the hearing?

8 A Well, she didn't order me to do anything. She
9 just said, basically, this is what you could do. But she
10 asked if there was a problem understanding him or him
11 understanding you. And I thought about it. And I went
12 home and I thought about it, I thought about it, I thought
13 about it. And the more I thought about it, the more I
14 thought about how smart he is. I've got all these letters
15 from him, which are intelligent. And we just went through
16 everything. And he constantly had one insight after
17 another about his case. And he was just bright. And he
18 understood what he was doing. Now, she had him evaluated,
19 Ms. Wiygul had him evaluated as part of his PCR, and he
20 was found to be competent. And I understand she went and
21 got the juvenile one and he was competent in that. So in
22 her juvenile -- in her request for an order, she put in
23 her order for a competency exam, that this will be
24 dispositive of this issue of competency. So as far as I'm
25 concerned, that's what she says. And he's been found

IVAN TONEY-CROSS BY MS. MEADOWS

1 competent twice.

2 Q Okay. Well, I'm just talking about Judge
3 Verdin's ruling. Was it your understanding that she was
4 ordering you to follow up with something or what was your
5 interpretation of what?

6 A It's clear to me that she wasn't ordering it.

7 Q Okay.

8 A She was just allowing it.

9 Q Okay. And then as far as the Denno hearing, I
10 believe you did argue that Mr. Adams had a low IQ and
11 that's why the statements should be suppressed. Or was
12 that part of your argument?

13 A I'm trying to remember. What does it say in the
14 transcript?

15 Q Sorry, just one second, I lost my place.

16 A I want to say this. If you look at the
17 competency evaluation they say, In our opinion Mr. Adams
18 has the capacity to understand the proceedings against him
19 and assist his own defense.

20 That's exactly how it was.

21 MS. WIYGUL: Ms. Meadows, I believe you're
22 looking for Page 61.

23 THE WITNESS: With regard to his capacity to
24 understand the legal proceedings, Mr. Adams was aware
25 of the charges, he's seeking PCR for the possible