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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

HENRY DUKES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000522

APPENDIX

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VOLUME I OF II
PAGES 1-500

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 20, AUGUST 1-2, 2011	1
FINAL BRIEF OF APPELLANT DATED JANUARY 3, 2013	402
FINAL BRIEF OF RESPONDENT DATED JANUARY 2, 2013	416
COURT OF APPEALS OPINION NO. 5148 DATED JUNE 26, 2013	448
APPELLANT’S PETITION FOR REHEARING DATED JULY 11, 2013	457
ORDER DENYING PETITION FOR REHEARING DATED JULY 24, 2013	467
APPELLANT’S PETITION FOR CERTIORARI TO THE COURT OF APPEALS DATED OCTOBER 23, 2013	468
STATE’S RETURN TO PETITION FOR CERTIORARI TO THE COURT OF APPEALS DATED DECEMBER 23, 2013	485
ORDER DENYING CERTIORARI TO THE COURT OF APPEALS DATED JULY 25, 2014	514
REMITTITUR DATED AUGUST 2, 2014	515
APPLICATION FOR POST-CONVICTION RELIEF DATED SEPTEMBER 9, 2011	516
RETURN AND MOTION TO DISMISS DATED NOVEMBER 18, 2011	524
ORDER OF DISMISSAL DATED NOVEMBER 22, 2011	526
APPLICATION FOR POST-CONVICTION RELIEF DATED JULY 1, 2013	528
RETURN DATED JUNE 2, 2014	535
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 11, 2016	539
PLAINTIFF’S EXHIBIT NO. 1 (SLED REPORT)	570
ORDER OF DISMISSAL DATED MARCH 7, 2016	574
APPLICATION FOR POST-CONVICTION RELIEF DATED AUGUST 6, 2014	581

CLERK OF COURT LETTERS DATED AUGUST 12, 2014.....	589
RETURN AND MOTION TO DISMISS DATED AUGUST 14, 2014.....	591
ORDER OF DISMISSAL DATED AUGUST 27, 2014.....	595
APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 24, 2017	597
RETURN AND MOTION TO DISMISS DATED JUNE 29, 2017	605
ORDER GRANTING <i>AUSTIN</i> RELIEF DATED JUNE 12, 2018.....	613
HABEAS CORPUS PETITION DATED APRIL 26, 2019.....	621
MOTION FOR SUMMARY JUDGEMENT DATED JULY 19, 2019.....	636
RETURN AND MEMORANDUM IN SUPPORT OF SUMMARY JUDGEMENT MOTION DATED JULY 19, 2019.....	637
REPLY TO MOTION FOR SUMMARY JUDGEMENT DATED AUGUST 1, 2019	664
DISTRICT COURT ORDER DATED OCTOBER 9, 2019	668
APPLICATION FOR POST-CONVICTION RELIEF DATED OCTOBER 21, 2019.....	670
RETURN, MOTION TO DISMISS, CONCESSION TO <i>AUSTIN</i> DATED OCTOBER 13, 2020	677
RESPONSE TO RESPONDENT’S RETURN DATED DECEMBER 10, 2020	687
ORDER GRANTING <i>AUSTIN</i> RELIEF AND CONDITIONALLY DISMISSING APPLICATION FOR POST-CONVICTION RELIEF DATED APRIL 12, 2021	689
RESPONSE TO CONDITIONAL ORDER WITH ATTACHMENTS DATED MAY 21, 2021.....	699
LETTER TO ATTORNEY GENERAL FROM JUDGE CULBERTSON DATED JUNE 10, 2021	714
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 2, 2022	715
ORDER GRANTING <i>AUSTIN</i> RELIEF DATED FEBRUARY 22, 2023	758
INDICTMENT.....	773

SENTENCE SHEET.....	775

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) (08-GS-26-02911)
 3)

4 STATE)
 5)

6 VERSUS)

TRANSCRIPT OF RECORD

7 HENRY JERMAINE DUKES)
 8)
 9)

July 20, 2011 and
 August 1, 2, 2011
 Conway, South Carolina

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge.

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

13 JIMMY A. RICHARDSON, II, ESQ.

14 ROBERT PAUL TAYLOR, ESQ.

15 ASSISTANT SOLICITORS FOR HORRY COUNTY

ATTORNEYS FOR STATE

16 JONATHAN ERIC FOX, ESQ.

17 ASSISTANT PUBLIC DEFENDER FOR HORRY COUNTY

ATTORNEY FOR DEFENDANT

18
 19
 20
 21
 22 DIXIE COX EUBANK
 23 CIRCUIT COURT REPORTER
 24 FIFTEENTH JUDICIAL CIRCUIT

25 VOLUME 1 OF 2
 (SEE VOLUME 1 FOR INDEX)

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

I N D E X

JULY 20, 2011

MOTIONS

8

WITNESSES

DIRECT

CROSS

RD

RC

CORNELIUS ALFORD LAFAYETTE FORD

Mr. Taylor 28

Mr. Fox 35

RASHEED SALMET KARLIN MUHAMMAD

Mr. Taylor 41

Mr. Fox 44

The Court 47

I N D E X

(TRIAL)

AUGUST 1, 2011

JURY SELECTION (NOT TRANSCRIBED)

(SEE JURY SELECTION FORM ATTACHED HERETO) 55

COURT'S OPENING REMARKS 55

STATE'S OPENING (Richardson) 65

DEFENDANT'S OPENING (Fox) 70

WITNESSES

DIRECT

CROSS

RD

RC

RASHEED SALMET KARLIN MUHAMMAD

Mr. Taylor 74 104

Mr. Fox 89 111

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	CORNELIUS FORD				
4	Mr. Richardson	112			
5	Mr. Fox		182		
6	BREAK/JURY OUT				151
7	AS TO JUROR # 332				151
8	AS TO JUROR # 59				157
9	JURY IN				
10	Mr. Fox		157		
11	RODERICK MISHOE				
12	Mr. Taylor	189		202	
13	Mr. Fox		197		
14	END DAY				
15					
16	AUGUST 2, 2011				
17	JURY IN				
18	ASHLEY HARDEE				
19	Mr. Richardson	206		212	
20	Mr. Fox		209		213
21	SYLVIA RANDALL				
22	Mr. Richardson	213		230	
23	Mr. Fox		225		
24					
25					

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	WILLA MAE DIXON				
4	Mr. Taylor	233		241	
5	Mr. Fox		239		242
6	CAROLYN HEESTER				
7	Mr. Richardson	243		255	
8	Mr. Fox		252		
9	BREAK				257
10	JURY IN				
11	BONNIE PARLIMAN				
12	Mr. Taylor	258			
13	Mr. Fox		261		
14	WALKER LEE JOHNSON, Jr.				
15	Mr. Taylor	262			
16	Mr. Fox		266		
17	SHARONDA JONIQUE WILLIAMS				
18	Mr. Richardson	269		291	
19	Mr. Fox		286		
20	FRANKIE SANCHEZ				
21	Mr. Richardson	293			
22	(NONE)		295		
23	LUNCH				
24	JURY IN				297
25					

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	EDWARD LEROY PROCTOR, JR.				
4	Mr. Taylor	297			
5	Mr. Fox		303		
6	JURY OUT/MOTIONS				305
7	COURT'S RULING				306
8	COURT TO DEFENDANT (SWORN)				307
9	JURY IN				312
10	WALTER DIALS				
11	Mr. Fox	313		335	
12	Mr. Richardson		321		
13	JURY OUT/ON RECORD				336
14	COURT'S RULING				336
15	BREAK/JURY IN/COURT TO JURY				341
16	DEFENDANT'S SUMMATION (FOX)				342
17	STATE'S SUMMATION (RICHARDSON)				361
18	OBJECTION				374
19	BREAK/JURY IN				381
20	CHARGE BY COURT				381
21	JURY OUT/ALTERNATE EXCUSED				390
22	ADDITIONS, EXCEPTIONS, OBJECTIONS				390
23					
24					
25					

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	JURY TO DELIBERATE @ 5:15 P.M.				391
4	JURY OUT/ON RECORD TO AUDIENCE				391
5	JURY IN @ 6:25 P.M.				392
6	VERDICT				392
7	JURY POLLED BY NUMBER				393
8	MOTIONS				393
9	COURT'S RULING				394
10	SENTENCING				394
11					
12	<u>E X H I B I T S</u>				
13	<u>NO.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>
14	(EXHIBITS FROM MOTIONS ON JULY 20, 2011)				
15	D-1	HANDWRITTEN DOCUMENT (1 pg.) (2/12/11)			11
16	D-2	DOCUMENT - LIVINGSTON TO J. RICHARDSON (2/23/11)			11
17					
18	(EXHIBITS FROM TRIAL ON AUGUST 1, 2, 2011)				
19	S-1	DIAGRAM OF SCENE		126	
20	S-2	PHOTO			143
21	S-3	PHOTO			147
22	S-4	PHOTO			145
23	S-5	PHOTO			145
24	S-6	PHOTO			146
25	S-7	PHOTO			192

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-8	BULLET CASING	193	
4	S-9	PHOTO		195
5	S-10	PHOTO		195
6	S-11	PHOTO		195
7	S-12	PHOTO (copy)		256
8	S-13	PHOTO (copy)		256
9	S-14	HANDWRITTEN STATEMENT	249	
10	S-15	CAB LOG	259/261	
11	S-16	STATEMENT OF S. WILLIAMS	291	
12	S-17	PHOTO		301
13	S-18	PHOTO		301
14	S-19	PHOTO		301
15	S-20	PHOTO		301
16				
17	C-1	STIPULATION	148	
18				
19				
20				
21				
22				
23				
24				
25				

(08.65-28-2911) State vs. Henry Germaine Dukes
Horry County Courthouse (Eric Fox, Atty.)
(Paul Taylor/Jimmy Richardson) **RANDOM STRIKE SHEET**

JUDGE NAME:

TRIAL TYPE: Criminal

VEL ID: JOHN 8-1

COURTROOM JAR

(August 1, 2011)

DESCRIPTION: JOHN 8-1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF		DEFENDANT		REMARKS
				GR	SR	GR	SR	
1 Trask, Joseph L SR	347	W	M	()	()	()	()	
2 Nielsen, Kate	265	W	F	()	()	()	()	
3 Dutcher, Diana L	111	W	F	()	()	()	()	
4 Elliott, Collier E	114	W	M	()	()	()	()	
5 Kelley, Twyla S	205	W	F	()	()	()	()	
6 Brown, Steven T	45	W	M	()	()	()	()	
7 Noyes, Jay L	266	W	M	()	()	()	()	
8 Skipper, Randy E	323	W	M	()	()	()	()	
9 Rittweger, Stephen H	293	W	M	()	()	()	()	
10 Hill, Barbara L	173	W	F	()	()	()	()	
11 Arias, Maribel	10	H	F	()	()	()	()	
12 Lovelace, Daniel R	223	W	M	()	()	()	()	
13 Munday, Patricia C	256	W	F	()	()	()	()	
14 Simmons, Carole A	320	W	F	()	()	()	()	✓ ② alt.
15 Cannaday, Pranorchit I	59	A	F	()	()	()	()	Seated on jury to replace #332 - Crystal S. Squires ✓ ① alt.
16 Bellamy, Sharon D	24	B	F	(X) ①	()	()	()	
17 Hill, Sandra E	174	W	F	()	(X) ①	()	()	
18 Mccaffrey, Reba M	233	N	F	()	()	()	()	✓ ⑫
19 Squires, Crystal S	332	W	F	()	()	()	()	Excused by the Court ✓ ⑭
20 Gore, Lona E	148	W	F	()	(X) ⑨	()	()	
21 Buzanowski, Martha J	54	W	F	()	()	()	()	✓ ⑩
22 Warstler, Amanda R	356	W	F	()	(X) ③	()	()	
23 Bellamy, Edna E	22	B	F	()	()	()	()	✓ ⑨

Horry County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

JURY ID : JOHN 8-1

COURTROOM JAR

DESCRIPTION : JOHN 8-1

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF		DEFENDANT		REMARKS
				Chal	Sub	Court		
24 Kunkle, Charles W	210	W	M	()	()	()	(Foreman)	✓ ⑧
25 Keily, John J III	204	W	M	()	X ⑦	()		
26 Laidlaw, Robert W	211	W	M	()	X ⑥	()		
27 Cole, Amanda M	81	W	F	()	()	()		✓ ⑦
28 Campbell, Constance M	56	W	F	()	X ⑤	()		
29 Bilby, Kristen P	31	W	F	()	()	()		✓ ⑥
30 Dubose, Betty C	108	W	F	()	X ④	()		
31 Cox, Michael W	86	W	M	()	()	()		✓ ⑤
32 McCarty, Blake A	235	W	M	X ②	()	()		
33 Doss, David W	106	W	M	X ①	()	()		
34 Causey, Meghan A	64	W	F	()	X ③	()		
35 Saviotti, Hector	310	W	M	()	()	()		✓ ④
36 Gilliard, Veronica	145	B	F	()	X ②	()		
37 Coker, Jason M	80	W	M	()	()	()		✓ ③
38 Butler, James C	52	B	M	()	()	()		✓ ②
39 Worthen, Agnese J	369	W	F	()	X ①	()		
40 Prack, Adam G JR	280	W	M	()	()	()		✓ ①

Total Number of Jurors:

40

** END OF REPORT **

MOTIONS

1 **THE COURT:** All right, we're going to go into
2 2008-GS-26-2911, the State of South Carolina versus Henry
3 Jermaine Dukes. The parties are present?

4 **MR. TAYLOR:** They are, Your Honor. The Defendant is
5 in lock-up, and Mr. Fox is in the first waiting room to the
6 back, if I can just grab him real quick.

7 **THE COURT:** All right, and if we can bring out Mr.
8 Dukes, please.

9 All right, gentlemen, as I understand it, there are
10 several issues regarding this particular case that's up for
11 -- this murder trial that's up for trial next -- I guess it
12 would be a week from Monday?

13 **MR. TAYLOR:** Yes sir, Your Honor.

14 **THE COURT:** All right.

15 **MR. TAYLOR:** It's eight motions being filed by the
16 Defense counsel. We've resolved one of them at least at
17 this point, Your Honor, the motion to sequester. From the
18 State's standpoint, we consented and join in that motion for
19 mutual sequestration of witnesses on both sides.

20 **THE COURT:** All right, except for the chief
21 investigating officer?

22 **MR. TAYLOR:** Yes sir, Your Honor.

23 **THE COURT:** All right, very good.

24 All right, Mr. Fox.

25 **MR. FOX:** Just on that point, as far as the chief

MOTIONS

1 investigating officer in this case, I think that is
2 Detective Sean Addison, formerly of the Conway Police
3 Department. He is no longer with the Conway Police
4 Department, in fact, is in Afghanistan, has been for some
5 time, is not expected back for trial, so I would say the
6 chief investigating officer in this is not present.

7 **THE COURT:** Well, certainly somebody has had to assume
8 those duties and responsibilities. I'm sure they would not
9 have let that lapse, so whoever has assumed those duties and
10 responsibilities would be the person at issue would be
11 allowed to remain.

12 All right, you have several motions that you have
13 filed, Mr. Fox. One of them would be to suppress an
14 identification.

15 **MR. FOX:** Yes, Your Honor. There was an out-of-court
16 identification by Mr. Cornelius Ford. That was done, I
17 believe, at the Conway Police Department. He was shown
18 photographs. He gave a statement. They then -- he made an
19 out-of-court identification.

20 There's an issue about how exactly that was done, and
21 one issue I have is, again, this was Detective Addison who
22 was -- conducted the interview and who apparently was the
23 one present when these pictures were either shown to or when
24 Mr. Ford saw them.

25 Mr. Add- -- Detective Addison, of course, is not here,

MOTIONS

1 and my first position would be without Detective Addison, I
2 don't have a proper way to conduct cross-examination or for
3 the Court to investigate the procedure, I would say line-up
4 procedure, photo line-up procedure, and there's no way to
5 make a determination as to whether it was done properly or
6 whether it was unduly suggestive.

7 We do have -- I believe Mr. Ford is here to testify,
8 but there are discrepancies to what I believe he will say
9 and what's in Detective Addison's report in terms of how
10 that identification was made, and again, I do not have
11 Detective Addison here. I think without it, the State
12 cannot meet its burden of showing that this was not an
13 unduly suggestive procedure.

14 **THE COURT:** Well, I don't know that. Obviously we
15 will need to hear the testimony of Mr. Ford, so Solicitor,
16 are you prepared to present that?

17 **MR. TAYLOR:** I am, Your Honor, but before we get into
18 the motion of identification, as I stated, Your Honor,
19 there's several issues. One of the issues or one of the
20 motions filed by Mr. Fox was regarding a note that was
21 written by his client and given to Captain Wineglass down in
22 Georgetown. In speaking with Mr. Fox prior to this motion
23 starting, and I thought it was agreed that we could deal
24 with that motion first since Ms. Wineglass was supposed to
25 be somewhere at 10:30. We had agreed this morning to do

MOTIONS

1 that one first.

2 **MR. FOX:** I would have no objection to that, Your
3 Honor, for Ms. Wineglass.

4 **THE COURT:** All right, very good. All right, let's go
5 ahead.

6 **MR. TAYLOR:** Your Honor, it's a Defense motion so I'll
7 let him go first.

8 **THE COURT:** Go ahead, Mr. Fox.

9 **MR. FOX:** Your Honor, Mr. Dukes was out on bond, was
10 re-incarcerated. His bond was revoked in February of this
11 year. He was, for his own protection, taken down to
12 Georgetown County Detention Center.

13 Apparently -- well, not apparently. At some point he
14 wrote on an inmate grievance form, that I will hand up and
15 mark it as a Court's exhibit, a note indicating that his
16 address -- Captain Wineglass, that I am not trying to cause
17 any trouble. I need to speak to you in regard to contacting
18 the Horry County Solicitor's Office. I am ready to give a
19 confession.

20 (HANDWRITTEN DOCUMENT (1 PG.), DATED 2/12/11, MARKED AS
21 DEFENDANT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)

22 (DOCUMENT, LIVINGSTON TO J. RICHARDSON, DATED 2/23/11,
23 MARKED AS DEFENDANT'S EXHIBIT NUMBER 2 FOR IDENTIFICATION
24 ONLY.)

25 **MR. FOX:** There was then communication back and forth

MOTIONS

1 between Captain Wineglass and Mr. Dukes, and our position is
2 that Mr. Dukes -- there is nothing further in that note.
3 There are no details. He doesn't say this is what I am
4 confessing to. Our position is he is using a term of art
5 and, in fact, in subsequent follow-up, there was no
6 confession.

7 The Solicitor's Office sent a investigator, interviewed
8 Mr. Dukes' roommates and other people he had contact with.
9 In that investigation, there was absolutely no indication
10 and facts Mr. Dukes intended to confess in the legal sense
11 of the word and, in fact, one of the witnesses told Gerodie
12 Livingston that Mr. Dukes indicated he simply wanted a way
13 to communicate with the Solicitor's Office to let his side
14 of the story be told, so our position would be it's not a
15 confession in the legal sense of the word and that any
16 probative value would be outweighed by its prejudicial
17 effect and we would ask that that note be suppressed, Your
18 Honor.

19 And we have spoken with Mr. Taylor about this. There
20 is -- I could hand up to the Court a memo that Mr.
21 Livingston prepared for Deputy Solicitor Jimmy Richardson
22 outlining -- summarizing his interviews with the three
23 inmates at Georgetown County Detention Center. I think if
24 you take all the circumstances together, and there was never
25 a time, in fact, when anyone from the police or Solicitor's

MOTIONS

1 Office or anyone else interviewed Mr. Dukes where he gave
2 any affirmative confession.

3 **THE COURT:** All right, Solicitor, let me hear your
4 argument, please.

5 **MR. TAYLOR:** Thank you, Your Honor; please the Court.
6 Your Honor, the State's position is that this note that came
7 from the Defendant, Mr. Dukes, is a matter for the jury to
8 determine regarding its weight and credibility. The note
9 was done of his own volition. Nobody forced, threatened, or
10 coerced him to do so. It was sent to Captain Wineglass.
11 That's the person or the personnel that would receive all
12 these notes.

13 She was on vacation, in speaking with her, which I can
14 have her testify to in a minute, but she was on vacation, so
15 there was a period of time between which he wrote the note
16 to whenever Ms. Wineglass first saw it. Whenever she
17 received it, she wrote who is your Solicitor that you would
18 like to speak to, and it had to go back to him again, so
19 there was a delay in time between the point in time whenever
20 he originally wrote the note to whenever somebody went down
21 and talked to him.

22 During that period of time, I believe it would be a
23 matter for the jury to determine whether or not Mr. Dukes
24 decided whether he was going to change his mind whether he
25 wanted to confess or not and in looking at whether this note

MOTIONS

1 should go to the jury, in State v. McDowell, which the cite
2 is 266 S.C. 508 at Page 515, it says as a general rule any
3 guilty act or conduct on the part of the accused is
4 admissible as some evidence of consciousness of guilt.

5 Based on the fact that Mr. Dukes on his own accord made
6 this act of his own conduct, we feel that it would be for
7 the jury to determine, and based on State v. McDowell, we
8 think that it is admissible, Your Honor.

9 **THE COURT:** All right, Mr. Fox, any argument about
10 that?

11 **MR. FOX:** Well, Your Honor, just say that the
12 confession is used as a legal term of art as an
13 acknowledgement of guilt. If you take all the
14 circumstances, what's in the note which just uses the word
15 confession, it doesn't say I want to con- -- doesn't
16 actually say what he wants to confess about, but when you
17 add to the follow-up, the fact that he never gave any
18 statements to anyone and any -- anyone else that it was
19 discussed with that were interviewed indicated that's not
20 what he intended.

21 I would say it's not of a guilty act, and any probative
22 value that it would have is greatly outweighed by its
23 potential prejudicial effect.

24 **THE COURT:** All right. Regarding this particular
25 statement, it does not indicate the case which he wants to

MOTIONS

1 communicate about. It does not mention the victim's name.
2 It does not give any details. It says I am ready to give a
3 confession about my case.

4 **MR. TAYLOR:** Your Honor, if I could ---

5 **THE COURT:** Yes sir.

6 **MR. TAYLOR:** Not to interrupt the Court, but this is
7 the only case that Mr. Dukes had pending at the time.

8 **THE COURT:** It might very well be, but it gives no
9 indication of what he's talking about. It doesn't say give
10 a confession about my case. It doesn't say I did something.
11 It doesn't say that I committed some act. It would lead the
12 jury to engage in conjecture and speculation if I allowed
13 you to put it in your direct evidence in this matter.

14 Now, obviously if Mr. Dukes testifies in this case,
15 this ruling would not prevent you from using it in cross-
16 examination of him, but in your case in chief to attempt to
17 show that the Defendant committed the crime of murder as
18 alleged by the State, I find that the probative value of
19 this is outweighed greatly by its prejudicial effect.

20 Obviously it's some evidence, but allowing the jury to
21 speculate as to the -- which they would have to based on its
22 contents, I don't find that it's proper in the State's
23 presentation of its case in chief to allow it and I'm not
24 going to allow it.

25 **MR. TAYLOR:** Thank you, Your Honor.

MOTIONS

1 **THE COURT:** All right, next motion.

2 **MR. FOX:** The next one I would address would be the
3 motion to exclude evidence of Defendant's flight as being
4 evidence of guilt. I believe the State would seek to
5 introduce testimony on a couple of fronts.

6 Mr. Dukes -- this shooting occurred, I believe, on
7 November 2nd, or early November, 2007. Mr. Dukes -- the
8 shooting occurred at nine or ten o'clock in the morning.
9 Later that afternoon, or actually evening, Mr. Dukes left
10 Conway and went first to Darlington, South Carolina, where
11 his mother lives.

12 There will be testimony regarding a cab that he took,
13 the cab driver, the person that called the cab, and then
14 subsequently Mr. Dukes left Darlington and traveled to
15 Florida, to Miami, Florida, where he was eventually
16 arrested, and I believe there will be testimony about that
17 as well.

18 I'm aware that the general rule is that evidence of
19 flight is some evidence of guilt. Although it's improper to
20 give an actual jury charge on that, it is something that a
21 jury -- that can be presented to a jury. However, under
22 United States v. Beahm, which is B-E-A-H-M, at 664 F.2d,
23 Page 414, that's out of the Fourth Circuit, a 1981 case, the
24 Court there ruled evidence of flight is inadmissible where
25 the Defendant flees after commencement of investigation

MOTIONS

1 unrelated to the crime, the crime charged, or of which
2 Defendant was unaware. That second part of that phrase
3 applies here.

4 At the time Mr. Dukes left Conway and eventually South
5 Carolina, he had been actually spoken to by the police
6 following the shooting. They had -- their investigation had
7 led them across town in Conway to another residence where
8 Mr. Dukes was actually staying in a truck, living in a
9 truck. They got -- the police arrived to speak to everyone
10 at the house. They believed one of the indictments at the
11 house may have been involved in the shooting. They
12 questioned, talked to everybody there, including Mr. Dukes.

13 He was removed from the vehicle. They even did a
14 gunshot residue on Mr. Dukes, as they did others there, and
15 by the time the police left a little while later, they had
16 released -- he never was arrested, never was taken into
17 custody, or interrogated, or mirandized, or anything like
18 that, but by the time the police left they said -- told Mr.
19 Dukes, have a nice day.

20 He had no further contact from any authorities before
21 he left Conway or before he left the State of South
22 Carolina, so I believe under Beahm, which is also mentioned
23 in State v. Robinson, it is a Court of -- S.C. Court of
24 Appeals, 2004, that Mr. Dukes being unaware that he was even
25 a suspect, let alone charged in this crime, makes that any

MOTIONS

1 evidence of his flight, leaving Conway and ultimately South
2 Carolina, inadmissible.

3 **THE COURT:** All right, Solicitor.

4 **MR. TAYLOR:** Your Honor, I am aware of these cases
5 that Mr. Fox mentioned, but he's left out a lot of the facts
6 of this case, which would put his client right in the middle
7 of knowing what exactly was going on and that he was under
8 investigation.

9 The facts of the case that he left out was that after
10 he had the gunshot residue taken there was a witness that
11 was discovered shortly thereafter that identified this
12 Defendant as being the shooter in this crime. When they
13 tried to locate him, he was gone. With further
14 investigation, this Defendant made contact with a woman who
15 he knew for a short period of time here in Conway.

16 The testimony would be at trial would be that he told
17 her I've done something bad. I need to get out of town. A
18 cab driver -- a cab is called. A cab driver shows up and
19 picks him up. The cab driver then takes him over to his
20 mother's house out of -- out of county. Whenever he gets
21 there, the cab driver will testify at trial that this
22 Defendant says you've not seen me, nobody has seen me, we're
23 good, and lets him out, so he's under -- he knows that
24 there's an investigation that's going on.

25 Also, Your Honor, in dealing with the cases, what Mr.

MOTIONS

1 Fox has not mentioned to you is that under State v. Walker,
2 it held that flight or evasion of arrest is an issue for the
3 jury to consider, and given the evidence that the State
4 would present during trial, it would be a matter for the
5 jury to consider and not to be suppressed here at Court.

6 There's countless cases that deal right on point with
7 this, but our State has gone so far as even saying that a
8 Defendant that has tried to commit suicide prior to trial,
9 that whenever that suicide attempt has failed, that even
10 that could be used against the Defendant to show evidence of
11 flight or as well as guilt.

12 Further, in State v. Pagan, flight of evidence is
13 relevant when the flight and the Defendant's charge are
14 connected. Clearly we can show that this Defendant was
15 connected to the crime through statements that he made to
16 the witnesses that would be presented through trial, and
17 State v. Ballenger, flight is at least some evidence of
18 Defendant's guilt, and further under State v. Walker also
19 mentions State v. Beckham, and I apologize, Judge, I did not
20 give you the cites. I can go back if you'd like to have
21 those ---

22 **THE COURT:** That's all right.

23 **MR. TAYLOR:** State v. Beckham, which is 34 or at 334
24 S.C. at Page 315. Further, and follows up with State v.
25 Walker, that evidence of flight is a matter for the jury to

MOTIONS

1 consider.

2 The State that I mentioned -- or the case that I
3 mentioned where the State has held -- or the Court has held
4 that the State is okay with presenting evidence to the jury
5 that the Defendant showed evidence of flight through his
6 suicide attempt is State v. Juan Orozco, and that cite is
7 392 S.C. 212.

8 Further in that evidence of attempt of flight are
9 probative to the consciousness of guilt stated in that case,
10 and it follows up again by citing Walker in that case since
11 State v. Juan Orozco is a recent case of 2011, again
12 reiterates Walker holding that an unexplained flight is
13 admissible as indicating consciousness of guilt, where it is
14 not as likely that one who is blameless and conscious of
15 that fact would flee. State v. Robinson also holds that
16 flight when unexplained is admissible as indicating
17 consciousness of guilt.

18 Your Honor, these are talking about unexplained flight
19 where the Defendant has left the area when an investigation
20 is going on and nobody has really connected him and it's
21 unexplained as to why he left.

22 Clearly the State can show in this case that it is
23 explained. He left the area. The police had already talked
24 to him, and he left the area because he knew that he was
25 somewhat involved and that they would -- they would through

MOTIONS

1 their investigation would follow up on that.

2 They then found a witness, which is here in Court today
3 that can identify this Defendant. As a result of that, when
4 they went to talk to him again, he was gone, and as I
5 stated, we've got a witness that said she had contact with
6 him and he said I've done something bad. I need to get out
7 of town.

8 The driver that took him out of town says whenever they
9 get to the end of that destination, he tells the driver you
10 haven't seen me, and given the time frame which is the same
11 day as the murder, Judge, clearly he was trying to flee, and
12 I believe it is definitely a matter for the jury to
13 determine based on the cases that I've cited to the Court
14 today.

15 **THE COURT:** Thank you.

16 Regarding this issue of flight ---

17 **MR. FOX:** Your Honor, I'm sorry. May I briefly
18 respond to that, I mean to re-argue, but I do have a couple
19 of points I would like to address.

20 **THE COURT:** All right.

21 **MR. FOX:** Thank you, Your Honor, just very briefly.

22 With regard to the witnesses, at the time the witness
23 that identified Mr. Dukes did not come forward or he claimed
24 to be present at the shooting, he did not come forward for
25 six or seven hours, many hours after Mr. Dukes had already

MOTIONS

1 spoken to the police and he had been released. He did not
2 know that and had no way of knowing, had no communication
3 with that witness that identified him as the shooter.

4 As far as the witness who called the cab for him, that
5 woman did not come forward for several weeks -- for about
6 six weeks, and several weeks after Mr. Dukes had already
7 been arrested, so at the time that he left, there's no --
8 there won't be any testimony indicating that he, in fact,
9 was aware that he was a suspect.

10 **THE COURT:** All right. Flight from prosecution is
11 admissible as evidence of guilt. Evidence of flight has
12 been held to constitute evidence of the Defendant's guilty
13 knowledge and intent. A critical factor to the
14 admissibility of the evidence of flight is whether the
15 totality of the evidence creates an inference that the
16 Defendant had knowledge that he was being sought by the
17 authorities.

18 It is sufficient that circumstances justify an
19 inference that the Defendant or Defendants or the accused's
20 actions were motivated as a result of his belief that the
21 police officers were aware of his wrongdoing and were
22 seeking him for that purpose.

23 Obviously if this evidence is allowed, there will be no
24 charge to the jury about that. That will be simply
25 arguments of counsel.

MOTIONS

1 From the matters presented, I do find that the evidence
2 of flight should be allowed in this particular matter. The
3 Defendant was clearly questioned by police regarding this
4 particular matter. Whether or not he was detained and
5 arrested at that time is not the determining factor.

6 He was clearly aware that something had occurred, that
7 the police had questioned him about it, and his actions
8 thereafter are proper to be explored by the jury in this
9 particular matter. Therefore, I am going to allow it. The
10 motion to exclude is denied.

11 **MR. TAYLOR:** Thank you, Your Honor.

12 **MR. FOX:** Thank you, Your Honor.

13 Your Honor, our next mo- -- I would like to move to
14 several I think we can deal with rather quickly and then
15 save the identification issue for last.

16 **THE COURT:** All right, sir.

17 **MR. FOX:** The next one, I filed a motion to suppress a
18 statement that Mr. Dukes apparently made upon his arrest in
19 Miami. I spoke to the Solicitor's Office. Of course, those
20 officers from Miami who would need to testify are not here.

21 In order to save them from traveling twice to South
22 Carolina, I would like to hold off on that until they will
23 be here for trial. I think we can address that fairly
24 quickly. It's something he said. It wasn't a full
25 interrogation statement. It was something he blurted out at

MOTIONS

1 the time, so we'll hold that one in abeyance.

2 **THE COURT:** And we can take that up prior to the
3 officers testifying at trial, ---

4 **MR. FOX:** Yes sir.

5 **THE COURT:** --- so we will wait until then.

6 **MR. FOX:** Next, Your Honor, is a motion to disclose
7 the State's witness list, simply -- I realize that they are
8 not required to do that at this point, but it would perhaps
9 save us some time if I knew who the State intended to call.
10 I have some idea, but save duplication of sending out and
11 serving subpoenas for the same witnesses. I would request
12 that the State, as soon as they can, next week, give us a
13 witness list.

14 **THE COURT:** What's the State's position in this, in
15 that particular request?

16 **MR. TAYLOR:** Judge, I've never, in the defense
17 standpoint, never had the State give me a witness list prior
18 to the day of trial, but at this point, until I can speak
19 with Mr. Richardson, until he gets back, I'm not sure as to
20 which witnesses would be called at this time.

21 **THE COURT:** All right.

22 **MR. TAYLOR:** Based on State v. Nicholson, which is 366
23 S.C. 568, I would ask that we not be ordered to provide a
24 witness list until time of trial.

25 **THE COURT:** All right. I'm not going to order that,

MOTIONS

1 but I would appreciate it after you speak with Mr.
2 Richardson if there is some information that you could
3 provide to Defense counsel, understanding that we have some
4 time constraints next week, that you disclose the
5 information as quickly as possible, as well as full and
6 complete information as to any convictions, ---

7 **MR. TAYLOR:** Yes sir, Your Honor.

8 **THE COURT:** --- you know, N.C.I.C. reports that -- on
9 all those witnesses, so if you can when you do supply the
10 witness list, please make sure attached thereto is some
11 N.C.I.C. report indicating they have convictions or they
12 don't have convictions, just one way or the other so that
13 Mr. Fox will know that y'all have run the report and it
14 shows something or it doesn't show something so he doesn't
15 have to duplicate that information, all right?

16 **MR. TAYLOR:** Yes sir, Your Honor.

17 **MR. FOX:** Thank you, Your Honor. That addresses my
18 next motion about the prior convictions, so that issue has
19 been addressed.

20 The next would be a motion to allow counsel prior to
21 trial to inspect any exhibits the State intends to introduce
22 at trial. I don't expect anything particularly difficult,
23 but again in the interest -- we do have time constraints
24 trying to finish this trial by Wednesday of the following
25 week, and that may save us time having to stop during the

MOTIONS

1 trial, look, take up the issue of whether I have any
2 objections or not, so if there are any exhibits, I don't
3 know if there are ---

4 **THE COURT:** Well, I appreciate that, but surely Rule 5
5 and Brady would cover that. If you've got anything that you
6 even think you might introduce at trial, you certainly
7 should have sent those over to Defense counsel by now.

8 **MR. TAYLOR:** Yes sir. He's -- all discovery has been
9 provided to my understanding.

10 **THE COURT:** All right, so let's just make sure that,
11 you know, y'all comply with Rule 5 and Brady and that all
12 the information that exists, you're saying has already gone
13 to Defense counsel, but let's just make sure ---

14 **MR. TAYLOR:** Yes sir, Your Honor.

15 **THE COURT:** --- that it -- when is Mr. Richardson
16 going to be back?

17 **MR. TAYLOR:** My understanding, he'll be back in the
18 office on Friday, and I'm assuming that Mr. Richardson is
19 also going to want to mark exhibits and discuss them with
20 the Court prior to trial just so the case will flow ---

21 **THE COURT:** Ask him to communicate with Mr. Fox and
22 see if y'all can't get that done next week ---

23 **MR. TAYLOR:** Yes sir, Your Honor.

24 **THE COURT:** --- so that when it does come time for
25 trial, that y'all would have already accomplished that, all

MOTIONS

1 right?

2 **MR. TAYLOR:** Yes sir.

3 **MR. FOX:** Thank you, Your Honor.

4 Your Honor, that would mean the final motion is a
5 motion to suppress out-of-court identification of Mr. Dukes
6 by the witness, Cornelius Ford. It's the one we spoke of a
7 little bit earlier regarding the circumstance that he was --
8 came in and gave a statement.

9 During the statement, they then offered to show him
10 pictures and there's some discrepancy as to exactly what
11 happened, but our position is that, of course, we'll have to
12 take testimony, but our position is it was an unduly
13 suggestive procedure and created a very substantial
14 likelihood of misidentification, so I believe we'll need to
15 take testimony on that, Your Honor.

16 **THE COURT:** All right, very good.

17 All right. Then do you want to proceed then with the
18 testimony of Mr. Cornelius Ford then?

19 **MR. TAYLOR:** Yes sir, Your Honor.

20 **THE COURT:** All right.

21 **MR. TAYLOR:** Cornelius Ford to the stand.

22 **THE COURT:** All right. Please come around to be
23 sworn.

24 **CORNELIUS ALFORD LAVON LAFAYETTE FORD,**
25 being first duly sworn, testifies as follows:

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 **DIRECT-EXAMINATION BY MR. TAYLOR:**

2 Q. Mr. Ford, will you please state your full name for the
3 record?

4 A. Cornelius Alford Lavon Lafayette Ford.

5 Q. I think you just said it. I'm sorry, I was just
6 getting a glass of water.

7 Mr. Ford, you were questioned regarding this incident
8 that occurred, and can you state to the Court -- just
9 explain what happened, regarding how the identification
10 occurred, and how many times you had met the Defendant prior
11 to being questioned by police.

12 A. Well, I had seen him twice prior to this. The
13 morning that it happened was the third time I seen him.

14 Q. Okay. The first time you saw him was where?

15 A. At a store next to Food Lion on 701, called Deals.

16 Q. And how long did that period of time whenever you saw
17 him -- did you have a conversation with him?

18 A. No.

19 Q. In passing him, how much time went by, and how close
20 was he to you?

21 A. He was real close. He was coming out, I was going in
22 the store.

23 Q. Okay. So in terms of feet, how close was that?

24 A. One foot. Less than a foot, I guess.

25 Q. Okay. And did you know him at that time?

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

- 1 A. No sir.
- 2 Q. And where was the second time that you saw him?
- 3 A. The second time I seen him he came to the house where
- 4 this happened at, with another -- another guy.
- 5 Q. I'm sorry. He came to the house with who?
- 6 A. He came to the house where this happened at, on Suggs
- 7 Street ---
- 8 Q. All right.
- 9 A. ---And he was with another guy, and that was the
- 10 second time I seen him.
- 11 Q. And how close were you to him at that time?
- 12 A. Probably five feet at the most, something like that.
- 13 Q. And the decedent -- explain the conversation. Did
- 14 the decedent know the Defendant?
- 15 A. No. I think the guy that he came with knew the
- 16 Defendant, and I guess he just came over there with them.
- 17 Q. And y'all were all in the same room?
- 18 A. No. We was outside, in the back yard.
- 19 Q. Okay. And how long did that conversation ensue?
- 20 A. They probably stayed probably about twenty, thirty
- 21 minutes, something like that.
- 22 Q. Okay. So you had a conversation -- you had words
- 23 with this Defendant?
- 24 A. No. I mean, I heard him speak, but I didn't have a
- 25 personal conversation with them.

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 Q. All right. And where was the third time that you saw
2 him?

3 A. The morning that this happened.

4 Q. All right. And can you explain to the Court how that
5 transpired?

6 A. It was early in the morning. I can't remember
7 exactly what time, eight o'clock, somewhere in there, nine
8 o'clock, and me and Andy was in there, which was the victim,
9 and a knock came on the door, and he end up opening the door
10 and the Defendant came in, Mr. Dukes came in.

11 Q. What happened next?

12 A. When he came in they had some kind of conversation at
13 the door, and when they had the conversation at the door I
14 remember Mr. Dukes pulling the gun out.

15 Q. How far away from you -- were you from Mr. Dukes
16 whenever the gun was pulled?

17 A. Probably about from me to you, or closer.

18 Q. Okay. And there was a hallway?

19 A. Yes sir.

20 Q. And you were right there at that hallway coming into
21 the room?

22 A. Yes sir.

23 Q. Any question in your mind it was Mr. Dukes?

24 A. No sir.

25 Q. Okay. Whenever he pulled out a firearm did that

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 cause you to be attentive to him?

2 A. Yes. I stood up when I seen him pull the gun out,
3 and then he pointed the gun at me, and the victim ---

4 Q. Prior to pointing the gun at you, what did he do?
5 What did ---

6 A. He pointed it at the victim, Andy, first, and then
7 when I stood up -- I don't know if I drew his attention --
8 he pointed it at me, and then the victim, Andy, jumped back,
9 and he turned the gun on him and fired, boom, then he fired
10 twice. He fired twice.

11 Q. Okay.

12 A. Then after ---

13 Q. What happened after that?

14 A. After he fired twice I like stood in a room. It was
15 like a room where I was standing there. He came around to
16 the kitchen and pointed the gun at me, and it like clicked.
17 I don't know if it jammed or whatever. It clicked like
18 twice. And then he took off out the door.

19 Q. At any point in time did you ever take your eyes off
20 of Mr. Dukes?

21 A. No sir.

22 Q. And you gave a pretty accurate description of Mr.
23 Dukes, didn't you?

24 A. Yes sir.

25 **MR. FOX:** Objection to the leading.

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 **THE COURT:** Why don't you just go into the
2 description, Solicitor.

3 Q. All right. What did you describe? Go to what you
4 described regarding the Defendant.

5 A. I knew he had like a funny accent like a -- like I
6 don't know if he talk with water in his mouth or what, but I
7 remember that, and I remember he had like a big smile, like
8 a big mouth, so that's the description I gave them.

9 Q. All right. Can you describe your level of certainty
10 to the Court regarding your identification?

11 A. My level of certainty? Oh, I'm a hundred percent
12 that was him.

13 Q. Okay. And what was the amount of time, from the
14 period of time that you saw Mr. Dukes at the house, the
15 third time, to whenever you gave your identification?

16 A. Maybe a couple of hours. I don't remember exactly
17 how many hours, probably four or five or ---

18 Q. Same day?

19 A. Yes sir.

20 Q. Okay. Now, let's move a little forward. The police
21 contact -- or you are in contact with police. Describe to
22 the Court what happened, your whole interview and how it
23 transpired for you to identify Mr. Dukes.

24 A. When I went to get a interview I was giving --
25 telling them what happened, and while I was talking -- while

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 I was talking to them they said they was going to get some
2 pictures, like a photo book or whatever, but I seen like
3 some pictures on the table, and when I seen the pictures on
4 the table I pointed him out, because I knew that's who it
5 was.

6 Q. All right. And the pictures that were on the table,
7 how far away were they from you?

8 A. I guess -- a foot, I guess.

9 Q. Okay. And were they contained in a file like this?

10 A. It was like a couple of files, and it was a couple of
11 pictures.

12 Q. Okay. So they had opened up their file in order to
13 make notes?

14 A. Yes.

15 Q. And contained in that file, your testimony is, is
16 that's where the pictures were?

17 A. Uh huh **(indicating positive)**.

18 Q. Now, the Detective was out of the room at that point?

19 A. No. He was in the room. He was -- because he was
20 about to get up to go get a book, I guess, or whatever, for
21 me to identify him, but while he was getting up I seen the
22 pictures. From my understanding they went by the house, or
23 whatever. They had some pictures. And I seen the pictures
24 and I end up pointing him out.

25 Q. So on your own accord -- your testimony is, on your

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR

1 own accord you saw the picture and you identified this
2 Defendant, and that's how it transpired?
3 A. Yes sir.
4 Q. Now your video does not show this, does it?
5 A. The video?
6 Q. Yes. In other words, the first room that you were
7 in, which you were being video-recorded, video and audio
8 recorded, you moved from that room, didn't you?
9 A. Yes. We was talking in one room ---
10 Q. All right. Why did you move to that -- from that
11 room?
12 A. I don't know. The Officer -- we was in that room and
13 they -- he told us to go to the next room. I don't know.
14 Q. All right. And that's the reason why you were not
15 video-recorded?
16 A. Yes sir.
17 Q. Okay. And again, any question in your mind whether
18 or ---
19 A. No sir.
20 Q. All right. Anybody tell you to pick that picture?
21 A. No sir.
22 Q. Anybody promised you anything to pick that picture?
23 A. **(NODS HEAD NEGATIVE)**.
24 Q. And again, how many pictures were there contained in
25 the -- in the file?

CORNELIUS ALFORD LAVON LAFAYETTE FORD - DIRECT BY TAYLOR
CROSS BY FOX

1 A. I think it was three or four ---

2 Q. Okay. All right.

3 A. ---Maybe five.

4 **MR. TAYLOR:** Court's indulgence, Your Honor.

5 Your Honor, I have no further questions.

6 **THE COURT:** All right. Thank you.

7 All right, cross-examination.

8 **MR. FOX:** Thank you, Your Honor.

9 **CROSS-EXAMINATION BY MR. FOX:**

10 Q. Mr. Ford, this shooting happened when?

11 A. Sir?

12 Q. What time of day did this shooting happen?

13 A. Just probably about -- I know it was early, either --
14 between eight and nine, something like that.

15 Q. Okay. And ---

16 A. I don't know the exact time.

17 Q. ---You didn't go speak to the police until after
18 four-thirty, four-thirty or five that afternoon, correct?

19 A. Yes.

20 Q. So about six and a half hours later?

21 A. I guess so.

22 Q. Where did you go after you left the house?

23 A. I went to my house.

24 Q. How far is that?

25 A. Probably about five miles, ten miles at the most.

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX

- 1 Q. Okay. How did you get there?
- 2 A. I drove.
- 3 Q. So how long did that take you?
- 4 A. Five, ten minutes.
- 5 Q. You got a cell phone?
- 6 A. Yes sir.
- 7 Q. Call anybody on the cell phone?
- 8 A. At that time?
- 9 Q. Yes.
- 10 A. I made contact with the family, like his mother, his
- 11 cousins and stuff like that, at the time.
- 12 Q. Anybody else?
- 13 A. No sir.
- 14 Q. Nobody else?
- 15 A. No.
- 16 Q. Didn't call your father?
- 17 A. Oh yeah. I called my father before I left the house.
- 18 Q. So that's somebody else. So while you are still at
- 19 the house you called your father. Anybody else?
- 20 A. I called 911 and my father, at the same time.
- 21 Q. You hung up on 911 though, didn't you?
- 22 A. Not that I know of, cause I was talking to both of
- 23 them on two phones at the same time.
- 24 Q. Well, there would be a recording then if you -- so
- 25 you had a conversation with 911?

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX

1 A. Yes, from my understanding. I was talking to both of
2 them at the same time.

3 Q. From your understanding. Well, what is your
4 knowledge? What did you do? You called 911, what did you
5 tell them?

6 A. What happened.

7 Q. So you told 911 -- there will be a recording -- a
8 record though -- we should have a recording of you,
9 Cornelius Ford, telling 911 operator that there was a
10 shooting over on Suggs Street?

11 A. Yeah, it should be, cause I was on the phone with
12 both of them at the same time.

13 Q. At the same time?

14 A. Yeah.

15 Q. So we could hear you talking to your father in the
16 background?

17 A. Should be, yeah.

18 Q. Okay. Now -- so you went home.

19 A. Uh huh **(indicating positive)**.

20 Q. Did 911 -- so you told 911 what happened. They asked
21 you questions.

22 A. Yeah, they was asking me questions. I was -- like I
23 say, I was talking with dad. I was panicking at the same
24 time I was talking to my dad and 911 at the same time.

25 Q. And what were you tell -- and what did they ask you?

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX

1 A. Like what happened, and where was it at. That's how
2 they knew we was on Suggs Street.

3 Q. Okay. And ---

4 A. And when my father got there I left.

5 Q. So you waited till your father got there?

6 A. Yeah.

7 Q. But you left?

8 A. Uh huh (**indicating positive**).

9 Q. You witnessed a shooting. Was Andy still alive when
10 you left?

11 A. I couldn't tell you.

12 Q. Couldn't tell you. Did you check?

13 A. Huh?

14 Q. Did you bother to check?

15 A. No.

16 Q. So, the man was shot, you called 911, but you didn't
17 think to stick around and see -- wait for the police?

18 A. No, I mean, at the same time I was panicked, I'm
19 scared, I just seen my best friend shot.

20 **MR. TAYLOR:** Your Honor, I would object at this time
21 to that line of questioning. It's more getting into a
22 defense for trial and not identification.

23 **THE COURT:** I believe that to be correct.

24 **MR. FOX:** I'll move along, Your Honor.

25 Q. All right. So you didn't stick around. And at what

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX

1 point did you decide it would be a good idea to go back and
2 speak to the police?

3 A. After I talked to his mother and his family. They
4 said the police wanted to talk to me ---

5 Q. Okay.

6 A. ---Which I already knew that, and I ended up going
7 down there.

8 Q. Okay. So late that afternoon you went back. Several
9 of the now -- six or seven hours later you went back to
10 speak to the police, correct?

11 A. Uh huh **(indicating positive)**.

12 Q. Okay. Now, you told the police, in your interview
13 with them, that you had seen Mr. Dukes one time before this
14 shooting, didn't you?

15 A. I couldn't remember. What you talking about, at the
16 interview?

17 Q. Yes. That was on tape, that's recorded.

18 A. I can't remember.

19 Q. Okay. So you can't remember. And your ability to
20 observe -- you were in the house, you say the person came
21 through with a gun, pointed the gun at Mr. Gowans, at you,
22 back at Mr. Gowans, shot Mr. Gowans, and -- so he ran,
23 correctly -- correct?

24 A. Uh huh **(indicating positive)**.

25 Q. Correct.

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX

1 **THE COURT:** You need to answer yes or no, please.

2 A. Yes sir.

3 Q. And you could -- if I understood, in response to Mr.
4 Taylor's question, you said you could keep your -- you kept
5 your eyes on the shooter the whole time.

6 A. Yes sir.

7 Q. So he ran backwards out of the house or what? How
8 did that work?

9 A. Who ran backwards out of the house?

10 Q. You. How did you manage to run out of the house?

11 A. He left out the house before me. He ran out the
12 house. I was still in the house.

13 Q. All right. Now, when you spoke to the police, they
14 took your statement, you told them what you say you saw, and
15 at the end the officer said, we've got some books, we want
16 to go down to the next room so it will be more comfortable,
17 correct? Remember that?

18 A. No. He just say he was going to get the books. He
19 never said we was going in another room.

20 Q. Okay. He never said they would go in the next room.
21 Okay. Now, he never handed you or showed you any pictures.

22 A. No.

23 Q. Your testimony -- he didn't present pictures one
24 after the other to you? He didn't show you a line-up in a
25 folder of multiple pictures? You just ---

CORNELIUS ALFORD LAVON LAFAYETTE FORD - CROSS BY FOX
RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 A. No. Like I say, I seen the pictures on the table,
2 and I end up pointed him out.

3 Q. Okay.

4 MR. FOX: No more questions of this witness, Your
5 Honor.

6 THE COURT: Any redirect?

7 MR. TAYLOR: I have no redirect of this witness, Your
8 Honor, but I do have ---

9 THE COURT: All right.

10 You may step down, sir. Thank you.

11 MR. TAYLOR: I do have a second witness that was
12 present during the time that ---

13 THE COURT: All right, sir.

14 MR. TAYLOR: --- identification occurred.
15 We call Rasheed Muhammad to the stand.

16 THE COURT: All right.

17 Please come around to be sworn.

18 RASHEED SALMET KARLIN MUHAMMAD, being
19 first duly sworn, testifies as follows:

20 DIRECT EXAMINATION BY MR. TAYLOR:

21 Q. Mr. Muhammad, Mr. Ford is, in fact, your son,
22 correct?

23 A. Yes, Cornelius is my son.

24 Q. And you were present the day that he made an
25 identification at the Police Department?

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 A. Yes. I spoke to Sergeant Bryan, if I'm not mistaken.

2 Q. Please don't tell me what somebody else told you.

3 Just tell me what you know of your own knowledge. In other
4 words, don't tell me what another person told you. Just
5 tell me what you saw or what you witnessed yourself.

6 A. Well, I was contact by Conway Police Department
7 asking me reference of my son, Cornelius, and I told him
8 yes, and they said they needed to speak to him. I got in
9 contact with my son. We went down to the substation, which
10 is right next to the marsh here in Conway.

11 The detective set down. It was a long table. I set at
12 one end. Cornelius and the officer set at another end. He
13 questioned him. I set there. I wasn't asked any questions.
14 They came to a point where there were pictures that was
15 shown to my son, and he positively identified this
16 individual.

17 Q. All right. Let's talk about those pictures. How
18 were those pictures shown to your son?

19 A. They were put on the table from my knowledge, because
20 I was far -- at the far end of a table. There were pictures
21 that were on the table. He positively identified this
22 individual.

23 Q. And there was a book they were going to show your
24 son, correct, a book that had mug shots in it?

25 A. Yes; yes.

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 Q. And prior to that book being shown, your son
2 recognized somebody?

3 A. Yes.

4 Q. All right, and that picture that he recognized was
5 contained within the officer's folder or his files in front
6 of him?

7 A. I can't be positively identified and say yes. Only
8 thing I observed is that my son positively identified this
9 individual as the person who committed this crime.

10 Q. All right, and in doing so, did anybody insinuate or
11 was there anything, any misconduct on the officer's part to
12 make you think that something was being suggested to your
13 son?

14 A. No, but there was one strange part, that when the
15 officer asked my son repeatedly was he sure that this was
16 the Defendant, and he positively identified, I just asked
17 the detective could I see the picture, and he slid the
18 picture all the way down to the table and showed me the
19 picture, and I saw the picture, and I repeatedly asked my
20 son over and over are you positive this is the individual,
21 and he said yes, Daddy, I am.

22 And then the detective said why, Mr. Muhammad, do you
23 know him? and I said yes, he's came in to mosque. He's
24 made prayer with us at the mosque here. He explained to us
25 that he was from out of town. We welcomed him into the

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR
CROSS BY FOX

1 mosque. He studied with us. He ate with us during the
2 days, and I was to the point where I kept asking my son are
3 you positive that this is the individual, and he kept
4 telling me yes, and I didn't ask him again because he was
5 positive that that was the individual, and that's how I knew
6 Mr. Dukes.

7 Q. So there was no question in your son's mind?

8 A. No question, no question whatsoever.

9 **MR. TAYLOR:** No further questions. Please answer any
10 that opposing counsel may have for you.

11 **THE COURT:** Cross-examination.

12 **CROSS-EXAMINATION BY MR. FOX:**

13 Q. Mr. Muhammad, you called 911 the morning of the
14 shooting, did you not?

15 A. Yes sir, I did.

16 Q. Okay, and when you called 911, you indicated that you
17 were the person that had discovered the body, correct?

18 A. I was -- I ---

19 **MR. TAYLOR:** Your Honor, I would again object to
20 this ---

21 **MR. FOX:** Well, as to credibility, Your Honor, which
22 is an issue with any witness.

23 **THE COURT:** Well, let's -- let's stick directly to
24 that point and don't expand it.

25 **MR. FOX:** I will. Yes sir. My only ---

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. You lie- -- you didn't tell the police the whole
2 truth when you first contacted them, did you?

3 A. What do you mean, didn't tell them the whole truth?

4 Q. You didn't tell them that your son was there and was
5 a witness to this shooting? When you called the police,
6 called 911, you told nobody that your son was present when
7 Andriko Gowans was shot, did you?

8 A. I can't remember if I did or not, but I explained to
9 them where I was and what position that I was in at that
10 time.

11 Q. Okay. And, in fact, when you went and met with your
12 son and Detective Addison, he said, okay, Mr. Muhammad, I
13 mean what happened this morning, that's not what you told
14 us?

15 **MR. TAYLOR:** I would object to the detective's
16 statement, Your Honor, as being hearsay.

17 **THE COURT:** All right. Let's ---

18 **MR. FOX:** Yes, Your Honor.

19 **THE COURT:** --- move along.

20 **MR. FOX:** I'll move along.

21 Q. So the statement with your son -- the son -- the
22 statement your son gave in the meeting with the detective,
23 that was recorded. Did you know that?

24 A. No, I had no knowledge of that.

25 Q. Did he speak about that? Did the detective indicate

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 -- in fact, at one point, didn't he tell y'all that he
2 wanted to start the tapes to make sure they caught
3 everything? Do you remember that?

4 A. I wasn't -- I wasn't there. I wasn't present there.

5 Q. You weren't there the whole time?

6 A. No. I only came that evening when I was contacted,
7 about six or seven o'clock, in reference to my son and they
8 needed to speak with him. That was the first time and only
9 time.

10 Q. That's when I'm talk- -- I'm sorry. That's when I'm
11 talking about, when you met with your son. Do you remember
12 the detective mentioning that they were recording the
13 conversation?

14 A. I didn't really pay attention if he said it or not.

15 Q. Okay. Now, I also believe you said in response to
16 Mr. Taylor's question that, quote, pictures were shown to my
17 son. Is that correct?

18 A. The picture was on the table and he positively
19 identified this individual as the individual who committed
20 this crime.

21 Q. And he also -- I believe you also said he positively
22 -- he identified -- I understand the context of claiming
23 that Mr. Dukes was the person who had the gun and was the
24 shooter, but did he not also identify the other individuals
25 in the other pictures?

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX
EXAMINATION BY THE COURT

1 A. I have no knowledge of that. The only thing that I
2 witnessed there -- as I say, I was at the far end of the
3 table, is when that picture was on that table, my son
4 positively identified this individual who committed this
5 crime.

6 Q. Who all was in the room at that time?

7 A. Myself, Cornelius, and the detective.

8 Q. So three of you?

9 A. That was it.

10 **MR. FOX:** Thank you. No further questions.

11 **THE COURT:** Just so -- just so that I understand the
12 situation. After your son identified the Defendant, Mr.
13 Dukes, for the police, is that when you questioned your son
14 about the picture?

15 A. No. When my son positively identified Mr. Dukes as
16 being the individual who committed the crime, I set there,
17 and the detective asked him repeatedly was he positive, and
18 he was firmly positive, and just by coincidence I just asked
19 the detective if I could see the picture, and he slid the
20 picture all the way down to the end of the table and I saw
21 the picture, and I repeatedly asked my son are you positive,
22 Cornelius, and he says yeah, Daddy, I am positive this is
23 him.

24 **THE COURT:** Was that because then once you saw the
25 picture, you recognized this individual as coming to the

RASHEED SALMET KARLIN MUHAMMAD - EXAMINATION BY THE COURT
MOTIONS CONTINUE

1 mosque, a place of your worship, a place of worship?

2 A. Yes.

3 **THE COURT:** All right, very good.

4 Any further questions, Solicitor?

5 **MR. TAYLOR:** None from the State, Your Honor.

6 **THE COURT:** All right.

7 You may step down.

8 Any further witnesses on behalf of the State regarding
9 this motion to suppress the identification?

10 **MR. TAYLOR:** None, Your Honor.

11 **THE COURT:** All right.

12 Any witnesses on behalf of the Defendant, Mr. Fox?

13 **MR. FOX:** Well, Your Honor, the one witness that I
14 would want to hear from is the one witness who is
15 unavailable, being Detective Addison, who was the third
16 person in the room, who is the police officer who, in
17 theory, would be the most objective observer of the
18 procedure.

19 Always there's an issue in these matters of what was
20 the procedure. I can tell Your Honor, and I can pass up ---

21 **THE COURT:** Well, I don't know if him being the most
22 objective. It would seem to me he would be the one, I
23 guess, that you would want to question as to whether he did
24 anything improper.

25 **MR. FOX:** Of course. I would want to explore what the

RASHEED SALMET KARLIN MUHAMMAD - EXAMINATION BY THE COURT
MOTIONS CONTINUE

1 procedure was. I would note, and I can show Your Honor, and
2 Mr. Taylor is aware of this in Detective Addison's police
3 report, his investigative report, the phrase he uses in
4 describing this is -- and I would ask him about this because
5 it is directly different than what these two witnesses have
6 testified.

7 And what he says in his -- which I recognize this
8 report is not evidence, and this is why he would be a
9 necessary witness, and I would like to ask him as a live
10 witness -- he says based on the information -- he had the
11 interview with Mr. Ford, talked about that.

12 Based on this information, several photos were
13 obtained. They included Ronnie Atkinson, Jeremy Rush, Steve
14 Wilson, and Henry Dukes. The photos were presented to
15 Cornelius Ford one at a time, and then he, without
16 hesitation, took the photograph of Mr. Dukes, but it
17 describes a definite procedure and a definite -- now I would
18 have questions further about how were they presented, were
19 they, in fact, presented one at a time or was there an array
20 -- I don't have any indication there was an array, but there
21 would be questions for the detective about that.

22 I would want to know whether or not Mr. Ford was told
23 that the person that is in these photos may not be -- you
24 know, there may not be that person in there. That's
25 something that should definitely be done, so there's the

MOTIONS

1 whole procedure.

2 All we have is Mr. Ford. We have reasons to question
3 Mr. Ford's believability on the issue, one, because he's
4 uncertain about some things; two, because he lied to the
5 police, or at least hid his identity; three, because they
6 are in direct contradiction to what we believe Detective
7 Atkinson -- I'm sorry, Addison -- Addison observed.

8 I don't believe the State can meet its burden of
9 showing this was a proper procedure without having testimony
10 from Detective Addison.

11 **THE COURT:** All right.

12 I do not find that it is necessary for the Court to
13 hear the testimony of the detective who is unavailable. I
14 mean, there is no argument, Mr. Fox, that that detective is
15 unavailable. He is in the service of his country in
16 Afghanistan. It's not possible for the Court to have him
17 here to question him, nor will it be possible for him to be
18 at the trial. I mean, that's clear, correct?

19 **MR. FOX:** Yes, Your Honor, no question.

20 **THE COURT:** All right, so with that circumstance, the
21 Court does not find it to be obviously, number one, within
22 the court's power to have him here. Secondly, I find it is
23 not necessary for the Court to make the determination on
24 your motion to suppress the identification to have the
25 testimony of the officer in this particular case.

MOTIONS

1 The process or the previous rulings of our Supreme
2 Court, Court of Appeals, and the U.S. Supreme Court
3 indicate, and just in general first, the defendant may be
4 deprived of due process of law by an identification process
5 that is unnecessarily suggestive and conducive to
6 irreparable mistaken identification. The U.S. Supreme Court
7 developed a two-prong test or inquiry to determine the
8 admissibility of out-of-court identification.

9 First, I think that was in Neil v. Biggers in 1972, and
10 I think they've had subsequent decisions about it since
11 then, but first the Court must ascertain whether the
12 identification process was unduly suggestive, and the Court
13 must next decide whether the out-of-court identification was
14 nevertheless so allowable that no substantial likelihood of
15 misidentification exists.

16 In determination -- in determining whether an
17 identification is reliable, the following factors have been
18 set forth by the appellate courts, that is the opportunity
19 of the witness to view the defendant at the time of the
20 crime.

21 It's clear that this particular witness says he was
22 present at the time the crime was committed, that he had
23 seen the Defendant prior -- on prior occasions before the
24 crime was committed, that he was certain of who the person
25 was, that he subsequently identified them and gave a

MOTIONS

1 description to the police of the Defendant.

2 The witness's degree of attention, he says what
3 occurred, that he was paying close attention. I think the
4 Court can take into consideration that when a gun is present
5 being pointed at certain individuals and then yourself, and
6 then it is fired in your presence, that you will have your
7 attention to those particular details.

8 The accuracy of the witness's prior description of the
9 Defendant, the level of certainty demonstrated by the
10 witness, he says it's a hundred percent. The amount of time
11 between the crime and the confrontation, obviously his
12 initial description is the same day. The communication with
13 the police is shortly thereafter, and then the corrupting
14 effect of any suggestive identification is to be weighed
15 against these factors.

16 It does not appear, even taking into consideration the
17 report of the investigator, that there was any corrupting
18 effect, that there was any intentional act, that there was
19 any deliberate act, there was any act by the police of a
20 suggestive manner. The witness had already identified the
21 Defendant prior to the -- looking at the photographs.

22 The seeing of the photographs was either done
23 accidentally through the looking at a file or in a process
24 that the Court finds was not suggestive in -- in any manner,
25 and therefore, based upon all that, the motion to suppress

MOTIONS

1 the identification is denied.

2 **MR. TAYLOR:** Thank you, Your Honor.

3 **THE COURT:** All right, any further motions at this
4 point in time, obviously reserving that one issue about the
5 statement to the Miami police. Any other motions on behalf
6 of the Defendant at this point in time, Mr. Fox?

7 **MR. FOX:** Just making sure -- none, Your Honor.

8 **THE COURT:** All right, thank you very much. All
9 right, we'll take a short break for about five minutes.

10 **(THE FOLLOWING TAKES PLACE AFTER A BREAK.)**

11 **THE COURT:** We are back on the record of the State of
12 South Carolina versus Henry J. Dukes.

13 Mr. Dukes, could you stand for a moment, please, sir.

14 **MR. DUKES:** Yes sir.

15 **THE COURT:** You had sent some correspondence to the
16 Court and it's from you dated July 6, 2011, and I'm not
17 going to go through the whole thing, but the part of it I
18 want to address with you in open court is you made a request
19 to relieve your attorney, Mr. Eric Fox, and have the Court
20 appoint somebody else to represent you in this particular
21 matter.

22 Now, obviously this is of some concern with the Court.
23 We went through motions today. We've got a trial scheduled
24 for a week from -- from Monday, so regarding your request to
25 relieve Mr. Fox, do you want to go forward with that hearing

MOTIONS

1 at this time or do you want to withdraw it. What do you
2 want to do?

3 **MR. DUKES:** I want to, but it's too close to trial
4 now, so it's ---

5 **THE COURT:** Well, tell my why you would want to.

6 **MR. DUKES:** Because it's certain situations me and Mr.
7 Fox don't see eye to eye on.

8 **THE COURT:** Well, and I appreciate that, but that's
9 not the duty of a defense attorney, whether they're
10 appointed or retained, is to completely and totally agree
11 with you as to what you want to do. It's their job to
12 independently evaluate the case, to give you their best
13 recommendations and to do the best job that can be done on
14 your behalf.

15 Differences in strategy, differences in how the trial
16 will proceed, certainly those are matters y'all need to talk
17 about, but that in and of itself is not a reason to relieve
18 your attorney.

19 I've read through your paperwork and I will have the
20 Clerk file it and make it a part of the record, but based
21 upon the information that you have provided here to me today
22 and what's contained in your written letter to me of July
23 26, 2011, I don't find any reason to relieve Mr. Fox as your
24 attorney in this particular matter, and your request is
25 denied.

MOTIONS

JURY QUALIFICATION/VOIR DIRE/JURY SELECTION/COURT TO JURY

1 Thank you very much.

2 **MR. FOX:** Thank you, Your Honor.

3 **MR. TAYLOR:** Thank you, Your Honor.

4 (End Day on July 20, 2011)

5 (THE FOLLOWING TAKES PLACE ON AUGUST 1, 2011, AFTER
6 QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE FOR THIS
7 PARTICULAR CASE, AFTER A JURY WAS SELECTED FOR THE TRIAL OF
8 THIS CASE, AND WITHIN THE PRESENCE OF THE JURY.)

9 (A JURY SELECTION FORM WAS PREPARED IN THIS CASE AND IS
10 ATTACHED HERETO.)

11 **THE COURT:** All right, Ms. Canady and Ms. Simmons, the
12 two of you are the alternates in this particular case.

13 Ladies and gentlemen, I'm going to ask that you go into
14 your jury room in just a moment, and I'm going to ask that
15 you select your Foreperson for this particular jury, so let
16 me tell you very briefly what the duties and
17 responsibilities of the Foreperson are.

18 If we're here in the courtroom and there's something
19 that the jury needs attention to, the witness needs to speak
20 up, or the lawyers need to speak up, whatever it is, the
21 Foreperson, you can raise your hand, gets the Court's
22 attention, and I will handle the matter, whatever it is.

23 If you are back in the jury room, the Foreperson will
24 write out a note, sign it and give it to the bailiff, and it
25 will come to me, and again, we will handle the matter,

COURT TO JURY

1 whatever it is.

2 When we have concluded the evidentiary portion of the
3 trial and we've heard the closing arguments of the lawyers
4 and I've told you the law that you are going to apply to the
5 facts that you find to be true in this particular case and
6 then I send the case to you for your deliberations and your
7 unanimous decision in this particular matter, the
8 Foreperson's duties and responsibilities change in this
9 regard.

10 The Foreperson is going to act like the chairman at a
11 meeting. An important duty that the Foreperson has is to
12 make sure that anybody that wants to has the opportunity to
13 speak, everybody's voice has an opportunity to be heard on
14 the issue to be decided.

15 The Foreperson's voice and vote carries no more weight
16 than any other member of the jury, so everybody is on an
17 equal plane in that regard, but somebody needs to be in
18 charge. Again, if there is a question, the Foreperson will
19 write that out, sign it, hand it to the bailiff. It will
20 come to me, and we will handle the matter, whatever it is.

21 The final duty and responsibility of the Foreperson is
22 once the jury has well and truly deliberated in this case
23 and reached its unanimous decision in this particular
24 matter, then the Foreperson will take the verdict form that
25 the Court will provide to you and the Foreperson will check

COURT TO JURY
JURY OUT/ON RECORD

1 the appropriate block and thereafter sign your name as the
2 Foreperson indicating that indeed is the unanimous verdict
3 of each and every member of the jury in this particular
4 case.

5 So with that explanation of what the Foreperson's
6 duties are, I'm going to ask you to go back to your jury
7 room, select your Foreperson, knock on the door, let the
8 bailiff know who that Foreperson is, and again, Ms. Canady
9 and Ms. Simmons, as the alternates, y'all cannot be the
10 Foreperson, but you can vote on who the Foreperson is, all
11 right?

12 So if y'all will just go to the jury room at this time.
13 Thank you.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, is there any objections to the
17 jury as empaneled, from the State?

18 MR. TAYLOR: No sir, Your Honor.

19 THE COURT: Any objections to the jury as empaneled,
20 from the Defense?

21 MR. FOX: No, Your Honor.

22 THE COURT: All right, very good.

23 I find the jury has been properly empaneled pursuant to
24 Batson v. Kentucky and J.E.B. v. Alabama.

25 All right, ladies and gentlemen, the members of the

JURY OUT/ON RECORD

1 jury panel that were not selected for this particular case,
2 I'm going to be able to excuse you for the balance of today.
3 I do need for you to call back that juror information line
4 tonight after 6:00 P.M.

5 Follow those instructions, whatever they may be, and it
6 might very well be a call-back again at another time, but --
7 or to report, whatever they may be, but follow those
8 instructions, whatever they are.

9 Call the number after 6:00 P.M. tonight. With that,
10 you're now excused. Thank you very much.

11 All right, are there any matters from the State that we
12 need to handle before we start the case?

13 **MR. TAYLOR:** Your Honor, I think as far as scheduling,
14 we've got some witnesses coming in at 1:00.

15 **THE COURT:** Okay.

16 **MR. TAYLOR:** If Your Honor wants to do opening before
17 lunch, we ---

18 **THE COURT:** Probably what we'll do, obviously I'm
19 planning on taking a break for lunch right now and then
20 we'll come back at probably two o'clock and get started at
21 two, but if there was some motion or some matter that we
22 ought to handle, then I wanted to do it now if you know of
23 anything.

24 **MR. TAYLOR:** No sir.

25 **THE COURT:** And Mr. Fox?

JURY IN/COURT TO JURY
JURY SWORN/COURT TO JURY

1 **MR. FOX:** No, Your Honor.

2 **THE COURT:** All right, good.

3 Gentlemen, I'll see y'all at two o'clock and we'll
4 start then with the swearing of the jury and the opening
5 statements, all right?

6 **MR. TAYLOR:** Thank you, Your Honor.

7 **THE COURT:** Thank you very much.

8 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND**
9 **OUTSIDE THE PRESENCE OF THE JURY.)**

10 **THE COURT:** All right, gentlemen, for your
11 information, the jury selected Juror Number 210, Mr. Kunkle,
12 for the Foreperson.

13 All right, Solicitor, are you ready for the jury?

14 **MR. TAYLOR:** Yes sir, Your Honor.

15 If you -- we can certainly mark these later. I've got
16 a few photographs to put in. We can go ahead and do opening
17 statements and mark them later if you want.

18 **THE COURT:** Well, why don't we just get started and
19 see what we can do.

20 **MR. TAYLOR:** Yes sir.

21 **THE COURT:** All right, Mr. Fox, are you ready for the
22 jury?

23 **MR. FOX:** Yes, Your Honor.

24 **THE COURT:** All right.

25 Ask the jury to come in, please.

JURY IN/COURT TO JURY
JURY SWORN/COURT TO JURY

1 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, and is your last name Kunkle,
4 sir?

5 **MR. KUNKLE:** Yes.

6 **THE COURT:** All right. You were selected by the jury
7 to be the Foreperson of this particular jury, is that right?

8 **MR. KUNKLE:** Yes.

9 **THE COURT:** All right, very good, sir. If you would
10 always occupy that particular chair when you come back from
11 the jury room, I would appreciate it.

12 And Ms. Simmons and Ms. Canady, if y'all would always
13 occupy the last two chairs of the row; it honestly doesn't
14 matter which one. If y'all just make sure you just occupy
15 an end seat on the row so I know where the Foreperson and
16 the Alternates are, all right?

17 All right, ladies and gentlemen, the very first thing
18 that's going to happen in this trial is the Clerk is going
19 to administer your oath to you, so if all of you would
20 please stand at this time.

21 **(THE JURORS ARE PLACED UNDER OATH BY THE DEPUTY CLERK**
22 **OF COURT.)**

23 **THE COURT:** All right, if there is any member of the
24 jury panel that did not affirmatively take the oath as given
25 by the Clerk, if so, please stand.

COURT TO JURY

1 I find the jury has been properly sworn in this matter.

2 All right, ladies and gentlemen, as I told you in the
3 very beginning, the State of South Carolina had levied a
4 charge against the Defendant, Henry Jermaine Dukes, for the
5 offense of murder, and I read to you from the indictment,
6 and again remind you that the indictment is merely the
7 charging document, the document by which the matter is
8 brought to Court.

9 It is not evidence, cannot be considered by you as
10 evidence in this case. You will receive the evidence in
11 this case from the witness stand from witnesses that come
12 before you under oath, as well as any other kind of
13 documentary or other kind of physical evidence that might be
14 properly introduced in this trial.

15 To the indictment, the charge levied against him by the
16 State of South Carolina, the Defendant has pled not guilty.
17 That puts the burden of proof on the State of South
18 Carolina. The burden of proof came upon the State of South
19 Carolina when he pled not guilty. It remains on the State
20 of South Carolina. It is always on the State of South
21 Carolina, and that is to prove the Defendant guilty of the
22 crime charged beyond a reasonable doubt.

23 The Defendant has nothing to show to you. The
24 Defendant has nothing to prove to you. The Defendant need
25 not testify or present any evidence because he doesn't have

COURT TO JURY

1 any burden of any kind. The State must produce the evidence
2 from which you will consider to see whether or not the State
3 can prove the Defendant guilty of the crime charged beyond a
4 reasonable doubt.

5 By pleading not guilty to the indictment, the Defendant
6 is presumed innocent, and he remains presumed innocent of
7 the crime for which he has been charged unless you, the
8 jury, by examination of the facts and evidence in this case
9 and the evidence that you find to be true find that the
10 State has proved the guilt of the Defendant of the crime
11 charged beyond a reasonable doubt.

12 Collectively you are the judges of the facts of this
13 case. I will not indicate to you in any way what I believe
14 the facts of this case are. That's not my job. That's not
15 my responsibility. That is your job. That is your
16 responsibility, to look at the facts and evidence in this
17 case, find that evidence which convinces you of its truth
18 and then weigh that evidence against the burden that the
19 State has to prove the Defendant guilty of the crime charged
20 beyond a reasonable doubt.

21 I will define these terms to you at the very end, but
22 suffice it to say in your job as the judges of the facts of
23 this case, one of your jobs is to judge the credibility and
24 the believability of the witnesses that come before you and
25 testify in this particular case. If you will think about

COURT TO JURY

1 it, it is something you do every single day of your life.
2 When somebody tells you something, you are automatically
3 judging whether or not you believe them, and you do that
4 through your own common sense, your good judgment that you
5 use in conducting your own affairs.

6 That's what we're asking you to do today, apply your
7 good common sense, your good judgment to the facts and
8 evidence presented in this case, find that evidence which
9 convinces you of its truth, and again, weigh that evidence
10 against the State's burden to prove the Defendant guilty
11 beyond a reasonable doubt.

12 How the trial will proceed when I get done with these
13 opening remarks to you, we'll have the opening statements of
14 the attorneys. Remember, the opening statements -- and I'll
15 tell you this about the closing statements -- they're not
16 evidence. The evidence comes to you from the witness stand
17 and, again, any physical evidence that might be introduced,
18 but the opening statements are important. They are each
19 side's initial presentation to you of what they believe the
20 evidence will show to you during the course of the trial and
21 what they are asking you to do as a result of your unanimous
22 verdict.

23 We will then have the evidence in the case, the
24 witnesses, physical evidence, whatever that may turn out to
25 be. When we're done with the actual presentation of the

COURT TO JURY

1 evidence, we'll have the closing arguments of the attorneys.
2 Again, those closing arguments are not evidence, cannot be
3 considered by you as evidence, but they are important. They
4 are each side's summation to you of what they believe the
5 evidence has shown to you during the course of the trial,
6 and then again, ultimately what they are asking you to do as
7 a result of your unanimous verdict in this matter.

8 After that I will give you the law that you will apply
9 to the facts that you find to be true in this particular
10 matter, and then I will submit the case to you for your
11 deliberation and your unanimous decision in this particular
12 matter.

13 Before I send it to you for your unanimous decision,
14 I'm going to be asking do not discuss this case among
15 yourselves. As best you can, don't form any mental opinion
16 as to what you believe or do not believe until you have
17 heard all the evidence in the case and you know the law to
18 apply to the facts and evidence presented.

19 I will tell you when you leave, and I will remind you
20 several times, you have to make your decision solely and
21 completely on the facts and evidence presented in this
22 courtroom and from no other source. You may not do any
23 research on your own. You may not look up anything. You
24 may not have any communications with anyone about this case
25 until it's over.

COURT TO JURY
STATE'S OPENING - RICHARDSON

1 You're got friends, family, husband, wife, boyfriend,
2 girlfriend, neighbor down the street, whoever; you can't
3 communicate with this case about them, nor can they
4 communicate with you. You must decide this case solely and
5 completely on what you hear in the courtroom and from no
6 other source, so with that, I'll turn it over to the lawyers
7 for their opening statements.

8 Solicitor.

9 **MR. RICHARDSON:** Thank you, Your Honor.

10 **THE COURT:** Yes sir.

11 **MR. RICHARDSON:** Mr. Foreman, ladies and gentlemen of
12 the jury, my name is Jimmy Richardson. I'm here to tell you
13 about a murder that took place on November 2nd, 2007.

14 On November 2nd, 2007, Mr. Henry Dukes, over here in
15 the orange top, went to [REDACTED] Suggs Street in Conway. It's
16 right across 378. A good point of reference is where
17 Whittemore Park School is, right in that area, and on Suggs
18 Street. He went to the home of a young man named Andrico
19 Gowans.

20 We'll call him Andy Gowans, and at that time armed with
21 a nine millimeter handgun, shot Andrico Gowans. One shot,
22 the -- Dr. Proctor will tell you went through his left arm,
23 through his left lung, and his right lung, and lodged over
24 here around the rib cage of the right -- right-hand side,
25 ending his life, and Andy Gowans was a twin brother, and to

STATE'S OPENING - RICHARDSON

1 his twin, who is here in the courtroom, of course he's a
2 twin brother. His mother, seated right over here, Ms.
3 Benning, and to her, he's a son. Mr. Freddie DeBerry is his
4 father. To him, Andy was a son.

5 To Cornelius Ford, who is presently sequestered out of
6 the room, but you'll hear from him, he was one of his best
7 friends, and Cornelius Ford was there that day at Suggs
8 Street and saw this. You're going to hear from him, but to
9 most of the people in Conway, and we might as well get off
10 to being true right from the beginning, Andy Gowans sold
11 drugs, and that's how many people would have known Andy.

12 From that house at [REDACTED] Suggs Street, Andy sold drugs
13 to a bunch of people, and quite honestly, selling drugs, as
14 you would imagine, is a dangerous game, and from the day
15 that Andy started selling drugs there, he set himself on a
16 collision course with -- I mean, your prime suspect to be
17 shot, to be robbed, to be killed, or to be arrested, and
18 that could have been no more clear than on November 2nd,
19 2007, because on that day he was shot and killed by Henry
20 Dukes, but also on that day, you're going to hear testimony
21 from Ashley Hardee who works with Horry County DEU, or Drug
22 Enforcement Unit, and Ashley kept getting this information
23 that you'll hear about that a white truck was going by when
24 all of this went down.

25 Ashley, working with DEU, will tell you I was driving

STATE'S OPENING - RICHARDSON

1 that white SUV and actually looking at this house. We had a
2 search warrant. We were figuring out the ways to get in and
3 get out of that house, and we were going to execute that
4 search warrant and we were going to arrest namely Andy and
5 anybody else who was in there selling drugs at that time, so
6 on that day, November 2nd, was very important. The police
7 were going to raid that house that same day, and they were
8 looking, but Henry Dukes, of course, beat them -- beat them
9 to that, and those fears were realized.

10 Selling drugs is a dangerous game, but committing
11 murder is, too, because from November 2nd, 2007, until
12 today, Dukes has been on a collision course with justice,
13 and today and over the next couple of days, I believe it
14 will be over with by Wednesday, that is the day of reckoning
15 for Dukes and he'll meet up with a group of fourteen, twelve
16 on this petit jury, two alternates, the defense attorney,
17 the prosecution. We're all here seeking one thing. We all
18 come concurring under one thing.

19 That day of reckoning is justice, and that is what you
20 will remember lifting your hands and swearing to look for is
21 justice, looking for the truth. That's actually what
22 verdict means. It's from a Latin phrase. It means to speak
23 the truth, so everything that you're doing here today,
24 tomorrow, maybe even Wednesday, will go into looking for,
25 seeking the truth, and that's why we might as well start off

STATE'S OPENING - RICHARDSON

1 by telling you that that's what Andy was doing there on that
2 date, selling drugs, and he come to a very untimely end
3 because of it or throughout this process.

4 You're going to hear from a few witnesses. Some will
5 be fairly short. Some will be a little bit longer. Today
6 you will probably hear from the two longest witnesses, one
7 being Cornelius Ford. He also goes by the name C-4. He was
8 going to be arrested that day also. C-4 has got a record
9 for selling drugs. He was there at the house that morning
10 and he hung around with Andy a good bit, but he saw what
11 went down and he will tell you about what he saw.

12 And then you will hear from several other witnesses
13 that piece together the story from November 2nd, 2007, to
14 slightly thereafter it. We'll try to recreate that day as
15 best we can for you, and we'll also try to recreate that
16 flight that Henry Dukes took from that date until he was
17 ultimately arrested in Miami. You'll hear from some people
18 in Miami also.

19 I would -- I could go through and give you every name,
20 but it's going to be a really short trial. Please don't
21 take from that that it's unimportant. You already know that
22 probably, you know, murder is about as important a case as
23 you'll ever get an opportunity to sit in on.

24 This is a murder. There ain't no doubt about it. I
25 don't -- I think at the end of it you may hear that it

STATE'S OPENING - RICHARDSON

1 wasn't me, was somebody else that did it, but nobody is
2 going to dispute the fact that it was a murder. It is
3 important.

4 I think that it's going to go quickly, but I don't want
5 you to hold that against us or the Defense. There is a lot
6 of circumstantial evidence. There's not as much physical
7 evidence, but Your Honor, Judge John, will tell you at the
8 end of it as part of your oath, you're going to have to
9 consider the charging, and that is that circumstantial
10 evidence is important, too. Matter of fact, it is just as
11 important as direct evidence, and we'll explain over the
12 course of the next couple of days what circumstantial
13 evidence is, but as far as being able to hold a lot of stuff
14 in your hands, it's not a case like that. This is not a
15 case of C.S.I.

16 You'll hear that we looked into some of those things
17 that just didn't pan out, but I really covet your attention.
18 I ask you to pay special attention to everybody that takes
19 the stand. You're going to be judging them for their truth,
20 their veracity to tell the truth. You will weigh biases,
21 see, you know, does he have a reason to story, does he have
22 a reason to lie, are they making things up, and at the end
23 of the day, you are going to be charged with this duty, this
24 awesome duty, of finding whether or not Henry Dukes is
25 guilty or not guilty of the murder of Andy Gowans or Andrico

STATE'S OPENING - RICHARDSON
DEFENDANT'S OPENING - FOX

1 Gowans.

2 I thank you for your attention already. I ask you to
3 listen. Let me make a few introductions. Mr. Eric Fox, he
4 is a defense attorney. He's going to come up and talk with
5 you in just a second about his version of what you're going
6 to hear, and seated right over here is Paul Taylor, and Paul
7 Taylor is with our office. He's a prosecutor. He is going
8 to question several of these witnesses, too. He's helped me
9 in preparing -- preparing this case. It's always good to
10 put a name with a face, so that's the attorneys in that, but
11 I thank you for all that you've done so far, and I would ask
12 you to give the same attention to Mr. Fox, and then we'll
13 start with the testimony. All right, thank you.

14 **THE COURT:** Mr. Fox.

15 **MR. FOX:** Thank you, Your Honor. May it please the
16 Court.

17 **THE COURT:** Yes sir.

18 **MR. FOX:** Good afternoon, ladies and gentlemen. As
19 Mr. Richardson just told you, my name is Eric Fox. I'll be
20 representing Mr. Henry Dukes who is seated over there across
21 the courtroom, and I also want to, right off the bat, to
22 thank you for your time in being here. I know when you got
23 your summons in the mail to come to jury duty, I doubt
24 anyone did a cartwheel or jump for joy, but it is, as
25 Winston Churchill said, along with voting and serving your

DEFENDANT'S OPENING - FOX

1 country in time of war, it really is one of the three great
2 responsibilities of a citizen in our democracy. It may not
3 be something you choose, but it doesn't get any more
4 important than this to everybody involved.

5 Now, the Judge has already instructed you briefly and
6 will instruct you again on the law. Most importantly my
7 point of view, the burden of proof that rests with the State
8 now and every single moment to the end of this case, the end
9 of the case being at the moment twelve jurors render a
10 verdict, whatever that verdict is. At every instant all
11 along the way, the burden of proof remains with the State of
12 South Carolina and only the State of South Carolina, and
13 that burden is beyond a reasonable doubt, which is the
14 highest burden of proof that our system of jurisprudence
15 has.

16 If we were in civil court fighting over a car accident,
17 or a contract, or something of that nature, the burden of
18 proof would be a preponderance of the evidence. That
19 basically means that one side or the other can tilt. If you
20 think of the scales of justice, one side or the other can
21 tilt those scales in their favor. If you can tilt them ever
22 so slightly in your favor, you're entitled to a verdict in
23 your favor.

24 Beyond a reasonable doubt is a much higher burden. The
25 Judge will define that for you at the end of the case, but

DEFENDANT'S OPENING - FOX

1 it's basically a common sense -- probably all of you, as you
2 think in your mind, what is a reasonable doubt, you probably
3 have a very good idea already. It's a doubt that you can
4 give a reason for, and not just a fanciful reason.

5 Sidney Floyd, he was a Judge here for quite a long time
6 in Horry County, and he would say you might have a doubt
7 whether there is salt in the ocean down in Myrtle Beach, but
8 that's a fanciful doubt. That's not a doubt based on reason
9 or fact. You might have a doubt, but that's just a whim.
10 Any doubt you have in this case must be based on the
11 evidence, or lack of evidence, that is presented this week.

12 You will hear -- I'm not going to go through each
13 witness and what you are going to hear, but you will hear
14 from some witnesses, one in particular, Mr. Cornelius Ford,
15 who will say I saw this shooting. Nobody else claimed to be
16 there and know what happened. Anybody else that testifies
17 knows some piece. You have officers and investigators that
18 had particular duties collecting evidence, interviewing
19 witnesses, those sorts of things, but don't have any direct
20 knowledge because they're not eye witnesses, and you'll have
21 some other people that claim to have encountered Mr. Dukes
22 along the way in the days and weeks following this incident.

23 I'll tell you right off the bat I disagree a little bit
24 with the Solicitor. We know that there is a dead person.
25 We know Mr. Andy Gowans unfortunately is dead. We know that

DEFENDANT'S OPENING - FOX

1 he was shot with a bullet. I do not believe they can
2 establish this was necessarily a murder, there was malice
3 aforethought. No dispute that there is a shooting and there
4 is a person dead. Not all shootings that result in death
5 are murders.

6 Now, the Judge will also tell you with regard to these
7 witnesses, and I don't think it will be any doubt in your
8 mind who the credible witnesses are really quickly, that you
9 can believe every word a witness says; you can reject every
10 word a witness says. You can believe some things they say
11 and not others. You are the finders of fact. You decide.
12 I strongly believe that when you do the things you do in
13 your everyday life, are these witnesses consistent in what
14 they say? Are they sure in what they say? How -- what is
15 their body language, their demeanor? How do they speak to
16 you?

17 When you evaluate, in particular, Mr. Ford, I think you
18 will find his credibility to be sorely lacking and when you
19 realize that he is the critical witness in this case, that
20 he is the folder of this entire case, I believe the whole
21 case comes down.

22 Mr. Richardson referred to the flight of Mr. Dukes from
23 the area. Well, there's one other person we'll hear
24 testimony from who fled the scene and it wasn't Mr. Dukes.
25 You will hear that that was Mr. Ford, their eye witness. I

DEFENDANT'S OPENING - FOX
RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 think eye witness is a generous term. He will be a witness
2 because he will be sworn in court, and he will give
3 testimony, and he will be questioned, and I believe he has
4 eyes, but other than that, I'm not sure he can qualify him
5 as an eye witness.

6 Ladies and gentlemen, I simply ask you, as I know you
7 will, to carefully remember your oath to truly try this
8 case, and I am very sure when this is all over that you will
9 return a verdict of not guilty.

10 **THE COURT:** All right, Solicitor, your first witness,
11 please.

12 **MR. TAYLOR:** Your Honor, can we approach before that
13 witness?

14 **THE COURT:** Yes sir.

15 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

16 **THE COURT:** Call your witness, Solicitor.

17 **MR. TAYLOR:** Thank you, Your Honor. Your Honor, our
18 first witness will be Rasheed Muhammad.

19 **THE COURT:** Come around, sir, all the way up front,
20 please. Thank you.

21 **RASHEED SALMET KARLIN MUHAMMAD,** being
22 first duly sworn, states as follows:

23 **THE CLERK:** State your name and spell your last name.

24 **MR. MUHAMMAD:** Rasheed Muhammad, R-A-S-H-E-E-D, last
25 name is M-U-H-A-M-M-A-D, which is birth in Arabic is Vernon

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 Ford, V-E-R-N-O-N, Ford, F-O-R-D.

2 **THE COURT:** Go ahead, Solicitor.

3 **MR. TAYLOR:** Thank you, Your Honor.

4 **DIRECT EXAMINATION BY MR. TAYLOR:**

5 Q. Mr. Muhammad, can you please state your age and where
6 you presently live?

7 A. Sixty years of age. I'm at [REDACTED],
8 Bell Bay Landing.

9 Q. All right. How many children do you have?

10 A. Five.

11 Q. And one of your children is Cornelius Ford?

12 A. Correct.

13 Q. All right, and how old is Cornelius Ford?

14 A. He's thirty-one.

15 Q. All right. Now, Cornelius Ford was friends with the
16 deceased?

17 A. Correct.

18 Q. That would be Andy Gowans, as he was known by?

19 A. Correct.

20 Q. Please state to the jury how close a friends they
21 were.

22 A. Cornelius and the young man were very close friends.
23 I have seen them come by my home a number of times. They
24 were very respectful young men. They were two twins.
25 Whenever they saw me, they always respected me. They

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 addressed me as Mr. Muhammad, and if there are any
2 questions, they always would come and ask me certain
3 questions, so him and Cornelius were very good friends.

4 Q. And how long a time period would you say they were
5 friends?

6 A. I can't give any -- I don't know.

7 Q. To the best of your knowledge?

8 A. A couple of years or so, more than three or four
9 years.

10 Q. And did Andy have occasion to stay at your house?

11 A. He's never spent the night at my house, but he has
12 been to my house to see my son a number of times.

13 Q. Where was your son actually living at the time on
14 November the 2nd, 2007?

15 A. I can't remember the address, but it was way out in
16 the country. I forget the address.

17 Q. But was he staying with Andriko Gowans?

18 A. Yes, they were living together.

19 Q. All right. Now, at the time of the shooting, where
20 had he been staying on Suggs Street?

21 A. With a young -- with Andy.

22 Q. Okay, and why was that? Why had he been staying with
23 Andy?

24 A. They were very close friends. I guess there were
25 problems that came up between them that they -- not

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 problems, but the things that came up between those two that
2 they were very close and they shared different ideas.

3 Q. Now, Andy had a brother that was incarcerated?

4 A. Correct.

5 Q. Okay, and was that the reason why your son was
6 staying with Andriko at the time, or Andy?

7 A. Correct. That's what Cornelius had stated to me.

8 Q. All right. Let's get to the date of this incident.
9 How did you come to find yourself at the incident location?

10 A. I got a phone call from my son early that morning. I
11 was in process of going to the mosque that morning, and my
12 son called me, very upset ---

13 Q. Please don't tell me what your son said to avoid an
14 objection from Defense counsel, but of your own knowledge,
15 what else brought you to the incident location?

16 A. He was -- stated that ---

17 **MR. FOX:** Objection, Your Honor.

18 **THE COURT:** All right.

19 Don't -- don't say what your son said. You can say
20 what you did as a result of the conversation.

21 Go ahead, Solicitor.

22 Q. In answering that question, what did you do as a
23 result?

24 A. I came to -- he called me, and I came to see what he
25 wanted.

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 Q. Okay, and what did you observe whenever you got to
2 Suggs Street?

3 A. There had been a shooting. A young man was -- a man
4 down on the floor in the living room.

5 Q. And, again, who was that young man that had been
6 shot?

7 A. Andy.

8 Q. Andriko Gowans?

9 A. Correct.

10 Q. What happened as a result of that? What happened
11 next? What did you observe?

12 A. My son was very upset. He was hollering; he was
13 crying. I told him to go outside, and I went inside and I
14 saw a young man laying on the floor, and I felt to see if he
15 had a pulse, and he did not have a pulse, so I immediately
16 got on the phone with 911 and called 911.

17 Q. All right. Do you have any knowledge as to whether
18 or not 911 had previously been called prior to you calling?

19 A. No, I had not.

20 Q. And tell me what happened, what you said regarding
21 the 911 call.

22 A. I explained to them, if I could recollect, it's been
23 about two or three years, that there had been a shooting
24 there, there was a young man that was laying on the floor.
25 They asked me the address. She called out the street, but I

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 hadn't been here in this area to know the streets, and I
2 just gave her directions, by the elementary school, so she
3 knew exactly where I was talking about then.

4 Q. Okay, and how long did you stay at that location?

5 A. What do you mean, how long did I stay?

6 Q. How long did you stay at the incident location? Did
7 you wait for the police to show up?

8 A. Yes; yes.

9 Q. In fact, you directed the police to the house?

10 A. Correct, and I ---

11 Q. And could you explain to the jury how that happened?

12 A. They asked me -- the police officers came and I
13 directed them straight in the house, and I took them to
14 where the young man was laying between a table and a chair.
15 He was dead.

16 Q. Okay. Backing up some before the police got there,
17 can you describe the scene, what you saw?

18 A. When I got there, again I say, Cornelius was very
19 upset. He was hollering and screaming. I couldn't really
20 make heads into what he was saying. He brought me in the
21 house and showed me. He just -- he didn't take me all the
22 way in. He just showed me where the young man was laying on
23 the floor. I then proceeded to -- I sent Cornelius outside.
24 I told him to go outside, and then I got on the phone
25 immediately and called 911.

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 Q. Did you go anywhere else other than the first room,
2 which would be the den, as you entered the house?

3 A. No; no.

4 Q. Did you notice anything on the floor other than the
5 deceased?

6 A. No.

7 Q. Now, after the police arrived, what did -- did they
8 get a statement from you or ---

9 A. Yes. As soon as they came, they -- was a female
10 officer who came and asked me would I be willing to give a
11 statement, and I told her sure, and she immediately took me
12 in the police car and we went right next to the substation,
13 which is located right next to the mosque there on Racepath,
14 and I wrote a statement.

15 Q. All right. Were you subsequently contacted later to
16 get another statement?

17 A. Yes. I was -- before that, she took me back to the
18 scene of the crime, and my vehicle was taped off in the
19 yellow tape, and I explained to the officer that I am Muslim
20 and I am the Imam here, and I had Jumah service because this
21 was on a Friday and I had to do the service, and would I be
22 allowed to go, and they said, Mr. Muhammad, procedures are
23 to search your van. Can we search your van? I said sure,
24 so they searched my van, and within ten minutes after that,
25 I left and went home and went to Jumah.

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 Q. All right. When did you talk to your son next?

2 A. He had been calling me briefly on and off asking me
3 about the young man. He kept asking me, Daddy, is he okay?
4 Is he okay, and I told him, I said, Cornelius, I don't know,
5 but I did know, and I finally -- he called me back maybe
6 three or four times, and he finally called me back and I
7 finally told him that the young man had deceased.

8 Q. What was your son's reaction?

9 A. I wasn't in front of him. We were on the telephone.
10 He started hollering and he's screaming. He said Dad, no,
11 it can't be true, and I was like, yes, Cornelius, it is, and
12 he said -- he kept asking me are you sure, and I said yes, I
13 am sure.

14 Q. Now, you're going to be questioned in a minute
15 regarding -- from the Defense counsel as to why your son
16 left before that. Can you explain to the jury why you felt
17 that your son left?

18 **MR. FOX:** Object; calls for speculation, Your Honor.

19 **THE COURT:** Rephrase your question.

20 **MR. TAYLOR:** Why he feels his son left ---

21 **THE COURT:** I appreciate that. Rephrase the question,
22 Solicitor.

23 **MR. TAYLOR:** Thank you, Your Honor.

24 Q. In your opinion why did your son leave?

25 A. He was very upset. He was scared. Who knows a son

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 better than a father, and I knew at that time to try to get
2 some understanding from him would be very difficult at that
3 time.

4 Q. Now, let's talk about Mr. Gowans, and I know it's
5 always bad to talk about somebody that's deceased, but it's
6 well known that he was in the drug business, he sold drugs?

7 A. I'm -- that, I had no knowledge of. I didn't proceed
8 to find out what the young man and them did. That wasn't
9 something that I looked forward to finding out what they
10 were doing. That was their business.

11 Q. And do you have any knowledge about anything found in
12 the house regarding narcotics?

13 A. No.

14 Q. Okay. Now, your son, again, addressing it and I need
15 to talk about it, not meaning to talk about somebody, but in
16 his past when he was younger, he was convicted for a drug
17 offense and did spend some time in jail?

18 A. Correct.

19 Q. So would that also be a reason why he would want to
20 leave a known drug house?

21 A. Assuming probably so.

22 Q. And again, given his prior, he would be charged
23 possibly ---

24 A. Yes sir.

25 Q. --- and face an enhanced penalty?

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 A. Yes.

2 MR. FOX: Objection, Your Honor. The Solicitor is
3 testifying, leading, and ---

4 MR. TAYLOR: I'll withdraw that question.

5 THE COURT: All right. Don't lead your witness,
6 Solicitor.

7 MR. TAYLOR: Thank you, Your Honor.

8 Q. Now, later on you were contacted by law enforcement
9 again regarding your son, and you went to the substation
10 again with your son. Can you tell the jury what happened
11 and what transpired once you got to the substation to take
12 your son to speak with law enforcement regarding this
13 incident?

14 A. Yes. Later on that afternoon I was contacted by a
15 detective in Conway Police Department and he asked me if I
16 had a son that name was Cornelius Ford, and I said yes, and
17 he says, well, we need to speak to him, and I said okay,
18 give me about fifteen or twenty minutes or so and I'll bring
19 him down, and I did get in contact with Cornelius later on
20 that afternoon. It was later on that afternoon around about
21 7:00, 7:30, I took my son to the substation, which is right
22 next to the mosque here in Conway.

23 We got there. He questioned my son on different
24 questions. He did not ask me any questions. Then we left
25 one room and went into another room where there was a long

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 desk, and I set at the far end, and Cornelius and the
2 detective set at -- closer, and he was questioning my son
3 about what happened.

4 He then mentioned to my son about could you identify
5 this person, and he said yes. And then the detective got up
6 and he had a folder, and he put the folder down on the table
7 and he got up, and two pictures came out, and my son said to
8 him, you don't have to go anywhere. This is him.

9 And he kept asking Cornelius are you -- are you sure,
10 and he said yes, I'm sure. This is him. This was the
11 picture. Again, I hadn't said anything. They hadn't asked
12 me any questions.

13 I was asked -- and I asked my son, and I asked the
14 detective could I see the picture because I was just
15 curious. I just want to see who the person was. He slid
16 the picture all the way down to the end of the table, and I
17 stood up and I asked my son, are you sure? And he said,
18 Daddy, yes, and I paused for a minute, and I said Cornelius,
19 are you sure? He didn't ever answer me then because I know
20 he was sure, and the person, that picture he picked out, the
21 detective asked me, says Mr. Muhammad, do you know him, and
22 I said yes, he has been to the mosque and made prayer with
23 us, and he has studied with us for the last three, or four,
24 or five days at the mosque here.

25 Q. Now, the person that was identified in that

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 photograph, is he here in Court today?

2 A. Yes, he is.

3 Q. Could you point him out to the jury?

4 A. (Indicating) This gentleman, James Dukes.

5 Q. And was there anything shocking or surprising to you
6 in addition to this that you of your own knowledge have
7 regarding Mr. Dukes coming to your mosque and asking
8 questions?

9 A. Well, yes, in a sense because there was a time that
10 we used to leave the mosque here open for brothers and
11 sisters that wanted to come by to make prayer because we do,
12 as Muslims, pray five times a day, and we used to leave the
13 mosque open until the -- eventually they came by one time
14 and stole all our halal meat and all our computers out, so
15 we end up locking it.

16 I came here one day and Mr. Dukes was there. I had
17 never seen him before. I didn't know him. He introduced
18 himself to me. We made prayer together, and then we set
19 down and we talked and we shared some ideas. He told me he
20 was from New York, and I asked him -- he said he didn't have
21 a place to stay and it was difficult with him, so I got with
22 some of the brothers and we were preparing to get him some
23 clothes and help him get a job and help him get on his feet.

24 He came to the mosque every day and studied with me,
25 and we shared ideas, and he was asking me several questions

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 about certain individuals that lived in our community.

2 Q. Who were those individuals he was asking about?

3 A. He asked me first about a young man that named Curt

4 Rasta. I don't know if that's his street name.

5 Q. And who is Curt Rasta?

6 A. He was a friend of my son's.

7 Q. And who else did he ask about?

8 A. Once he found that information out, then he asked me

9 about my son, Cornelius.

10 Q. Being from New York, what questions was he asking,

11 being new to the area?

12 A. The questions that he was asking me about Mr. Rasta

13 was did I know him, did I know where he lived, and I told

14 him they were young guys, they were young -- they were

15 friends of my son, they weren't young men that I affiliate

16 with, but he was asking me a question about Mr. Rasta, and

17 he also was asking me questions about my son because he

18 found out that they were both friends.

19 Q. And what significance is that to you regarding why

20 this individual sitting to my right here would be asking

21 about Curt Rasta to begin with?

22 A. Well, later I found out that the young man that Mr.

23 Curt had shot was a relative of Mr. Dukes, and ---

24 Q. Okay, and where -- what was the ramifications of him

25 being shot? What happened to him?

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

- 1 A. The ramifications for being shot, I don't know. He
2 said that his -- that Mr. Curt had shot his cousin, and that
3 was all the information that he had gave me until he brought
4 the young man by the mosque one evening and I did have a
5 chance to talk with him. I did ---
- 6 Q. Okay. How does this apply to your son?
- 7 A. Well, Curt and my son were together when Mr. Dukes'
8 cousin was shot.
- 9 Q. Okay, and at this time whenever these questions were
10 being asked, where was Curt Rasta to your knowledge?
- 11 A. Being sought by the Conway Police Department.
- 12 Q. Okay, and was he eventually arrested and
13 incarcerated?
- 14 A. Yes. I knew his parents. I talked with his parents,
15 and I had my son to get in contact with him and I talked to
16 him. I had him to meet me at the mosque later on that
17 afternoon and to surrender himself. I got with Detective
18 Darrell of Horry -- a Horry County detective who is Muslim.
19 I called him and we set it up, and we met him out to Horry
20 County Light -- where you pay your lights there, and he
21 turned himself in, and I went with him to J. Reuben Long to
22 surrender himself.
- 23 Q. Now, at the time period, backing up some to whenever
24 this shooting occurred on November the 2nd, 2007, how long
25 was it from that going backwards to whenever you first saw

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR

1 the Defendant to your recollection?

2 A. Again, I had never met Mr. Dukes. That was my first
3 time meeting him, at the mosque.

4 Q. And I understand that, but do you have an estimate, a
5 time frame, prior to the shooting of Andy Gowans?

6 A. Seven to ten -- seven to ten days.

7 Q. In your own opinion, what do you think happened here?
8 Tell me what you know about this case.

9 **MR. FOX:** Objection, Your Honor. That's complete
10 speculation.

11 **THE COURT:** Sustained.

12 **MR. TAYLOR:** The Court's indulgence, Your Honor.

13 **THE COURT:** Yes sir.

14 Q. Mr. Rasheed, whenever you were being questioned
15 regarding the location of Rasta or your son, was there ever
16 any -- did you ever provide information regarding Suggs
17 Street? Was it ever mentioned?

18 A. No.

19 Q. All right. Is there anything else you can -- any
20 questions or anything else that you know of regarding this
21 that I've failed to ask you, anything you'd like to add to
22 the jury in following up with the questions I've already
23 asked you?

24 A. Well, I ---

25 **MR. FOX:** Objection, Your Honor. That just calls for

RASHEED SALMET KARLIN MUHAMMAD - DIRECT BY TAYLOR
CROSS BY FOX

1 a narrative. That's open-ended. That's not designed to
2 elicit a specific response.

3 **THE COURT:** Sustained.

4 **MR. TAYLOR:** All right. Thank you, Your Honor. I
5 have no further questions.

6 **THE COURT:** Cross-examination, Mr. Fox.

7 **MR. FOX:** Thank you, Your Honor.

8 **CROSS-EXAMINATION BY MR. FOX:**

9 Q. Mr. Muhammad, so I can keep it straight, Cornelius
10 Ford, that's your son, correct?

11 A. Correct.

12 Q. Okay, and he's the one that called you on November
13 2nd from this house, from Andy Gowans' house, right?

14 A. I -- I don't know where he called me from, but he did
15 call me that morning.

16 Q. Okay.

17 A. I can't say if he was at the home or not.

18 Q. Well, that's where you got the information as to
19 where to go, right?

20 A. Well, he called me that morning and stated to me
21 where -- what had happened and what he thought had happened,
22 and that was that.

23 Q. Okay, and you knew where to go because you testified
24 your son was living at Suggs Street with Andy Gowans, right?

25 A. Well, yes, he was living there.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

- 1 Q. All right. Now, so then you arrived and your son was
2 still there at that time?
- 3 A. Yes, he was.
- 4 Q. Okay, and you went in the house, found Mr. Gowans on
5 the floor, is that right?
- 6 A. Correct.
- 7 Q. Did you check to see whether he was still breathing,
8 living?
- 9 A. That's the first thing I did.
- 10 Q. Okay, so you reached down and, what, touched him?
- 11 A. I felt a pulse to see if he had -- and he had none.
- 12 Q. Okay, and at what point then did you call 911?
- 13 A. Immediately.
- 14 Q. Okay, used a cell phone, house phone? What did you
15 use?
- 16 A. Cell phone.
- 17 Q. Okay, your cell phone?
- 18 A. Correct.
- 19 Q. Was your son still there?
- 20 A. He was outside. I sent him outside.
- 21 Q. Okay, but he was still -- as far as you know, I
22 mean, ---
- 23 A. So far as I know, yes.
- 24 Q. Did your son have a car?
- 25 A. At that time he did.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

- 1 Q. He did. What kind of car did he have?
- 2 A. A Lexus.
- 3 Q. Okay, and after -- did you see his Lexus out there?
- 4 A. I really didn't pay attention.
- 5 Q. Okay, but you would expect it to be there since he
- 6 was living there?
- 7 A. Correct.
- 8 Q. So you called 911 and you let them know that you
- 9 found a body, there was somebody, a body?
- 10 A. Correct.
- 11 Q. Did you -- and you stayed on the line with them while
- 12 the police kind of got it -- got it in, isn't that correct?
- 13 A. Correct.
- 14 Q. Okay, and that was how long would you say?
- 15 A. Roughly three, or four, or five minutes at the most.
- 16 Q. Okay, and your son was still there all that time?
- 17 A. I would assume so. I was inside.
- 18 Q. Okay. Who arrived first, the police, or did an
- 19 ambulance come?
- 20 A. Yes, it did, later on. The police came. The Conway
- 21 Police came first.
- 22 Q. Okay. Was your son still there when the police got
- 23 there?
- 24 A. I don't know. I didn't look around to see. I didn't
- 25 -- I was in the house when they came. I was at the back

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 door and I proceeded to show them where the young man was
2 laying down.

3 Q. So you don't recall seeing your son at that time?

4 A. No. I didn't go back outside then.

5 Q. Okay, so he wasn't inside?

6 A. No, he wasn't inside.

7 Q. Okay. I'm sorry; I didn't mean to cut you off. No,
8 he was not inside?

9 A. No, he was not inside.

10 Q. Okay, and how many officers, one car or two patrol
11 cars, do you recall?

12 A. I can't recollect how many police cars came.

13 Q. How many police officers?

14 A. Yeah, police officers. I know that one female police
15 officer came and immediately took me to the substation to
16 write a statement.

17 Q. Was anything said before that? Did anyone say what
18 do you know, I mean, any other than just get in the car and
19 let's go to the substation, anything before that?

20 A. Well, they asked me who I was. Most police officers,
21 Conway police officers, know me ---

22 Q. Okay.

23 A. --- because of being right next to the mosque.

24 Q. Exactly. So, now, so this was a female officer?

25 A. Correct.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. And you got back in her -- or in the squad car. Just
2 you and her drove to the substation?

3 A. No, she had a plain car. She didn't have a ---

4 Q. A plain car.

5 A. She just had a plain car.

6 Q. Okay, and once you got back there, she asked you
7 basically what you knew, is that right?

8 A. She asked me for a statement.

9 Q. Okay.

10 A. She didn't ask me what I knew. She asked me for a
11 statement.

12 Q. Just asked for a statement?

13 A. Right.

14 Q. And I think you previously testified they had asked
15 you if you would be willing to give a statement?

16 A. Correct.

17 Q. And you said yes?

18 A. Yes.

19 Q. Did she hurry you through making that statement?

20 A. No.

21 Q. Did she put any pressure or threats on you to make a
22 statement?

23 A. No.

24 Q. Did she tell you what to put in your statement?

25 A. No.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. She basically just handed you a plain sheet of paper?

2 A. She said and write what I knew.

3 Q. Okay, and you wrote ---

4 A. Exactly what I saw.

5 Q. --- one or two sentences, right?

6 A. That was it.

7 Q. Okay, and you remember doing that, don't you?

8 A. Correct.

9 Q. Okay. Did you make any mention in your statement
10 about your son, any reference to Cornelius Ford?

11 A. I can't remember.

12 Q. And if I showed you a copy of your statement, do you
13 think you'd recognize it?

14 A. I probably would if I wrote it.

15 Q. All right.

16 **(STATEMENT OF RASHEED MUHAMMAD MARKED AS DEFENDANT'S**
17 **EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)**

18 Q. Mr. Muhammad, I'm going to hand you what's been
19 marked Defendant's Exhibit for identification 1. Take a
20 look at that and tell me if you recognize that.

21 A. Yes.

22 Q. Okay, and what is that, please sir?

23 A. That's a statement, a brief statement, that I wrote
24 for Conway Police Department.

25 Q. Okay. Is there any reference anywhere in that

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

- 1 statement, and you wrote that your- -- that's your
2 handwriting?
- 3 A. Correct.
- 4 Q. Okay. Any reference in there to your son?
- 5 A. No.
- 6 Q. Any reference to getting a phone call from your son
7 that morning?
- 8 A. No.
- 9 Q. Okay. What does it say?
- 10 A. It briefly says I got a call from my -- from him ---
- 11 Q. Who is him?
- 12 A. Well, I guess it was reference to my son, Cornelius,
13 and it said that I -- I said to them that I got a call from
14 him.
- 15 Q. Did you mean your son or did you mean Andy Gowans?
- 16 A. My son.
- 17 Q. Okay, but him. Go ahead.
- 18 A. And ---
- 19 Q. To do what?
- 20 A. I can't -- I can't -- it's to pay something.
- 21 Q. A fine?
- 22 A. To pay a fine at the courthouse. Yeah, I was like
23 after -- when he -- he came down, he was open on the side of
24 the window and he was on the -- he was on the floor, and I
25 called 911.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. So here you're referring to -- your son wasn't on the
2 floor, was he?

3 A. Right.

4 Q. Andy Gowans was on the floor?

5 A. Correct.

6 Q. And here you're referring to they called you to pay
7 the fine and saying he's just on the floor, right?

8 A. Correct.

9 Q. So it's Andy Gowans. You say he called me to pay the
10 fine, and that was Andy Gowans. You told the police ---

11 A. Yeah.

12 Q. --- he called you to pay a fine?

13 A. Correct.

14 Q. That's not true, is it?

15 A. Why isn't it?

16 Q. I'm asking you. Was that true?

17 A. Sure. Well, he did give me a call. He had a fine to
18 pay that he had spoke to me a couple of days before that he
19 needed to -- I went to traffic court with him ---

20 Q. When?

21 A. A couple of days prior to that. We went ---

22 Q. But not on November 2nd?

23 A. No; no. That was before November 2nd. We went to
24 traffic court and he was charged a fine and that he had to
25 get back down to pay that fine.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. When you wrote this statement, did you think the
2 officer really cared about paying a traffic fine two days
3 before or do you think they were worried about the shooting
4 that happened on November 2nd?

5 A. More so the shooting than a fine.

6 Q. So what you did two days before, him calling you to
7 pay a fine two days before is irrelevant, isn't it?

8 A. Well, I would assume so, yes.

9 Q. Okay. Now, back to that day, the officer gave you
10 all the time you needed to write that statement. She didn't
11 rush you or pressure you in any way, did she?

12 A. No.

13 Q. She just said write what you know?

14 A. Yes.

15 Q. At that point what you knew was your son had called
16 you, said something was bad wrong. You went to his house
17 and there was a dead body. That's what you knew at that
18 point, right?

19 A. Correct.

20 Q. From your own eyes?

21 A. Correct.

22 Q. But you didn't put that in the statement? You didn't
23 say anything about your son calling you to let you know that
24 his good friend and someone you knew that had been to your
25 house and you described as a respectful young man had been

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 shot and was maybe dead? You didn't put that in your
2 statement to the police?

3 A. No.

4 Q. Do you think maybe the police would be interested in
5 knowing that fact, that there was an eye witness to the
6 shooting?

7 A. Well, I -- I didn't know how much my son -- if he --
8 how much he knew because that morning when I got there, he
9 was very upset. He was hollering and screaming. He really
10 didn't make sense until I got him on the phone and he
11 finally slowed down to tell me exactly what had transpired,
12 what happened.

13 Q. What -- so he called -- again, I don't mean to cut
14 you off. So he got you on the phone later and told you
15 exactly what happened. How long was that after you had
16 written that statement that your son let you know that he
17 was there for the whole thing supposedly?

18 A. Maybe within twenty or thirty minutes at the most.---

19 Q. Okay.

20 A. --- we had a conversation.

21 Q. And then you testified you didn't contact the police
22 or go down to see them again until six or seven that night,
23 correct?

24 A. They contacted me.

25 Q. You didn't even contact them?

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 A. They asked me if I had a son that was named Cornelius
2 Ford and I told him yes, and they said, well, Mr. Muhammad,
3 we need to speak with him. I said okay, I'll be there in
4 about fifteen to twenty minutes, which I got in contact with
5 Cornelius and we went.

6 Q. Okay, but you say you went down and you met them at
7 the substation about seven o'clock, right?

8 A. Pardon me?

9 Q. I think you testified under examination from Mr.
10 Taylor that you went and actually met with the police and
11 your son about seven o'clock that evening, correct?

12 A. My son and I went.

13 Q. Right.

14 A. Yes, we went to the police station. It was later on
15 that afternoon.

16 Q. Okay, so it was a good bit after your son had called
17 you and let you know ---

18 A. Yes.

19 Q. --- he said he saw this shooting?

20 A. Yes. It was -- yeah, it was a good while after my
21 son had talked to me that before I got contact by the Conway
22 Police Department.

23 Q. And you didn't -- in the meantime you didn't call the
24 police and say, hey, guess what, my son was there. He
25 witnessed this thing. He can help you solve this crime.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 A. No, because as again I stated to you, that was on a
2 Friday. It was Jumah and I was giving the Khutbah and I am
3 Imam as to giving our service, and I was in charge of giving
4 the service that day, so after I left the scene, I went
5 home, showered up, made voodoo, and then I went to the
6 mosque here to give the Khutbah for Jumah, and I was
7 contacted later on that afternoon.

8 Q. So your religious responsibilities were more
9 important than helping the police solve and letting the
10 family know who had killed Andy Gowans, is that right?

11 A. Is that a question you're asking me?

12 Q. That is a question. Is it your testimony that your
13 religious responsibilities were more important ---

14 A. I won't say they were more important, but I will say
15 that I was in charge or responsible for giving the Khutbah
16 that Friday, so I met my responsibilities and I gave our
17 service that Friday.

18 Q. And you didn't have any responsibility to the Conway
19 Police?

20 A. Well, if I was at -- I felt like if they wanted to
21 get in contact, they could have got me any time. They knew
22 my cell phone number. I was right next to the mosque, so if
23 there was a point that they need to get in contact with me,
24 they could get in contact with me twenty-four hours a day,
25 seven days a week.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. Okay, but you weren't going to go to the trouble of
2 calling them?

3 A. I won't say what I won't do because I didn't know. I
4 might have did later on that evening. I won't sit here and
5 say that I would have because I don't know.

6 Q. Okay, but at some point you knew your son was there
7 when the shooting happened, according to him anyway? He
8 says I was there, Daddy, when the shooting happened, right?

9 A. Correct.

10 Q. But you didn't at any time take that information and
11 contact the police with it? Do you think that would be
12 important information?

13 A. I would say yes, and I can't say what I wouldn't have
14 did later on that afternoon.

15 Q. All right. Did it scare you to know that your son
16 was so close to a shooting? Did that frighten you a little
17 bit?

18 A. Well, I won't say frighten. I will say it put me in
19 a situation where I met a young man that practiced the same
20 religion that I did and to find out that that young man was
21 here to kill my son ---

22 MR. FOX: Your Honor, I'm going to object to that
23 answer. Number one, it is not responsive to what I asked
24 and he's going off and narrating on something totally
25 different I asked, whether he was frightened about his son

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 being present.

2 **THE COURT:** All right. Let's respond -- if you would
3 listen to the question asked by Counsel and as directly as
4 you can answer the question asked by the Counsel. You can
5 explain your answer, but respond as directly as you can to
6 the question, all right?

7 A. Yes sir.

8 **THE COURT:** Go ahead, Mr. Fox.

9 **MR. FOX:** Thank you, Your Honor.

10 Q. Going back to Suggs Street on the day when this all
11 happened, do you know when your son left Suggs Street? Do
12 you know at what point did you see him leave? Did you know
13 when he left?

14 A. No.

15 Q. Your son in two thousand or so was convicted and sent
16 to prison for selling drugs, is that correct?

17 A. Correct.

18 Q. Was that hard as a father? Did you miss him?

19 A. Extremely. He is the youngest.

20 Q. You would like to avoid that situation again?

21 A. Would I?

22 Q. Yeah.

23 A. Sure.

24 Q. As a father?

25 A. Sure.

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX

1 Q. You like to protect your son?

2 A. Sure.

3 Q. Were you aware what was going on over there at Andy
4 Gowans, what he was doing at Suggs Street?

5 A. No. It was none of my concern.

6 **MR. FOX:** The Court's indulgence, Your Honor.

7 Q. Do you know -- you say you then went -- you were with
8 your son when you met -- was it Sean Addison, the Conway
9 Police Department, at the substation?

10 A. Whom are you speaking about now?

11 Q. The officer that you met at the substation. Do you
12 remember his name?

13 A. No.

14 Q. It's you -- you and your son when you ---

15 A. Yeah.

16 Q. --- went. I'm sorry, when you ---

17 A. I can't remember his name.

18 Q. Okay, but you sat with -- you -- they wanted to talk
19 to your son and you testified you took Cornelius over there,
20 arranged to meet at the substation, correct?

21 A. Correct.

22 Q. And the police got a statement from your son, right?

23 A. Correct.

24 Q. And you sat in on that, didn't you? You were there
25 at that interview?

RASHEED SALMET KARLIN MUHAMMAD - CROSS BY FOX
REDIRECT BY TAYLOR

1 A. Yes.

2 Q. Okay, and do you recall when -- basically your son
3 spoke to the police, asked him some questions; he talked to
4 them for a few minutes, and at some point the officer
5 instructed y'all to go into another room. Do you recall
6 that?

7 A. Correct.

8 Q. Okay. No question y'all got up and moved to another
9 room?

10 A. A big- -- a much larger room.

11 Q. Okay. Do you recall ---

12 **MR. FOX:** Thank you. No further questions of this
13 witness, Your Honor.

14 **THE COURT:** Redirect?

15 **MR. TAYLOR:** Yes sir, Your Honor.

16 **REDIRECT-EXAMINATION BY MR. TAYLOR:**

17 Q. Mr. Muhammad, or Mr. Rasheed, have you ever seen
18 anybody shot?

19 A. Yes.

20 Q. How does it affect you?

21 A. It's very tough on the individual who stands and
22 watch one of his best friends get killed or get shot. It
23 was very tough on me. One of my friends got shot when I was
24 young and passed away, so it's very tough.

25 Q. All right, and in describing your son, you testified

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

1 that he was very -- he was screaming and hysterical?

2 A. Correct.

3 Q. Now, you're aware that drugs were found in the home?

4 A. No, I was not aware of any drugs found in the home.
5 I didn't know anything about that.

6 Q. All right. You testified that your son had done time
7 and it was very hard for you?

8 A. Correct.

9 Q. Given that and given Andy Gowans' known reputation,
10 would you not want to -- is that a reason why you did not
11 initially put your son at the scene?

12 A. No. I -- I observed his demeanor and how he was, and
13 he was very upset. He was hollering and he was screaming,
14 and I thought the best thing for him to be would be outside
15 instead of inside, and I sent him outside.

16 Q. How traumatic was this situation to you, seeing this
17 young man laying in front of you?

18 A. Very, very tough, very tough.

19 Q. And you had known this kid, as well as your son, for
20 how long again?

21 A. I've been knowing the young man ever since I come
22 here to the Conway area. They were very good friends of
23 Cornelius.

24 Q. So what was the time frame of whenever the police
25 arrived and whenever you actually wrote this statement?

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

1 A. Within ten or fifteen minutes or so I'll say.

2 Q. And, again, given this, how would you describe the
3 entire scene with all the officers there, and how many
4 officers were on the scene, do you remember?

5 A. No. I don't know how many officers. I know that
6 there were two officers came first and came in the home, and
7 I showed them the young man, and then the female officer
8 immediately took me outside and asked me would I be willing
9 to go and write a statement, and I told her yes, and she put
10 me in the car and we immediately went there.

11 I wrote the statement and immediately came back.
12 Within fifteen, twenty minutes, I asked the officers if I
13 could leave, and they said that they want to search my van,
14 and I told them yes, and they search my van, and I got in my
15 van and left and went to Jumah.

16 Q. All right. Given this chaotic situation that it must
17 have been, is this maybe a reason why you did not ---

18 **MR. FOX:** Objection, Your Honor.

19 **MR. TAYLOR:** All right.

20 **THE COURT:** Sustained.

21 **MR. TAYLOR:** All right.

22 Q. Explain to the jury why you did not involve your son.
23 Why did you not list your son whenever they took you to the
24 scene. Whenever they took you to the police substation
25 within minutes of the shooting after you left, why did you

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

1 not list your son down as being there?

2 A. Well, I don't think that I didn't mention to him not
3 being there. I can't recollect if I did mention to them
4 about being him, but I would assume that he had been
5 incarcerated before on drug charges and I didn't think that
6 would be a good environment for him to be until they finally
7 got this thing figured out and found out what was really
8 going on because I didn't know.

9 Q. All right. Now, you were asked to read your
10 statement, and it appeared that in reading it you had some
11 problem reading your own handwriting?

12 A. Correct.

13 Q. Why was that?

14 A. I guess I was kind of nervous when I wrote this
15 statement. I didn't know where my son was and I want to
16 find out where he was. Our communication on the phone had
17 stopped. We hadn't talked on the telephone, so I was very
18 up- -- very upset in a sense because I was nervous and very
19 upset when I wrote this statement I gather.

20 Q. All right. Now, whenever you went outside to speak
21 to the police officer, where did you see your son?

22 A. When I went outside?

23 Q. When you went outside, you saw your son there?

24 A. I did not see him. I didn't -- I don't recollect if
25 I looked for him to see if he was there. His name did come

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

1 up through the conversation that ---

2 Q. As to how you got there?

3 A. Yes, and I told him how I was directed there, how I
4 got there through a phone call from my son.

5 Q. Okay. Whenever you left, how many people, E.M.S.
6 personnel, law enforcement, do you estimate was around you?

7 A. I can't reco- -- there were a lot, because Horry ---

8 Q. A lot. How many is a lot, twenty, twenty-five?

9 A. Fifteen, twenty, because Horry County Police
10 Department came, too.

11 Q. All right, and whenever they took you outside, did
12 they waste any time whenever they said they needed a
13 statement ---

14 A. No.

15 Q. --- or did they take you immediately to the
16 substation?

17 A. They put me right in the car and took me immediately.

18 Q. Okay. With all of the people around, could there be
19 some reason that your son may have still been there and you
20 just didn't see him?

21 A. There could have been, but I -- I didn't see him and
22 I didn't -- I didn't look for him.

23 Q. And again, you had trouble reading your own
24 statement. A possibility ---

25 A. Of being nervous.

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

1 Q. Okay. After you wrote the statement, again, how long
2 was it that you talked to your son?

3 A. The officer took me back. I left and went to Jumah.
4 I probably talked to him roughly about 2:00, 2:30, 3:00 that
5 afternoon. I talked to him again, and then later on that
6 evening is when I got a statement from -- I got a call from
7 the Conway Police Department that they needed to talk to my
8 son.

9 Q. All right. Well, let's talk about the Jumah and your
10 responsibilities there because I'm not exactly sure Jumah
11 is, and I'm sure that the jury is not either. What is
12 Jumah?

13 A. Jumah is our -- Jumah is our services as you have
14 your Christian services on Sunday. We pronounce it Jumah.
15 We don't allow anyone to give up -- to stand up in front of
16 a Imam and give a Khutbah. You have to have years of
17 studying, years of sincerity in order to get up and do a
18 Khutbah. I am qualified to give a Khutbah. I go to the
19 jails and prisons here in the State of South Carolina. I do
20 Khutbahs in the jails and prisons here in South Carolina and
21 in Horry County.

22 Q. And how long have you been a practicing Muslim?

23 A. Over thirty years.

24 Q. All right, and you said it was a Khutbah?

25 A. Khutbah.

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR

- 1 Q. And how is that spelled?
- 2 A. K-O-K-E, Koke; Khutbah.
- 3 Q. And that is your actual service?
- 4 A. Correct.
- 5 Q. If you were not there, who was able to do it?
- 6 A. If I wasn't there?
- 7 Q. Yes sir.
- 8 A. The emir. We have a Imam and a Emir. Imam is over
- 9 the Emir. Emir is under the Imam.
- 10 Q. All right. Is this person available to your
- 11 knowledge?
- 12 A. No, because I was -- I was called that day by another
- 13 brother to make sure that I was going to be at the mosque to
- 14 give the Khutbah, which -- because I'm normally going out to
- 15 J. Reuben Long and giving them there, and that day I went to
- 16 the mosque and did it there instead of going to J. Reuben
- 17 Long.
- 18 Q. How long does it take to perform these duties?
- 19 A. A Khutbah, an hour and forty-five minutes at the
- 20 most.
- 21 Q. Okay, and explain to the jury -- it may seem strange,
- 22 given the circumstances, that you would go and give a
- 23 service. Explain to the jury how important this is to you.
- 24 A. It's very important. It's like you have your
- 25 minister to give services in your church. It is the same

RASHEED SALMET KARLIN MUHAMMAD - REDIRECT BY TAYLOR
RE CROSS BY FOX

1 equal as in a mosque here. The Imam is the one who gives
2 the Khutbah, who is in charge of giving our services on
3 Friday. Again, I say it has to be someone that is
4 knowledgeable, a sincereness. There is no -- there are no
5 female Imams. There are only male Imams, so there are no
6 female ministers in Islam. There are only males, so only a
7 male can give a Khutbah, not a female.

8 Q. Now, sir, whenever you go in to law enforcement to
9 meet with the officer later on that day with your son, did
10 you take a lawyer with you?

11 A. No.

12 Q. And your son voluntarily went with you?

13 A. Sure. As soon as I call him, he says when, Daddy? I
14 said let's -- now. Where are you? He told me where he was,
15 and which was not maybe ten minutes from what I was, and I
16 went by and picked him up. He was at another friend's house
17 and I took him straight to the substation here in Conway.

18 MR. TAYLOR: The Court's indulgence, Your Honor.

19 THE COURT: Yes sir.

20 MR. TAYLOR: Your Honor, I have no further questions.

21 THE COURT: All right.

22 Mr. Fox?

23 MR. FOX: Just briefly, Your Honor.

24 RE CROSS-EXAMINATION BY MR. FOX:

25 Q. Where was that, at a friend's house? You say your

RASHEED SALMET KARLIN MUHAMMAD - RECROSS BY FOX
CORNELIUS FORD - DIRECT BY RICHARDSON

1 son stayed at a friend's house close by. Where was that,
2 the friend's house that you went and -- before you went to
3 see the police?

4 A. From where I was, maybe roughly five, six, seven,
5 eight, ten minutes at the most. I called him ---

6 Q. Excuse me, but what part of town is what I'm getting
7 -- what part of Conway?

8 A. Oh, here in Conway.

9 Q. What neighborhood?

10 A. Right down -- down 701. I think it was 701.

11 Q. Do you know the friend's name?

12 A. No, I don't.

13 **MR. FOX:** Okay, thank you.

14 **THE COURT:** You may step down.

15 Do you wish the witness to be excused, Solicitor?

16 **MR. TAYLOR:** Your Honor, not at this time. There may
17 -- there may be something that comes up.

18 **THE COURT:** All right, sir.

19 You may step down, sir, and you are still under
20 subpoena at this point in time, all right? Thank you.

21 Your next witness, Solicitor.

22 **MR. TAYLOR:** The State would call Cornelius Ford.

23 **CORNELIUS FORD,** being first duly sworn,
24 testifies as follows:

25 **THE COURT:** Go ahead, Solicitor.

CORNELIUS FORD - DIRECT BY RICHARDSON

1 **DIRECT EXAMINATION BY MR. RICHARDSON:**

2 Q. Cornelius, I'm going to stand over here. I want you
3 to keep your voice up so they can all hear you, and let's
4 start off, tell the jury, please, where you are from.

5 A. Conway, South Carolina.

6 Q. All right. Were you born here?

7 A. Yes sir.

8 Q. All right, and have you always lived here?

9 A. No. I stayed in Miami, Florida, until I was
10 thirteen.

11 Q. All right, so you were born here and you moved to
12 Miami for a while, and then you moved back when you were
13 thirteen?

14 A. Yes sir.

15 Q. All right, and do you know Andy Gowans?

16 A. Yes sir.

17 Q. How long have you known Andy?

18 A. It's about fifteen, sixteen years.

19 Q. Since you moved back to Conway?

20 A. Yeah. I met him like shortly after I moved up here.

21 Q. All right. Where -- where did Andy live?

22 A. In Horry County.

23 Q. All right. Suggs Street?

24 A. Yes sir.

25 Q. Did you ever know Andy to live anywhere besides Suggs

CORNELIUS FORD - DIRECT BY RICHARDSON

1 Street?

2 A. Yes sir. He used to stay in Socastee one time

3 before.

4 Q. For the last few years he's lived in Conway at Suggs

5 Street?

6 A. Yes sir.

7 Q. All right. Did you ever stay at Andy's house from

8 time to time?

9 A. Yes sir.

10 Q. All right. How close were you and Andy?

11 A. We were close. He was like a best friend, a brother.

12 Q. Do you know his real brother's name?

13 A. His brother?

14 Q. Yes sir.

15 A. Yes sir.

16 Q. What is his brother's name?

17 A. Antonio Gowans.

18 Q. And he's a twin to Antonio, ---

19 A. Yes sir.

20 Q. --- is that correct?

21 A. Uh huh **(indicating positive)**.

22 Q. All right. What did Andy do for a living?

23 A. He did a lot of things. I mean, I ain't ashamed to

24 say he probably sold drugs sometimes.

25 Q. I mean, you knew he sold drugs?

CORNELIUS FORD - DIRECT BY RICHARDSON

1 A. Yes sir.

2 Q. And his main source of income was selling drugs?

3 A. Yes sir.

4 Q. All right. Had you ever met Henry Dukes, the
5 Defendant in this case, before?

6 A. I never met him. I saw him, but I never like met
7 him.

8 Q. All right. Tell the jury about the first time you
9 ever saw Henry Dukes.

10 A. The first time I seen him, we was -- I was at the
11 store on 701 South, a clothing store they got down there,
12 and I was going in and he was coming out, passing me, like I
13 was passing him going in and he was coming out.

14 Q. All right. Was that -- what's nearby that clothing
15 store?

16 A. The Food Lion. It's in the Food Lion shopping
17 center.

18 Q. All right, so the Food Lion on 701, where -- that
19 same shopping mall, strip mall, there's a clothes store?

20 A. Yes sir, it was. It's not there anymore now.

21 Q. All right, and who, if anybody, did you see with
22 Henry Dukes on that day?

23 A. Ronnie Atkinson.

24 Q. Ronnie Atkinson?

25 A. Uh huh **(indicating positive)**.

CORNELIUS FORD - DIRECT BY RICHARDSON

- 1 Q. Does he have any other names that you know of?
- 2 A. He go by Stank.
- 3 Q. Stank, all right, so was -- was this of any interest
- 4 to you, the fact that he was with Stank?
- 5 A. Yeah. When I seen him with Stank, it kind of like
- 6 put me on my P's and Q's because a friend of mine had got
- 7 into it with the guy, Ronnie Atkinson, and I didn't know if
- 8 there was no bad blood between him, so when I seen him with
- 9 him, it just put me on my P's and Q's.
- 10 Q. All right. Let's -- we won't stay here long, but
- 11 your friend that had an altercation with Ronnie Atkinson,
- 12 what was your friend's name?
- 13 A. Curtis Scott.
- 14 Q. Curtis Scott?
- 15 A. Uh huh **(indicating positive)**.
- 16 Q. Does he go by the name, Rasta, also?
- 17 A. Yes sir.
- 18 Q. All right, and at some point Curtis Scott shot Ronnie
- 19 Atkinson or Stank?
- 20 A. Yes sir.
- 21 Q. All right, and then you see Stank with Henry Dukes?
- 22 A. Yes sir.
- 23 Q. All right, and that heightened your attention to who
- 24 Stank was walking around with at that point?
- 25 A. Yes sir.

CORNELIUS FORD - DIRECT BY RICHARDSON

1 Q. And you see them at a clothing store?

2 A. Uh huh (**indicating positive**), because I was with
3 Scott when he shot him, so it really put me on if they had
4 any bad blood, so that's why I really focused my attention
5 on it.

6 Q. All right, and actually tell us whose car you were in
7 when Curtis Scott shot Stank.

8 A. My car.

9 Q. Your car, all right, and do you know if Stank is
10 related to Henry Dukes?

11 A. I don't know personally if he is, like ---

12 Q. All right, but you saw them at the shopping center
13 where the Food Lion is on 701 South?

14 A. Yes sir.

15 Q. Okay. Do you remember, and I guess the best way to
16 do this is to back it up until November 2nd, 2007. How far
17 before November 2nd, 2007, was it that you saw Henry Dukes
18 and Stank at the Food Lion shopping center?

19 A. Maybe a month, a month, maybe two months, somewhere
20 in there, a month.

21 Q. The first time you saw Henry Dukes was a month, maybe
22 two months, before Andy Gowans was killed?

23 A. Yes sir.

24 Q. All right, and did you ever see Henry Dukes again
25 after that at the Food Lion shopping center?

CORNELIUS FORD - DIRECT BY RICHARDSON

- 1 A. Yes sir. I seen him one night. He came over there
2 with some other guy. I don't know whoever that was. He
3 came to Andy's house and ---
- 4 Q. Suggs Street?
- 5 A. Yes sir.
- 6 Q. All right. You say Henry Dukes came to Andy's house
7 on Suggs Street?
- 8 A. Uh huh **(indicating positive)**.
- 9 Q. Was Stank with him at that time?
- 10 A. No sir.
- 11 Q. All right. Someone else was with him?
- 12 A. Yes sir.
- 13 Q. Do you know who that someone else was?
- 14 A. No sir.
- 15 Q. Did Andy know that someone else?
- 16 A. Andy didn't know a whole lot of people. He knew way
17 more people than I knew, so I take it that he did. I don't
18 think he knew Mr. Dukes. He knew the other guy.
- 19 Q. Okay, but at least on one occasion, Andy Dukes (sic)
20 had met with Henry -- excuse me, Andy Gowans had met with
21 Henry Dukes at least once before November 2nd, 2007?
- 22 A. Yes sir.
- 23 Q. And do you know what went on when Andy Gowans met
24 Henry Dukes on that day?
- 25 A. No sir. They had a conversation briefly, and he

CORNELIUS FORD - DIRECT BY RICHARDSON

1 stayed for about thirty or forty-five minutes, him and the
2 other guy, and they left.

3 Q. Do you know if there was any transaction of drugs?

4 A. I think they did come over there to get something.

5 Q. All right. Do you know if it was Dukes or the other
6 guy that bought the drugs?

7 A. I think the other guy was bringing Mr. Dukes to get
8 it.

9 Q. Okay. Would Andy sell to just anybody?

10 A. No sir.

11 Q. So there was a select group of people that Andy
12 Gowans would sell drugs to?

13 A. Yes sir.

14 Q. And had you been around Andy when he had sold drugs
15 in the past?

16 A. Yes sir.

17 Q. How did -- how did that usually work out? Did the
18 people just show up to Andy's house to buy drugs?

19 A. No. They usually would call first.

20 Q. All right, so the signal or the code was they would
21 call and then they would come over after that?

22 A. Yes sir.

23 Q. And this always took place at Suggs Street?

24 A. Yes sir.

25 Q. Okay. How long before November 2nd, 2007, was it

CORNELIUS FORD - DIRECT BY RICHARDSON

- 1 that Henry Dukes went with one of his friends to buy drugs
2 from Andy?
- 3 A. Maybe a week, two weeks.
- 4 Q. Okay, so the first time you saw Henry Dukes, it was
5 with Stank?
- 6 A. Uh huh **(indicating positive)**.
- 7 Q. One to two months before Andy was killed?
- 8 A. Uh huh **(indicating positive)**.
- 9 Q. And then a week, maybe two weeks before Andy was
10 killed, Henry Dukes shows up with someone else at Andy's
11 house?
- 12 A. Yes sir.
- 13 Q. No hard feelings?
- 14 A. No sir.
- 15 Q. Did you ever say to Andy, Dukes is somehow related to
16 or knows Stank?
- 17 A. I don't remember if I ever brought it to his
18 attention or not. I probably did, though.
- 19 Q. Okay. I know you were close with Andy and you were
20 close with Curtis Scott or Rasta?
- 21 A. Yes sir.
- 22 Q. All right. Was Andy -- did Andy know Curtis Scott?
- 23 A. Yes sir. That's his cousin.
- 24 Q. Curtis Scott is Andy's cousin?
- 25 A. Yes sir.

CORNELIUS FORD - DIRECT BY RICHARDSON

- 1 Q. All right. Do you know if Curtis Scott sells drugs?
- 2 A. Uh, I can't say.
- 3 Q. Okay. Do you know of any other type of employment
- 4 that Curtis Scott or Rasta has where he could make money?
- 5 A. No sir.
- 6 Q. All right. Let's go to November 2nd, 2007 -- wait a
- 7 minute. In all this time when you would see that gentleman
- 8 sitting over there, did you know his name?
- 9 A. No sir. I just knew his face. I didn't know his
- 10 name.
- 11 Q. You knew his face, but you didn't know his name. You
- 12 knew he was somehow associated with Stank and this other guy
- 13 that Andy knew?
- 14 A. Yes sir.
- 15 Q. But you didn't know him to be Henry Dukes?
- 16 A. No sir.
- 17 Q. Okay. All right, on November 2nd, 2007, tell us what
- 18 you were doing that morning.
- 19 A. Well, that morning Andy had went out to the club that
- 20 night, and I was in the bed asleep. He came back. He woke
- 21 me up. I was like -- probably about six o'clock. I was
- 22 like, man, it's too early to get up, so I laid back down,
- 23 but I was already up, so I went ahead and got up, washed my
- 24 face and brushed my teeth, and I set down probably about
- 25 fifteen minutes.

CORNELIUS FORD - DIRECT BY RICHARDSON

1 We was smoking a joint at the time, and a knock came on
2 the door. He was reading the newspaper. A knock came on
3 the door and he didn't get up. I said, well, it's like you
4 ain't going to get the door? He was like, yeah, but they
5 ain't called my phone, but he got up anyway. When he went
6 -- he peeked out the blinds and he must have seen Mr. Dukes,
7 and he let him in.

8 So they briefly had a conversation at the door, which I
9 couldn't hardly hear cause of the T.V., but I do remember
10 when he pulled the gun out. When I seen him pull the gun
11 out, it made me jump. I stood up. He turned the gun on me,
12 and Andy jumped back. I couldn't see him no more because
13 there was like a wall right there, and I heard the first
14 shot go off.

15 I don't know if the first shot hit him or the second
16 shot hit him, but he shot twice. After he shot, I ran
17 inside the room and I was like lifting up the mattress like
18 I had a weapon. He pointed the gun at me and it clicked
19 twice, and then he took off running.

20 Q. Okay. About what time in the morning -- was that as
21 soon as y'all woke up or as soon as you woke up at six, or
22 had you been in ---

23 A. Nah. I laid in the bed for a minute after that. He
24 had the T.V. on out there, and then I end up getting up.

25 Q. All right, so at some time, certainly before nine

CORNELIUS FORD - DIRECT BY RICHARDSON

1 o'clock when 911 was called, Dukes shows up at the door and
2 there's a knock at the door?

3 A. Yes sir.

4 Q. All right, and you and Andy are watching T.V. and
5 smoking a joint?

6 A. Yes sir.

7 Q. What, if anything, was said that -- could you make
8 out anything that was said between either Andy to Henry
9 Dukes or Henry Dukes to Andy?

10 A. I don't remember the conversation he had, but I do
11 remember when he pulled the gun out, he was like F-that;
12 give it up.

13 Q. All right, so he said F-that, but he said the real
14 word?

15 A. Yeah; yes sir.

16 Q. F-that; give it up?

17 A. Yes sir.

18 Q. All right, and then anything else said before the
19 gunshots?

20 A. Nah, I couldn't hear exactly the conversation what
21 they had.

22 Q. All right. Approximately how far were you from Andy
23 and Henry Dukes?

24 A. I was about from here to the little podium thing
25 right here, this.

1 Q. Okay. Okay. Now, when -- when there was a knock at
2 the door, Andy opened the door.

3 A. He looked out the peephole, like the blinds, he opened
4 the blinds up, and then opened the door.

5 Q. Okay. Did Dukes come in, or did Andy go out?

6 A. No, he came in and stood right by the door.

7 Q. And no gun at that point.

8 A. No sir.

9 Q. There was just the conversation between the two of
10 them.

11 A. Yes, probably for about two or three minutes maybe.

12 Q. Did it appear hostile? Were they arguing back and
13 forth?

14 A. No. It just looked like a regular conversation.

15 Q. Okay. And then at some point he said, "F that, give it
16 up." ---

17 A. Yes sir.

18 Q. ---Or something to those -- that effect.

19 A. Yes sir.

20 Q. All right. Then it's your testimony that before he
21 ever shot Andy he moved the gun from Andy to you ---

22 A. Yes sir.

23 Q. ---And then back to Andy.

24 A. Yes sir.

25 Q. And then he chased you through the house.

1 A. Yes sir.

2 Q. All right.

3 MR. RICHARDSON: If I could have the Court's

4 indulgence.

5 THE COURT: Yes sir.

6 MR. RICHARDSON: Let me ask you a couple of questions

7 while she's taking that check.

8 Q. We've talked about Rasta, being Curtis Scott, right.

9 A. Yes sir.

10 Q. And you didn't know Henry Dukes by name, or any sort of

11 nickname like that.

12 A. No sir. I just know him by his face.

13 Q. Your name is Cornelius Ford -- Ford.

14 A. Yes sir. Uh huh (indicating positive)

15 Q. Do you have a nickname?

16 A. Yes sir.

17 Q. And what is that?

18 A. C-4.

19 Q. C-4.

20 A. Uh huh (indicating positive)

21 Q. All right. And Andy, did he have any other nickname?

22 A. Twin, Andy.

23 Q. Twin, or Andy?

24 A. Uh huh (indicating positive)

25 Q. And his name is Andrico?

1 A. Yes sir.

2 (DIAGRAM MARKED STATE'S EXHIBIT NUMBER 1, FOR
3 IDENTIFICATION ONLY.)

4 Q. Show you what has been marked, for demonstrative
5 purposes, as State's Exhibit Number 1. I'm going to hand you
6 this pointer. Now, how about let's start off by showing the
7 jury where the front door -- is this -- first of all, is this
8 representative of Suggs Street, the address that Andy stayed
9 at?

10 A. Yes sir.

11 Q. All right. Please show the jury the front door.
12 Can you see?

13 And was there another entrance and exit to this house?

14 A. It was a side door, that was right here.

15 Q. All right. And is that a porch?

16 A. Yes. It was like where they had the washing machine
17 and a little back porch.

18 Q. Okay.

19 A. But it was a closed in porch though.

20 Q. What door was that initial knock?

21 A. The front door.

22 Q. All right. So Andy looked out the window, and opens
23 that front door.

24 A. Yes sir.

25 Q. Okay. Point, if you will, where you and Andy had been

1 seated.

2 A. We were seated -- I was seated right here, which this
3 is the kitchen, and it's a little wall here. It's a chair
4 right there. I was sitting here. And it was a chair right
5 outside the bathroom, which the bathroom was here. Andy was
6 sitting right here facing this way.

7 Q. All right. Where's the T.V.?

8 A. The T.V. is right there.

9 Q. So that T.V. blocked any entrance or exit from that
10 area.

11 A. Yes sir.

12 Q. Okay. And when Andy went to answer the door, what
13 route would he have taken?

14 A. Through the kitchen, and then through the den, into the
15 living room, reach the front door.

16 Q. All right. So you were approximately where when Henry
17 Dukes walked into that room?

18 A. I was seated in the chair right -- right outside the
19 kitchen.

20 Q. And you stayed seated for -- when Henry Dukes walked
21 in.

22 A. Yes. I was seated while they was talking, and then
23 when I see him flash the gun that's when I stood up.

24 Q. Okay. And you talked about a wall that Andy was
25 around, that he -- he got out of your vision. Can you point

1 to that wall?

2 A. This is the wall right here.

3 Q. All right. So you unable to see Andy. Could you

4 continuously see Henry Dukes at that point?

5 A. Yes sir, I still see him because he was still standing

6 like in front of the front door.

7 Q. Okay. And that's where you heard the shots go off.

8 A. Yes sir.

9 Q. All right. What did you do when you heard the shots

10 ringing out?

11 A. When the shots rung off I ran into this room right

12 here. He came through the kitchen and was -- this is a

13 hallway right here, and he stood like right there, and I was

14 lifting the mattress up, trying to act like I had a weapon,

15 try to scare him off or something, but he still pointed the

16 gun at me. It clicked twice, and then he took off running.

17 Q. All right. Do you know -- did you leave that room

18 before he left?

19 A. No sir.

20 Q. Do you know which door he left out of?

21 A. The front door, cause he went through the kitchen.

22 Q. Okay.

23 A. If he had a went through this door I would have seen

24 him.

25 Q. All right. Did -- you stayed back here, but you

1 believe he went through this front door.

2 A. Yes sir.

3 Q. All right. Mr. Ford, do you remember anything in
4 particular what Henry Dukes was wearing on that day, November
5 2nd, 2007?

6 A. Yes sir. He had a white coat on that had blue trim.

7 Q. Okay. Do you remember the weather outside? Was it
8 hot, cold, rainy, sunny?

9 A. It was warm. I think it was a little too warm for a
10 coat.

11 Q. Okay. When he first come in did that give you any --
12 any cause ---

13 A. No sir. I really was watching them, really, because
14 like I say, I seen him with Stank, so every time I see him I
15 just keep my eyes on him, but he had his hands in his pocket
16 the whole time.

17 Q. All right. And he had on a white coat with blue trim.

18 A. Yes sir.

19 Q. All right. And can you describe -- if you can't just
20 say you can't. Do you remember what the gun looked like?

21 A. It was small semi-automatic, small, all black semi-
22 automatic.

23 Q. Okay. Do you know the caliber of the gun?

24 A. No sir.

25 Q. All right. Did Mr. Dukes have gloves, a mask, anything

1 along those lines?

2 A. No sir.

3 Q. Anything else that you remember vividly about his
4 dress?

5 A. No sir.

6 Q. Tennis shoes, nothing like that.

7 A. No sir. I know he had light blue jeans on.

8 Q. All right. So he had bluejeans on.

9 A. Yes sir.

10 Q. All right. At some point after he shot Andy, he
11 pointed the gun at you, then he left.

12 A. Yes sir.

13 Q. All right. What did you do upon coming out of the
14 bedroom?

15 A. I remember calling Andy's name. I called him once, I
16 called him twice. I don't remember if he groaned or mumbled
17 or something, but I walked up to him and his phone was on the
18 ground, so I picked his phone up and I called -- I don't know
19 if I called 911 from his phone or my phone. I dialed 911 on
20 one phone and I dialed my father's number on the other phone.

21 Q. Well, at some point you hung up on 911, after they
22 answered. Do you -- do you know why?

23 A. Probably because I was panicking.

24 Q. I'm sorry.

25 A. I was probably panicking cause my best friend just got

1 shot, so -- I don't remember hanging up on them though.

2 Q. All right. You were panicking.

3 A. Yes sir.

4 Q. Okay. And who was on the other phone?

5 A. My father.

6 Q. All right. And what's your dad's name?

7 A. Vernon Ford.

8 Q. Is that Rasheed Muhammad?

9 A. Yes sir.

10 Q. All right. What, if anything, did you tell your dad;

11 do you remember?

12 A. I remember telling him that Andy got shot. I told him

13 I know who did it, but I didn't know the name.

14 Q. All right. What -- did you tell him why Andy got shot?

15 Was there any reason in your mind for Andy being shot at that

16 point?

17 A. No sir.

18 Q. Okay. Did you ever mention the fact that Andy had been

19 robbed?

20 A. That it was -- that he was trying to rob him.

21 Q. Yes.

22 A. No sir.

23 Q. Okay. Did Henry Dukes take anything from you, any

24 money, valuables, anything like that?

25 A. No sir.

1 Q. Do you know if he took anything from Andy?

2 A. I don't know.

3 Q. All right. But he did say, "F that, give it up".

4 A. Yes sir.

5 Q. Okay. But you didn't see him going through his pockets

6 or anything like that.

7 A. No sir.

8 Q. All right. So you call your dad, you tell him that

9 Andy has been shot, and were you still at Suggs Street when

10 your dad arrived?

11 A. Yes sir.

12 Q. All right. Was there anyone else there with you?

13 A. No sir.

14 Q. Just you, then your dad came, and Andy's body.

15 A. Yes sir.

16 Q. All right. Did you make any statements as to who had

17 done this, to your dad?

18 A. Yes. I remember telling him I know who did it, but I

19 didn't know his name, but I know if I see a picture of him I

20 know who it was.

21 Q. All right. So it wasn't like it was a stranger; it was

22 just putting a face to a name ---

23 A. Yes sir.

24 Q. ---Or a name to a face.

25 A. Yes sir.

1 Q. Okay. All right. Did there come a time that you left
2 the house?

3 A. (NODS HEAD AFFIRMATIVE)

4 Q. All right. Why did you leave the house?

5 A. Nervous, scared, and panicking. My best friend just
6 got shot.

7 Q. Did anybody direct you not to leave the premises, but
8 to leave the interior of the house?

9 A. Yes sir. My father told me -- he advised me to step
10 outside, but when I stepped outside I went ahead and got to my
11 car and drove off.

12 Q. All right, but you didn't leave until someone was there
13 with Andy.

14 A. No sir.

15 Q. All right. Was Andy alive when you left?

16 A. I don't know.

17 Q. Do you think that maybe he had muttered something, or
18 tried to say something to you, or at least moaned while you
19 were there over him?

20 A. Yes sir.

21 Q. And that was within seconds of him being shot.

22 A. Yes sir.

23 Q. The whole ordeal, how long did it take, I mean, from
24 the time that Henry Dukes shot him until you were standing
25 there with him and he was -- he was groaning.

1 A. It seemed like forever, but I think it was probably
2 like a -- maybe two minutes, three minutes at the most.
3 Q. All right. So as soon as all this took place Henry
4 Dukes left.
5 A. Yes sir.
6 Q. All right. Where did you go upon leaving Andy's house?
7 A. I went out to my house.
8 Q. You went to your house.
9 A. Yes sir.
10 Q. How far do you live from Andy?
11 A. Probably about seven or eight miles.
12 Q. All right. You lived out closer to the country, in Con
13 -- still in Conway.
14 A. Yes sir.
15 Q. Is it still in Conway city limits?
16 A. No sir.
17 Q. All right. What's a road name or something to
18 familiarize the jurors with the area that you lived in?
19 A. Blue Water Road, off of Cates Bay, Cates Bay Highway.
20 Q. Okay. Off of Cates Bay.
21 A. Yes sir.
22 Q. You live back in there.
23 A. Yes sir.
24 Q. Is that near Dongola?
25 A. Uh huh (**indicating positive**), It's on Dongola Highway.

1 Q. Okay. All right. And you stayed there and talked back
2 and forth to your dad, by phone, several times.

3 A. Yes sir.

4 Q. Did you ever talk with anyone else about what had
5 happened?

6 A. Yes. I talked to his cousin. Me and his cousin was
7 dating at one point, and I was talking to her, and she the one
8 told me that Andy had passed.

9 Q. All right. And what was her name?

10 A. Christina.

11 Q. Christina Gowans?

12 A. Yes sir.

13 Q. All right. She ever been in any trouble, ever injured
14 or anything in this drug life?

15 A. Yes sir. After Stank had got shot that day I guess
16 some of his friends came to retaliate, and they end up
17 shooting at my house, and she end up getting shot in the
18 process.

19 Q. Okay. And that was your house over at Dongola.

20 A. Yes sir.

21 Q. What -- that was the same day that Stank had been shot.

22 A. Yes sir. Like probably about two or three hours later.

23 Q. Right. So, Curtis Scott, Rasta, shoots Stank, and then
24 people come and shoot up your house at Dongola.

25 A. Yes sir.

1 Q. All right. Tell us about her injuries.

2 A. She got shot in the stomach. She was pregnant at the
3 time, and she end up losing the baby.

4 Q. Okay. Any -- I mean, did she stay in the hospital? Is
5 he on a colotomy bag, anything like that?

6 A. No sir. But she was in the hospital for about --
7 probably about four or fives days.

8 Q. All right. How about Stank? As a result of his
9 shooting, any lingering injury to him?

10 A. They say he has to wear one of those bags.

11 MR. FOX: Objection. Hearsay. They say.

12 THE COURT: Sustained.

13 Q. Okay. Do you know personally if he wears any sort of
14 bag or anything like that?

15 A. No sir.

16 Q. Okay. All right. So you did talk with your
17 girlfriend, you talked with your dad. This is all after Stank
18 had been shot, but before you talked with the police, correct.

19 A. Yes sir.

20 Q. All right. Did -- what -- did you ever receive a call
21 to say, go by the Conway Police and talk with them?

22 A. Yes sir.

23 Q. All right. Who called you?

24 A. Christina called me and told me that the police wanted
25 to talk to me.

CORNELIUS FORD - DIRECT BY RICHARDSON

137

1 Q. Okay. And did you meet your dad, or -- did you go to
2 the police department by yourself, or did someone go with you?
3 A. No sir. I called my dad and he took me.
4 Q. All right. So the two of you show up at the Conway
5 Police Department.
6 A. Yes. Right on RacePath, the substation.
7 Q. Right, the substation.
8 A. Yes sir.
9 Q. And that's near his mosque.
10 A. Yes sir.
11 Q. Okay. All right. And at some point you met with Sean
12 Addison.
13 A. Yes sir.
14 Q. And Sean Addison -- did you give him a statement?
15 A. Yes sir.
16 Q. Did you tell him everything that you've told us today?
17 A. Yes sir.
18 Q. Did you tell him you had seen -- you didn't know the
19 guy's name, but you had seen him twice?
20 A. I think I told him I saw him one time ---
21 Q. Uh huh (**indicating positive**)
22 A. ---But I remember it was twice.
23 Q. All right. Why would you have told him that you had
24 just seen the shooter one time before?
25 A. I left it out, because the time that he came to the

1 house he came to purchase drugs, so I wasn't, at the same
2 time, trying to implicate myself or nothing.

3 Q. Well, and let's -- let's talk about that a minute,
4 because I know you will be asked about it later. With regard
5 to your record, you've sold drugs a good bit in the past too,
6 correct?

7 A. Yes sir.

8 Q. And in -- looks like on 9/13/2000, did you plead, or
9 were you convicted of two counts of distribution?

10 A. I pled ---

11 **MR. FOX:** Objection, Your Honor. That part is
12 relevant, the record itself, but the manner of conviction, or
13 the process or the way in which he was convicted is
14 irrelevant.

15 **THE COURT:** Sustained.

16 Q. Okay.

17 **MR. FOX:** Move to strike his last answer also, Your
18 Honor.

19 **THE COURT:** So struck. The jury will disregard.

20 **MR. RICHARDSON:** Thank you, Your Honor.

21 Q. In 2 -- from November -- excuse me -- from September
22 13th, 2000, did you have a conviction for two counts of
23 distribution of crack cocaine?

24 A. Yes sir.

25 Q. All right. And Cornelius, did you also, in 2008,

1 October 10th, 2008, do you have a conviction for driving
2 under suspended license?

3 A. Yes sir.

4 Q. And Cornelius, in 1999, do you have a conviction for
5 possession of cocaine, distribution of crack cocaine, two
6 counts of that, possession of pills, or Schedule I, II, III --
7 no, I'm sorry, distribution of those, and possession of those,
8 several counts of distribution back from 1999?

9 A. Yes sir.

10 Q. All right. And all of those were taken care of at one
11 time.

12 A. Yes sir.

13 Q. You came into court and were either convicted or pled
14 to a bunch of counts of distribution or possession of crack
15 cocaine.

16 A. Yes sir.

17 Q. And then again in 2000.

18 A. Yes sir. Well, I pled in 2000 to all those charges,
19 all -- I ran -- they all ran together.

20 MR. FOX: Your Honor, I renew the objection, and ask
21 that that last response be stricken for the reasons given
22 before.

23 MR. RICHARDSON: All right.

24 THE COURT: I appreciate that, but it was not the
25 Solicitor's question that got the answer, so I'm going to

1 allow the answer.

2 Q. You've got a lot of convictions for selling or having
3 drugs, and driving under suspension.

4 A. Yes sir.

5 Q. Okay. And you -- did you know that Andy sold drugs
6 from the Suggs location?

7 A. Yes sir.

8 Q. Did you ever sell any drugs from that house?

9 A. No sir.

10 Q. Okay. Did you know what could happen to you for a
11 second or third offense distribution?

12 A. Yes sir.

13 Q. All right. But for whatever reason, you left that
14 house and you maintained contact with several different people
15 until the Conway Police told you to come in and give a
16 statement.

17 A. Yes sir.

18 Q. And some of that statement you left things out ---

19 A. Yes sir.

20 Q. ---That didn't implicate yourself or Andy.

21 A. Yes sir.

22 Q. Okay. Were you able to tell the police that you could
23 identify the Defendant if you could see a photograph of him?

24 A. Yes sir.

25 Q. And did you leave the -- that initial room to go

1 actually look at photographs?

2 A. Yes sir.

3 Q. All right. Tell the jury what happened at that point?

4 A. In the first room when they was asking me what happened
5 I told them, went through the whole story, then he said he was
6 going to get a -- some pictures for me, so we left out that
7 room to go to another one, but when he stood up he had like
8 some papers that was on the table, and he was gathering the
9 papers and I end up seeing Mr. Dukes' picture, and I told him
10 that that was the guy right there.

11 Q. All right. You told him, that's him.

12 A. Yes sir.

13 Q. Did you ever -- did you tell him, I need to look at
14 some other photographs?

15 A. No sir, cause I was a hundred percent sure who it was.

16 Q. You was a hundred percent sure.

17 A. Yes sir.

18 Q. There wasn't no doubt in your mind?

19 A. No sir.

20 Q. Because you had known him, or seen him, and knew people
21 that he had dealt with, had you not?

22 MR. FOX: Objection, Your Honor.

23 A. Yes sir.

24 THE COURT: Don't -- don't lead your witness,
25 Solicitor.

1 MR. RICHARDSON: Yes sir, Your Honor.

2 Q. You had testified that you knew some people that he
3 knew ---

4 A. Yes sir.

5 Q. ---And had seen him with those people.

6 A. Yes sir.

7 Q. Okay. So you told him you were a hundred percent sure.

8 A. Yes sir.

9 Q. And from that did you give any other statements that
10 you are aware of?

11 A. No sir.

12 Q. All right. Is there any doubt now as to the person
13 that you picked out was the one that shot Andy Gowans?

14 A. No sir.

15 Q. Any doubt in your mind that the person that you picked
16 out is the one that aimed the gun at you and tried to shoot
17 you?

18 A. None whatsoever.

19 Q. You are a hundred percent sure.

20 A. Yes sir.

21 Q. Do you see that person here today?

22 A. Yes sir.

23 Q. All right. Would you point that person out for us?

24 MR. RICHARDSON: Your Honor, let the record reflect
25 that he did point to Henry Dukes seated at the defense table.

1 Q. Any doubt in your mind that that's not the guy that
2 shot your friend.

3 A. No sir.

4 Q. You got any -- other than shooting your friend, do you
5 have any bias for or against Henry Dukes?

6 A. Now I do, that he killed my friend, but before I
7 didn't.

8 Q. Okay. I want to show you a few photographs, and ask
9 you a series of questions. Mr. Ford, I ask you what has been
10 marked as State's Exhibit Number 2, ask you if you recognize
11 that.

12 A. Yes sir.

13 Q. All right. And does that fairly and accurately depict
14 the photograph within Suggs Street?

15 A. Yes sir.

16 Q. All right. Tell the jury, if you would, what they are
17 looking at ---

18 MR. RICHARDSON: Your Honor, we would ask to move
19 State's Exhibit 2 into evidence.

20 THE COURT: Any objection?

21 MR. FOX: No, Your Honor.

22 THE COURT: All right. It's in evidence without
23 objection.

24 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
25 2.)

1 Q. Tell the jury what they are looking at in State's
2 Exhibit Number 2.

3 A. This is the hallway where I was seated, like it's a
4 chair right here. If you look it's a chair. That's where I
5 was seated at. This the T.V.. The bathroom was back here.
6 The front door is -- like, would be over here.

7 Q. Okay. So you were seated back here in a chair.

8 A. Yes sir.

9 Q. Over here is the bedroom that you ran into.

10 A. Yes sir.

11 Q. And what would have been out in this area?

12 A. The living room and the front door.

13 Q. All right. So this was your view, or Dukes' and Andy's
14 view back toward you.

15 A. Yes sir.

16 Q. Okay. Ask you, what has been marked State's Exhibit
17 Number 4, and tell me if you can recognize that photograph.

18 A. Yes sir. This is the -- where it shows more of the
19 living room, the chair and the couch.

20 Q. All right. So basically the same view, but pulled
21 back.

22 A. Yes sir.

23 Q. And that would be where someone at the front door was
24 looking back toward you.

25 A. And took, yes sir.

1 **MR. RICHARDSON:** Your Honor, we would move State's
2 Exhibit Number 4 into evidence.

3 **THE COURT:** Any objection?

4 **MR. FOX:** No, Your Honor.

5 **THE COURT:** It's in evidence without objection.

6 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
7 4.)

8 Q. That television set blocks the pathway between that
9 door.

10 A. Yes sir. You can't walk through there but you could
11 see.

12 Q. Let me ask you what's been marked as State's Exhibit
13 Number 5. Tell the jury what they are looking at. Can you --
14 -

15 A. That's the side door, the porch where the washing
16 machine and dryer, and if you go straight through that door
17 that's the kitchen.

18 Q. Okay.

19 **MR. RICHARDSON:** Your Honor, we would move State's
20 Exhibit Number 5 into evidence.

21 **THE COURT:** Any objection?

22 **MR. FOX:** No, Your Honor.

23 **THE COURT:** It's in evidence without objection.

24 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
25 5.)

1 Q. Now, Cornelius, that's not the door that ---

2 A. No sir. That's the side door.

3 Q. Okay. The side door. I show you what's been marked as
4 State's Exhibit Number 6. Would you tell us if you can
5 identify that photograph.

6 A. That's the kitchen, and that's the bedroom that I ran
7 in right there.

8 Q. Okay.

9 MR. RICHARDSON: Your Honor, we would -- the State
10 would move State's Exhibit Number 6 into evidence.

11 THE COURT: Any objection?

12 MR. FOX: No, Your Honor.

13 THE COURT: It's in evidence without objection.

14 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
15 6.)

16 Q. So, Cornelius, back over -- is the front door back this
17 way?

18 A. Yes sir, like you would come through the kitchen and go
19 around.

20 Q. Okay. And the path that Henry Dukes was taking to get
21 to you, can you describe that?

22 A. He would have been coming around, through here, into
23 the kitchen right here, cause this the hallway right here.

24 Q. Okay. And you ran in this bedroom.

25 A. Yes sir.

1 Q. All right. Is that the same path that Andy had used to
2 go open the door?

3 A. Yes sir. That's the only way you could have went,
4 because the T.V. blocking the other doorway.

5 Q. Okay. Ask you what's been marked as State's Exhibit
6 Number 3, see if you recognize that photograph.

7 A. Yes sir.

8 Q. All right. Describe, please, what that photograph
9 contains.

10 A. This is the front door right here. This is the den.
11 The living room is right here. This the den right on the side
12 of the kitchen, and this how I found him when I came around to
13 grab his phone.

14 Q. Does that photograph, State's Exhibit Number 3, fairly
15 and accurately depict the scene as it would have looked to you
16 on November 2nd, 2007?

17 A. Yes sir.

18 MR. RICHARDSON: Your Honor, the State would move
19 State's Exhibit Number 3 into evidence.

20 THE COURT: Any objection?

21 MR. FOX: No, Your Honor.

22 THE COURT: It's in evidence without objection.

23 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
24 3.)

25 Q. All right. So you say the door is visible in that

1 photograph. That's the door that was used ---

2 A. Yes sir.

3 Q. That's the door that Andy opened.

4 A. Yes sir.

5 Q. And from that, that's when he was shot and killed.

6 A. Yes sir.

7 Q. All right.

8 MR. RICHARDSON: And Your Honor, while we are at it,
9 I'll go ahead and move in, for stipulation, what we had talked
10 about earlier, just in case Mr. Fox does want to use this to
11 question.

12 THE COURT: All right.

13 MR. RICHARDSON: I'll move in, or ask the Court to move
14 in Court's Exhibit Number 1.

15 THE COURT: Any objection to that?

16 MR. FOX: Just one moment, Your Honor. I think ---
17 No, Your Honor.

18 THE COURT: All right. So that's a stipulation by both
19 parties.

20 MR. RICHARDSON: Yes sir, Your Honor.

21 THE COURT: All right. And let me see it real quick.

22 All right, Court's 1 is in evidence as a stipulation by
23 both parties.

24 (STIPULATION ADMITTED INTO EVIDENCE AS COURT'S EXHIBIT
25 NUMBER 1.)

1 Q. This is a jurisdictional question, Cornelius. This --
2 we keep talking about Suggs Street. What city is that in?

3 A. Horry -- Conway.

4 Q. Conway.

5 A. In Horry County.

6 Q. And it is in Horry County.

7 A. Yes sir.

8 Q. And that's the place that this shooting occurred.

9 A. Yes sir.

10 Q. Okay. Did you -- Cornelius, did you know where Andy
11 kept his drugs in the house?

12 A. No sir.

13 Q. All right. Do you know what kind of drugs would have
14 been in the house?

15 A. If anything it would have been crack or cocaine.

16 Q. And the marijuana that y'all were smoking.

17 A. Yes sir.

18 Q. All right. So crack cocaine. Did he ever sell powder
19 cocaine?

20 A. Sometimes.

21 Q. Okay. So it could have been powder and.

22 A. Yes sir. Yes sir.

23 Q. When you sold out of the house did you sell your
24 cocaine, or crack cocaine, or did you sell for Andy?

25 A. Mine.

1 Q. You sold yours.

2 A. Yes sir.

3 Q. So you didn't know where Andy kept his stash.

4 A. No sir.

5 Q. But you did know there would more than likely be
6 cocaine in the house.

7 A. Yes sir.

8 Q. Okay.

9 MR. RICHARDSON: I don't have any other questions at
10 this time. If you would answer any questions Mr. Fox has for
11 you.

12 A. Yes sir.

13 THE COURT: All right. Before you do that, Mr. Fox ---
14 Ladies and gentlemen, let's just take a short break for
15 about five minutes or so, and then we will come back.

16 Just leave the photographs here, please. All right.

17 Thank you very much.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY.)

20 THE COURT: Mr. Ford, you can step down, but you can't
21 talk to the Solicitor during the break, okay.

22 A. All right.

23 THE COURT: All right. Thank you. Be at ease for
24 about five minutes or so.

25 Thanks.

JURY OUT/ON RECORD

151

1 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: Juror Number 232, I believe, is the juror
4 that spoke to you. If you would ask her to come in, just that
5 one juror, please.

6 (JUROR NUMBER 232 ENTERS THE COURTROOM.)

7 THE COURT: All right. Ms. Squires, if you don't mind,
8 why don't you just come around -- that little flat thing
9 that's on top of the jury box, just stand right next to it
10 because that's a microphone and I need to hear you, okay.

11 A. Yes sir.

12 THE COURT: Great. All right. You mentioned to the
13 deputy that you recognized somebody; is that right?

14 A. Uh huh (indicating positive)

15 THE COURT: All right. Who was that?

16 A. Well, I worked with the deceased about fifteen years
17 ago, well, whenever I was nineteen, but I didn't recognize his
18 last name until I seen his twin brother enter the courtroom.

19 THE COURT: Okay. So when you saw his twin brother
20 that's when you figured out that about fifteen years ago you
21 worked with the deceased.

22 A. With Andy Gowans.

23 THE COURT: And where -- where was that?

24 A. Western Steer.

25 THE COURT: Western Steer.

1 A. Uh huh (indicating positive)

2 THE COURT: All right. Now, with that, you
3 understand -- and let me make sure you understand your job is
4 to -- as a juror, is to decide this case solely and completely
5 on the evidence you hear in this courtroom; do you understand
6 that?

7 A. Right.

8 THE COURT: All right. And you understand that any
9 past association with the victim, you have to leave that
10 completely aside; you can't let that impact your decision; you
11 can't let it enter your mind when you make your decision; it
12 can't be part of your decision in any way; you understand
13 that. Ma'am.

14 A. Yes sir.

15 THE COURT: All right. Have you mentioned this to any
16 of the other jurors?

17 A. No sir.

18 THE COURT: All right. You understand that you can't
19 mention it to any other jurors when there is a discussion
20 about this case; it's only on what -- the facts and evidence
21 in this courtroom, whether you have that past association or
22 not, that's not part of this case, and you can't talk to them
23 about it; you understand that.

24 A. Yes sir.

25 THE COURT: All right. Understanding your job as a

1 juror, and your duties, my question to you is, can you still
2 give to the State and to the Defendant a fair and impartial
3 trial, that is, be a fair and impartial juror in this case,
4 and not let that past association affect your decision in any
5 way?

6 A. Yes sir.

7 **THE COURT:** All right. Thank you, Ma'am.

8 Deputy, if you don't mind, just -- with Ms. Squires,
9 y'all stand in the hallway for just a second before she goes
10 back in and I'll let you know. Okay.

11 Thank you.

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JUROR AND THE REMAINING JURORS.)

14 **THE COURT:** All right, Solicitor, let me hear from you.

15 **MR. RICHARDSON:** Your Honor, I think she sounded very
16 sure of herself, that she could put that behind her. She
17 didn't even recognize his name, so it certainly wasn't a close
18 association. She did know him to be a twin, and -- but
19 apparently it was fifteen years ago. It was a business, I
20 believe she said the Western Sizzler or the Western Steer. I
21 don't even think there is one of those left in town.

22 When it came down to that critical Sixty-Four Thousand
23 Dollar question she said that she would have no problem
24 putting it aside. We believe she is still qualified. We've
25 asked the same question of all of them.

1 **THE COURT:** All right, sir.

2 All right, Mr. Fox, let me hear from you.

3 **MR. FOX:** Your Honor, I would request that she be
4 removed. It is informa -- and I have no doubt that she was
5 completely sincere, and that she didn't realize during, well,
6 voir dire, or during the selection process of that connection,
7 however, I do think it's information had I known during the
8 jury selection -- I don't have in front of me exactly where in
9 the order she was picked. I do know I had a strike left at
10 the end, so I would have had a strike left at the time that
11 that juror was presented, and I would have used it if I had
12 had that information.

13 Your Honor, I don't have the case at hand. I had a
14 similar situation several years ago in Georgetown, and did
15 research, and the question is not just whether or not the
16 juror can be fair and impartial, and give both sides a fair
17 trial, set asides whatever prior connection, but whether,
18 number one, their information is relevant, being one side or
19 the other would consider it important in making their
20 decision. Certainly it would have been for myself. And then
21 the other is whether the withholding of the information was
22 intentional; however the Court -- and I could find it. I
23 don't have it at the tip of my tongue, but anyway, the Court
24 in that case defines -- it's a South Carolina Supreme Court
25 case -- defined intentional as including a situation, used as

1 a term of art, including situations where it was inadvertent,
2 in other words, not deliberate, not I am going to hold this
3 fact back, but in that context included the situation where
4 the juror simply didn't know or forgot, and said that's,
5 quote, intentional, and that's grounds to have the juror
6 removed. And I could set my hands on that case back in my
7 office.

8 Thank you, Your Honor.

9 **THE COURT:** All right. I certainly believe the juror,
10 that she could be fair and impartial, but the fact of the
11 matter is, that information, if it had been known to the
12 Defense and the Prosecution, would have been important in
13 making their decisions to qualify this particular jury.

14 At the time this particular juror came to be called as a
15 potential juror Mr. Fox had two strikes left at that point in
16 time. He ended up with one strike still remaining when the
17 alternates were chosen and we went to a different selection
18 process, the one and two, so I don't think it has anything to
19 do with the availability of a strike, clearly he had them, and
20 in an abundance of caution -- again, don't -- no finding that
21 the juror did this intentionally in any way, but to make sure
22 there is a completely and totally unbiased juror I am going to
23 remove this juror for cause.

24 With that, in accordance with the -- our Code of Laws in
25 Criminal Court, Madame Clerk, what you are going to need to do

1 is take a little piece of paper and write Juror Number 59 on
2 it, and on another little piece of paper put Juror Number 320,
3 all right, and we will have you put those -- you know, fold
4 them over, put them in a -- we'll just put them in a little
5 plastic cup and you will shake that up, and by lot you will
6 draw one of the jurors, in accordance with the Code of Laws on
7 this.

8 And give me a second. And that is South Carolina Code
9 of Laws, 14-7-1340.

10 All right. Madame Clerk, did you do that?

11 **DEPUTY CLERK OF COURT:** Do it right now.

12 **THE COURT:** All right. And you've got them -- you just
13 shook it up and just picked one out. Great.

14 **DEPUTY CLERK OF COURT:** It's Juror Number 59.

15 **THE COURT:** Juror Number 59. All right. That is --
16 she has informed the Court, she goes by Kim Cannaday. That's
17 Juror Number 59.

18 All right. Can -- is Ms. Squires still in the hallway?

19 **DEPUTY:** She is, Your Honor.

20 **THE COURT:** Ask her to come in for just a second,
21 please.

22 (JUROR NUMBER 332 ENTERS THE COURTROOM AND IS EXCUSED
23 FOR CAUSE.)

24 **THE COURT:** All right. Is the State ready for the
25 jury, please?

1 MR. RICHARDSON: Yes sir.

2 THE COURT: Defense.

3 MR. FOX: Yes, Your Honor.

4 THE COURT: All right. Very good.

5 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right, Ms. Cannaday, switch seats
8 with -- and I'm sorry, I should have your name -- Ms. Simmons,
9 I'm sorry, Ms. Simmons. Y'all switch seats, please.

10 THE COURT: All right, Ms. Simmons, you remain as the
11 sole alternate in this particular case.

12 Ms. Cannaday, you are now a regular member of the jury
13 in this case. The Court has substituted you for one of the
14 other jurors, and removed that juror for reasons that are
15 unimportant at this point in time, so -- but you are now a
16 regular member of twelve -- of the jurors.

17 We will proceed on with one alternate in this particular
18 matter.

19 All right, Mr. Fox, your cross-examination, please.

20 MR. FOX: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. FOX:

22 Q. Mr. Ford, you testified when you finally went down and
23 spoke to the police -- and what time was that?

24 A. Maybe four or five, three, or four or five, somewhere
25 around there.

1 Q. Three, four or five. Okay. And what time did this
2 shooting happen?

3 A. About nine o'clock in the morning, nine.

4 Q. So between six and eight hours later you finally went
5 and spoke to the police, correct.

6 A. Yes.

7 Q. And did you, at any time between leaving Suggs Street
8 and going to the substation with your daddy, at any time
9 contact the police?

10 A. No sir.

11 Q. Now when you talked to them you spoke with Detective
12 Sean Addison, correct?

13 A. Yes sir.

14 Q. Okay. And gave him a statement. Is that -- do you
15 know whether that interview was recorded?

16 A. I couldn't tell you. I think the first one was
17 recorded. I don't know if it was video recorded or ---

18 Q. In fact, Detective Addison mentioned that to you,
19 didn't he, he was going to record this -- this conversation?

20 A. Yes sir.

21 Q. Okay. Now, so you were in a small room there at the
22 substation, correct?

23 A. Yes sir.

24 Q. And it was you and the Detective and your father,
25 right?

1 A. Yes sir.

2 Q. Kind of couple of chains and one little table in there?

3 A. Uh huh (*indicating positive*) Yes sir.

4 Q. Okay. Now, at the conclusion, as I understand, you, in

5 speaking with the Detective, you indicated that you could

6 possibly pick out a picture of the shooter, correct.

7 A. Yes sir.

8 Q. Okay. And the Detective indicated, we'll go down into

9 another room, little more comfortable, correct?

10 A. Yes.

11 Q. Okay. When was it that you then saw this picture that

12 you identified?

13 A. When he was standing up when we was moving from one

14 room to another, it was some papers on the table and ---

15 Q. I'm sorry, some papers on the table.

16 A. Yes sir.

17 Q. And that's that room you were first in.

18 A. Yes sir.

19 Q. At that point you saw a photograph that you told the

20 Detective was Henry Dukes.

21 A. Yes sir.

22 Q. Okay. Now, so you spoke to the Detective and did you

23 tell him everything you knew, everything you saw, did that

24 day?

25 A. That day, yes sir.

1 Q. The day of the shooting.

2 A. Yes sir.

3 Q. Okay. And you weren't under arrest at that time,
4 correct.

5 A. No sir.

6 Q. Okay. And as far as you knew you weren't a suspect in
7 anything.

8 A. No sir.

9 Q. Okay. In other words, they didn't have to handcuff you
10 and bring you there, right.

11 A. No sir.

12 Q. Okay. And the Detective wasn't being mean to you, or
13 threatening you, was he?

14 A. No sir.

15 Q. He gave you a chance to tell him everything you knew.

16 A. Yes sir.

17 Q. He gave you a chance to clarify everything you needed
18 to clarify.

19 A. Yes sir.

20 Q. Okay. So you weren't being pressured to give a
21 statement.

22 A. No.

23 Q. You weren't being coerced, threatened in any way.

24 A. No.

25 Q. Okay. And you had plenty of time to tell them

1 everything you needed to tell them.

2 A. Yes sir.

3 Q. Okay. Now, with regards to Mr. Dukes, you told
4 Detective Addison, did you not, that you had seen the shooter,
5 but now you didn't have a name at that time, correct.

6 A. Yes sir.

7 Q. Okay. And in fact you told the Detective, I don't know
8 the guy by name, but I've seen him, right.

9 A. Yes sir.

10 Q. And you said -- how many times have I seen him at
11 that -- when you spoke to the Detective you told him how many
12 times you had seen this person.

13 A. One time.

14 Q. One time.

15 A. Yes sir.

16 Q. All right. Now, your testimony today is you've seen
17 him two times, right.

18 A. Yes sir.

19 Q. And in fact, the Detective, on three different
20 occasions, asked you how many times you had seen -- and I'm
21 talking about this interview now, on November 2nd, the day of
22 the shooting, later in the afternoon when you went down there,
23 during that interview, the Detective asked three different
24 times, did he not, if you had seen him before, seen the
25 shooter before.

1 A. He asked me have I seen him before.

2 Q. Yes sir.

3 A. Yes sir.

4 Q. And he asked you -- three times he asked you that, not
5 one right after the other, but during the course of the
6 interview three different times that came up, you've never
7 seen him before, right, you only saw him one time before,
8 right.

9 A. I don't remember how many times he asked me.

10 Q. Okay. How about if I show you the transcript of that
11 interview with the Detective. Would that maybe refresh your
12 recollection? All right. Now look at, please, page -- well,
13 it says page four. It's actually the third page in. If you
14 look at the top, but it's actually the third page in, and the
15 first line on that page says, Detective: Okay, Mr. Muhammad -
16 - do you see that page?

17 A. Yes sir.

18 Q. Okay. On that page go down to line 24, and you tell
19 the Detective, I've seen him one time before, right.

20 A. Yes sir.

21 Q. And then you said again, one time before.

22 A. Yes sir.

23 **THE COURT:** You need to speak up, sir, please.

24 Q. And then, in that same paragraph, two more times you
25 say, only seen him one time before, is the only time I ever

1 seen him, so four times you say, only seen him once before,
2 correct.

3 A. Yes sir.

4 Q. All right. Then on the next page, line eight, the
5 Detective asked you, but you've seen him around -- you've seen
6 him around -- let's see -- but you've seen him before around
7 town. And your response was, again, one time before, one time
8 at Food Lion, that's the only time I've seen him, right.

9 A. Yes sir.

10 Q. All right. So now we are up to how many, four plus
11 three is even, correct.

12 A. If that's how many times it was you say.

13 Q. Okay. So seven times you said -- told the Detective,
14 I've only seen him once before. Now, -- and you mentioned the
15 Food Lion and nothing else, correct.

16 A. Yes sir.

17 Q. Okay. Now down on line 22 the Detective specifically
18 asked you, okay, you said you had never seen him over at that
19 house -- and you were talking about Suggs Street, correct.

20 A. Yes sir.

21 Q. Okay. And the Detective specifically asked you, did he
22 not, whether you had ever seen the shooter over at Suggs
23 Street, and what did you tell him?

24 A. No.

25 Q. Okay. All right, now, today you say you didn't really

1 want to implicate yourself, is the reason you didn't say
2 anything about seeing the person there before, seeing, as you
3 say, Mr. Dukes at that house, is because maybe there were
4 drugs involved and you didn't wish to implicate yourself,
5 right.

6 A. Yes sir.

7 Q. Okay. And because you've got a record you are facing
8 enhanced penalties if you ever get convicted of any drug
9 offenses again, right.

10 A. Yes.

11 Q. Your lawyer before probably covered that with you back
12 in 2000, correct?

13 A. I didn't hear you.

14 Q. Said your lawyer, back in 2000, when you were in court,
15 probably explained to you what happens if you keep getting
16 drug convictions, correct.

17 A. Yes.

18 Q. The penalties go up, right.

19 A. Yes.

20 Q. Okay. So you say today, I didn't want to implicate
21 myself, but the Detective specifically told you at some point,
22 did he not, Detective Addison again, didn't he tell you, look,
23 I don't care what was going on over there. Didn't he tell you
24 that?

25 A. I don't remember.

1 Q. All right.

2 A. That day I was panicking. I was -- my best friend just
3 got shot, so I can't tell you exactly what he said.

4 Q. Well, let's look at the transcript. Okay. Look on,
5 again, the third page in. It says page four at the top, the
6 third one in. Okay. Again, that's the one that starts, okay,
7 and Mr. Muhammad at the top.

8 A. Uh huh (*indicating positive*)

9 Q. Okay.

10 **THE COURT:** You need to answer yes or no, please sir.

11 A. Yes.

12 Q. Down on line eleven the Detective mentioned to you,
13 said well you told -- speaking to you -- you told your dad
14 there was a robbery and you were there. You say, yeah, right.

15 A. Yes.

16 Q. On line fifteen the Detective says to you, does he not,
17 you didn't tell us that, but you are in no trouble, okay,
18 let's get focused on who this guy is.

19 So the Detective did tell you he wasn't worried about
20 anything that was going on in terms of selling drugs at Suggs
21 Street, didn't he?

22 A. Yes sir.

23 Q. Okay. And you still didn't mention, at any time during
24 that interview, that the shooter, who you later identified as
25 Mr. Dukes, had ever been to that house, did you?

- 1 A. No.
- 2 Q. Now, do you live at that house or just stay at that
3 house, Suggs Street address?
- 4 A. I was staying over there a couple of nights.
- 5 Q. Okay. So you pretty much stay there when you care to.
6 And was that something you did frequently?
- 7 A. Sir?
- 8 Q. Is that something you did frequently, would kind of
9 stay for a while, or come and go as you wanted?
- 10 A. Not -- Andy's brother was incarcerated at the time, and
11 he wanted me to stay there with him while he was -- so he
12 wouldn't be there by himself.
- 13 Q. Okay. So you wouldn't describe yourself as living at
14 that address.
- 15 A. No sir.
- 16 Q. Okay. But you were there the pre -- the night before.
- 17 A. Yes sir.
- 18 Q. Okay. Spent the night.
- 19 A. Yes sir.
- 20 Q. Got up in the morning. You say you heard Andy at some
21 point -- well, when? You say at six you woke up. When did
22 you get out of bed?
- 23 A. I know I laid there for about a hour or two, maybe.
- 24 Q. Okay.
- 25 A. I just couldn't fall back to sleep so I went ahead and

1 got up.

2 Q. Okay. How soon after you got up did y'all start
3 smoking pot?

4 A. Oh, I never hit the joint because he had just lit up
5 before this happened.

6 Q. Okay. So you didn't smoke any weed that day?

7 A. No sir.

8 Q. There was weed in there, and you just managed -- you
9 resisted. All right, now, when the person came in -- what
10 does it mean? It says the person said, "give it up". What
11 does that mean to you?

12 A. Give it up.

13 Q. I know, but what does that mean to you if someone says
14 that to you?

15 A. Robbery.

16 Q. Robbery. Okay. But you say you saw this thing and you
17 never -- whole event, didn't see whoever shot Andy take
18 anything from Andy, did you?

19 A. No sir.

20 Q. Didn't see him run through, take anything, start
21 looking in the house for weapons or ---

22 A. I can't say if he took nothing off Andy or not, because
23 like I say, the wall was right there, and I was just out of
24 the room.

25 Q. Does Andy usually keep money on him to help with his

1 business, with his drug dealing, keep change, collect money
2 for the sales?

3 A. I don't know what he's got in his pocket.

4 Q. Okay. But you've been a drug dealer, and you know Andy
5 is a drug dealer. Would that be typically, for a dealer to
6 keep some cash on hand, or to have cash because they are
7 making sales?

8 A. Everybody different.

9 Q. Everybody's different. Okay. Should have been some in
10 the house though, right, and you have to have a supply of
11 drugs in the house also, wouldn't you, to sell? You've
12 testified he was a drug dealer, right?

13 A. Yes.

14 Q. Okay. So logic says, fair to assume, drugs in the
15 house, right?

16 A. We ain't dealing with logic; we are dealing with
17 reality.

18 Q. I'm sorry.

19 A. We are dealing with reality.

20 Q. You didn't sell out of that house?

21 A. I said I have.

22 Q. Okay. And didn't Andy sell out of that house?

23 A. Yes.

24 Q. Okay. People came to the house, they called up and
25 they came to the house, right.

1 A. Yes.

2 Q. Okay. So if they come to the house to buy drugs they
3 expect drugs to be there, and he can't be a successful drug
4 dealer if he don't have drugs to sell people at the house
5 though, can he?

6 A. Everybody run their business different.

7 Q. Well, what would happen if people came to the house
8 looking for drugs and he had none to sell? He wouldn't be in
9 business very long, would he?

10 A. I guess not.

11 Q. Okay. Now, this person fired how many shots?

12 A. Two.

13 Q. Okay. And tried to fire the gun again at you, correct?

14 A. Yes.

15 Q. Click. Click. All right. And where did you hide or
16 protect yourself?

17 A. Inside the room.

18 Q. Okay. With a mattress.

19 A. It's a bed in there, yes.

20 Q. Okay. So you were just, what, out in the room?

21 A. Out in the room. I was in the room by the bed, lifting
22 the mattress up.

23 Q. Okay. In the room, by the bed, lifting the mattress
24 up.

25 A. Uh huh (indicating positive)

1 Q. Okay. Now, when you spoke to Detective Addison what
2 did you tell him; do you remember?

3 A. No sir. I remember telling him exactly what I'm
4 telling you.

5 Q. You remember telling him exactly what you told me. All
6 right. Let's go back to that transcript. Let's look at the
7 second page, and look at the first paragraph. Does it not
8 describe the shots and what happened, starting at line
9 eighteen? Did you not tell the Detective, I'm right there; he
10 pointed the gun at me, correct. Is that what you told the
11 Detective, he pointed a gun at me, click, click, he ran out, I
12 jumped, right.

13 A. Uh huh (indicating positive)

14 THE COURT: You need to answer yes or no, sir, please.

15 A. Yes.

16 MR. FOX: Thank you.

17 Q. And then you told the Detective, that's why the closet
18 is open. I was inside the closet, the closet inside the room
19 over there; I was inside that closet right there, that's why
20 the closet door was open.

21 A. I opened the closet.

22 Q. And you also said, did you not, I was inside that
23 closet right there?

24 A. Yes sir.

25 Q. Any mention of a mattress?

1 A. No sir.

2 Q. Now, how long did you stay in that room?

3 A. Maybe a couple of second, maybe a minute or two,
4 because I didn't even know if he was gone or not.

5 Q. All right. Didn't know if he was gone. Could you hear
6 him anymore?

7 A. No.

8 Q. Okay. So at some point you decided to come out from
9 under the mattress, right?

10 A. Huh?

11 Q. At some point you decide to come out from the bedroom,
12 correct?

13 A. Yes sir.

14 Q. Okay. What did you do then?

15 A. I walked around to Andy where he was laying on the
16 floor, and that's when I picked the phone up.

17 Q. Okay. What was Andy doing then?

18 A. He was just laying there.

19 Q. Just laying there. All right. Did you lean down and
20 check his pulse?

21 A. No sir. I don't know nothing about that.

22 Q. Well, did you check to see if he was breathing, trying
23 to rouse him, anything?

24 A. No sir.

25 Q. Okay. But you got his phone.

- 1 A. Yes sir.
- 2 Q. Did what?
- 3 A. Called 911. I don't know if I called 911 off his phone
- 4 or my phone.
- 5 Q. Okay. And did you stay on the phone with 911?
- 6 A. As far as I remember, yes sir.
- 7 Q. As far as you remember. Now, did you call anybody
- 8 else?
- 9 A. Yes sir.
- 10 Q. Who was that?
- 11 A. My father.
- 12 Q. Okay. Why did you call your father?
- 13 A. Why?
- 14 Q. Yes.
- 15 A. To call my father. I mean, my best friend just got
- 16 shot, so he's about the closest person I'm thinking about
- 17 calling.
- 18 Q. And how long did you stay on the phone with your dad?
- 19 A. I don't remember.
- 20 Q. Okay. And what did you do after you got off the phone
- 21 with him?
- 22 A. I waited for him to come.
- 23 Q. Okay. Did he get there first?
- 24 A. Yes sir.
- 25 Q. Okay. Did he do anything then?

- 1 A. When he came in the door I was standing at the door.
2 He came in and he walked over to Andy's body, and he told me -
3 - he advised me to step outside.
- 4 Q. Okay. So did you?
- 5 A. Yes sir.
- 6 Q. What did you do then?
- 7 A. I walked outside, I walked around the yard for maybe a
8 couple of seconds and then jumped in the car and left.
- 9 Q. Had the police arrived yet?
- 10 A. No sir.
- 11 Q. Had an ambulance arrived yet?
- 12 A. No sir.
- 13 Q. All right. Anybody else in the house with you and Andy
14 when this person busted in and shot him?
- 15 A. No sir.
- 16 Q. All right. So when Andy, at least wasn't moving, if
17 not dead at that point, correct.
- 18 A. Yes sir.
- 19 Q. Okay. So you were the only witness still standing,
20 right.
- 21 A. Yes sir.
- 22 Q. Okay. But you didn't wait for the police?
- 23 A. No sir.
- 24 Q. You didn't wait for the ambulance.
- 25 A. Right when I was leaving, when I turned on Sixteenth

1 Avenue the ambulance was turning down Suggs Street.

2 Q. Okay. Did you think the police would be coming?

3 A. Yes sir.

4 Q. Okay. But you left anyway?

5 A. Yes sir.

6 Q. Where did you go?

7 A. At home.

8 Q. Home where?

9 A. On Dongola Highway.

10 Q. Dongola Highway. Whose at that house?

11 A. Who was there?

12 Q. Yes.

13 A. Me.

14 Q. Anybody else when you got there?

15 A. No sir.

16 Q. How long did it take you to get over there?

17 A. Maybe ten minutes, seven or eight, ten minutes,

18 something like that.

19 Q. Do you have a cell phone?

20 A. Yes sir.

21 Q. Did you own one then?

22 A. Yes sir.

23 Q. Okay. And it was working, paid up, all that good

24 stuff.

25 A. Yes sir.

1 Q. Okay. Did you call the police when you got to your
2 home?

3 A. No sir.

4 Q. All right. Did you ever call the police?

5 A. No sir.

6 Q. Didn't you think it might be important; didn't you
7 think the police may want to know that, not only did you
8 witness this, so they would know how Andy died, but who may
9 have done it?

10 A. Yes sir.

11 Q. But you didn't call anybody.

12 A. No. My father was in contact with the police cause he
13 was still over there, and he advised me that he was going to
14 take me down there.

15 Q. Well, when was that?

16 A. When was what?

17 Q. Your father advised you he was going to take you to the
18 substation.

19 A. When he was still on Suggs Street.

20 Q. But he was -- he's still on Suggs Street. Did you ever
21 call your dad back and, say, wait, when are we going, because
22 Suggs Street was what, ten o'clock in the morning?

23 A. Yes sir.

24 Q. All right. And you didn't go down to the police
25 station till three, four or five, sometime?

1 A. Yes.

2 Q. At no time in between did you contact anybody with
3 information you had.

4 A. I mean, I was talking to some of his family members a
5 couple of times. I kept telling them I know who did it, but I
6 didn't know his name.

7 Q. So this is your best friend; you've known this man for
8 fifteen, sixteen years; he's like a brother to you ---

9 A. Yes.

10 Q. ---But you didn't take the time to inform the
11 authorities what you knew about his death.

12 A. At that time, no.

13 Q. Now, there's no question in your mind with -- with
14 regards to the photographs that you saw, that these
15 photographs were either laying there, or fell out of the
16 folder, were loose in the folder that you just saw, I mean,
17 that's -- that's how it happened, right.

18 A. Yes sir. See, what it was was, when I talked to his
19 cousin I told her that the guy was with Stank, so somehow
20 another they went to Stank house that morning, and I think
21 that's how they had the mug shot pictures, I guess.

22 Q. Well I'm just -- I want to know -- and I'll ask you
23 about that in a minute. What I'm specifically asking right
24 now is, that it wasn't the case -- you and the Detective
25 talked about he was going to bring you some books or something

1 they had people can flip through and see if you recognize
2 since you didn't have a name, but you never got to that point,
3 right?

4 A. Yes.

5 Q. Okay. And in fact, as y'all stood up to leave there
6 was, what -- say this is a table -- there was a table with
7 drawers on one side, and the Detective either left or, you
8 know, stood up and the folder was open, anyway, you could see
9 photographs either in or next to the folder; is that right?

10 A. Yes.

11 Q. Just kind of sitting -- he never said -- showed you
12 anything, you just said ---

13 A. No.

14 Q. ---Hey, wait, here he is, right?

15 A. Yes.

16 Q. Now, you testified about Ronnie Atkinson -- you know
17 who Ronnie Atkinson is, right?

18 A. Yes.

19 Q. You know him by sight?

20 A. Yes.

21 Q. Okay. What about Ronnie Wilson? Do you know a guy
22 named Ronnie Wilson?

23 A. No. I might know his face, but I don't know him by the
24 name.

25 Q. Okay. Do you know Stank's dad?

1 A. No. I don't know him personally.

2 Q. Now, you said the reason you remember -- the first time
3 you saw Mr. Dukes, and the reason that stuck in your mind,
4 Food Lion in Conway is the first time you saw him.

5 A. Yes.

6 Q. And that stuck in your mind cause he was with Stank,
7 with Ronnie Atkinson, right?

8 A. Yes.

9 Q. Didn't mention that to the Detective -- and that put
10 you, as you put it, on your P's and Q's; that got your
11 antennae up, right?

12 A. Yes.

13 Q. But you never mentioned that to Detective Addison.

14 A. I don't remember.

15 Q. And your testimony today was that -- was it not, that
16 you found out that Andy was actually dead from, was it your
17 girlfriend?

18 A. No. She weren't my girlfriend at that time.

19 Q. Okay. But it was his cousin, correct?

20 A. Yes.

21 Q. And that's the only thing you knew, I mean you dated
22 her. Did you date her before?

23 A. Yes.

24 Q. But that's who told you he was dead, right?

25 A. Yes.

1 Q. And you also told Detective Addison, on the day of the
2 shooting, when you finally went down and met up with him, you
3 told him that you had just been there a few minutes before,
4 and when trying to explain why you panicked you told the
5 Detective that you had been there just about fifteen minutes
6 before the shooting occurred, did you not?

7 A. Before the shooting occurred.

8 Q. Excuse me.

9 A. What you say?

10 A. You told Detective Addison, who was the officer you
11 spoke to at the substation, in your interview with him, you
12 told him one reason you panicked was because, I was just there
13 for fifteen minutes and didn't know what's going on. Isn't
14 that what you told the Detective?

15 A. No. I don't remember that. I must say I -- meant to
16 say I just got up fifteen minutes.

17 Q. Okay. But what you -- you might want to look again.
18 That's on the second page, in that transcript on the second
19 page, on line twenty-six. Do you see that?

20 A. The second page.

21 Q. On the second -- it says page three up in the corner
22 because the -- after the first line on that page it says, it
23 says, Ford: No, he was at the front door. Do you see that,
24 at the top of the page.

25 A. Yeah.

1 Q. Okay. On that same page, down at line twenty-six.

2 Right. Follow me.

3 A. Yes.

4 Q. All right. Halfway down that line do you see where it
5 says, my parents.

6 A. Yes.

7 Q. All right. What did you tell the Detective after my
8 parents? What was next?

9 A. I was just over there fifteen minutes and I don't know
10 what's going on.

11 Q. Okay. Not I spent the night, just woke up, but I was
12 there fifteen minutes, right.

13 A. Yes.

14 Q. Okay.

15 MR. FOX: All right. Your Honor, we need -- may I
16 approach?

17 THE COURT: Yes sir.

18 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

19 THE COURT: Mr. Fox, you need about five minutes to get
20 that set up then.

21 MR. FOX: I think at most, Your Honor.

22 THE COURT: All right. Very good.

23 All right, ladies and gentlemen, why don't you go to
24 your jury room for about five minutes, so that they can set up
25 some equipment, please. Thank you.

1 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
2 PRESENCE OF THE JURY.)

3 THE COURT: All right, Mr. Fox, you may proceed, sir.

4 BY MR. FOX CONTINUED:

5 Q. Mr. Ford, can you see that screen all right?

6 A. Yes.

7 Q. Okay. Now, I remind you, we were talking about -- do
8 you recognize that setting? Do you recognize who is in that
9 pic -- in that frame?

10 A. Yes.

11 Q. All right. Who is that?

12 A. Me and my father.

13 Q. Okay. And can you tell where that is showing?

14 A. Yes. That's at the substation.

15 Q. Okay. Is that the room where you had the interview
16 with Detective Addison?

17 A. Yes.

18 Q. Okay. Now, you testified that the way you identified
19 these photos was, at some point you finished the interview,
20 you and Detective had discussed going down the hall to another
21 room, or not going down the hall, but going to another room
22 that he said would be a little bit more comfortable, or just
23 be a better place for you to look through these books,
24 correct.

25 A. Yes.

1 Q. Okay. And then you all get up. You saw -- as he got
2 up you saw the pictures fall out, or be out of the folder he
3 had, correct.

4 A. Yes.

5 Q. Do you know what that sound was at the end there of
6 that clip?

7 A. No.

8 Q. Did you ever go back in that room after that?

9 A. No sir.

10 Q. Mr. Ford, do you have any charges pending in Horry
11 County, Fifteenth Circuit Solicitor's Office?

12 A. Yes.

13 Q. And those charges -- you are out on bond on those
14 charges now?

15 A. Yes.

16 Q. Okay. So they haven't been resolved yet?

17 A. No sir.

18 MR. FOX: Thank you. No further questions.

19 THE COURT: Redirect.

20 MR. RICHARDSON: Yes sir, Your Honor.

21 THE COURT: All right.

22 MR. RICHARDSON: If it please the Court.

23 REDIRECT-EXAMINATION BY MR. RICHARDSON;

24 Q. Cornelius, was -- did you change clothes, or are those
25 the same clothes you had on at Suggs Street?

- 1 A. That's the same clothes.
- 2 Q. All right. How about your dad; do you recognize the
3 same clothes?
- 4 A. I can't be honest.
- 5 Q. Okay. And Mr. Fox asked you a couple of questions with
6 regard to page three, about you being in trouble with the
7 police officers, but you are in no trouble, okay; let's get
8 focused on who this guy is.
- 9 A. Yes.
- 10 Q. All right. And you told him, I know exactly who he is.
- 11 A. Yes.
- 12 Q. I know how he looks, no if, ands, buts about it.
- 13 A. Yes.
- 14 Q. And you begged them several times to show me a picture.
- 15 A. Yes.
- 16 Q. Throughout it you didn't -- it wasn't like you didn't
17 know who he was, or what he looked like, it was just putting a
18 name with a face.
- 19 A. Yes sir.
- 20 Q. And later on, when you are still talking to them,
21 asking for a photograph, you said, he's got a big mouth ---
- 22 A. Yes.
- 23 Q. ---Big mouth and a big grin.
- 24 A. Yes.
- 25 Q. You said he's dark.

1 A. Yes.

2 Q. Stocky.

3 A. Yes sir.

4 Q. Little -- just a little bit taller than you?

5 A. Yes sir.

6 Q. And you said, if you show me a picture I'll tell you

7 exactly who he is.

8 A. Yes sir.

9 Q. And at some point you saw a photograph of him.

10 A. Yes sir.

11 Q. Was there any doubt in your mind then?

12 A. No sir.

13 Q. Did you know his name at that point ---

14 A. No sir.

15 Q. ---When you saw the photograph?

16 A. No sir.

17 Q. Is there any doubt but that that person in the

18 photograph was the shooter?

19 A. No sir.

20 Q. And is there any doubt in your mind that that -- Henry

21 Dukes isn't the one that shot Andy Gowans?

22 A. No sir.

23 Q. Did Sean Addison, or anyone else, tell you, this is the

24 person that we need?

25 A. No sir.

1 Q. Anybody point out Dukes to you?

2 A. No sir.

3 Q. Even before he had the photographs you told him he had
4 a big mouth.

5 A. Yes sir.

6 Q. Dark skin.

7 A. Yes sir.

8 Q. Approximate size.

9 A. Yes sir.

10 Q. Approximate age. And you told him I -- if you show me
11 a picture I'll tell you that's who the person is.

12 A. Yes sir.

13 Q. And regarding your pending charges, have you talked
14 about those charges with me, or anyone else in this office as
15 it related to this case?

16 A. No sir.

17 Q. Anybody promise you any help on any of those charges?

18 A. No sir.

19 Q. Let me ask you, were those charges pending back in
20 2007?

21 A. No sir.

22 Q. So when you went to the police and told them, I know
23 exactly who he is; I can't tell you his name, but I know
24 exactly who it is, anything to do with those charges that
25 caused you to do that?

1 A. No sir.

2 Q. What about now; do you have a job?

3 A. Yes sir.

4 Q. And where is that?

5 A. At Wal-Mart.

6 Q. Wal-Mart. how long have you been at Wal-Mart?

7 A. About two months now.

8 Q. Two months. Okay. You -- you've cleaned up. You've

9 got a job now.

10 A. Yes sir.

11 Q. At the time, no doubt about it, you didn't tell Sean

12 Addison everything about this case ---

13 A. Yes sir.

14 Q. ---Like how many times you had seen him in the past.

15 A. Yes sir. I told him one time, but it really was twice.

16 Q. Right. And actually, if you count the time that you

17 saw him at the shooting, it would have been three times.

18 A. Yes, it would have been a third time.

19 Q. All right. And you knew who he was by who he hung

20 around also?

21 A. Yes sir.

22 Q. But no doubt you -- back in 2007 you didn't have these

23 charges pending against you, but you had two priors for drugs.

24 A. Yes sir.

25 Q. And you knew that drugs were in that house.

1 A. Yes sir.

2 Q. Have you ever been charged in charges where someone
3 else was a co-defendant, in other words, charged with the same
4 drugs, you and another person?

5 A. No sir.

6 Q. So all those other times it was just you with the
7 drugs.

8 A. Yes sir.

9 Q. And you know that the third offense is worse than the
10 first offense.

11 A. Yes sir.

12 Q. All right. And let me ask you, were you, in any way,
13 distrustful of the police?

14 A. Yes sir.

15 Q. Okay. Because you had been arrested by the police ---

16 A. Yes sir.

17 Q. ---Several times.

18 A. Yes sir.

19 Q. Were those the Conway Police, or some other law
20 enforcement agency?

21 A. Conway Police Department.

22 Q. Every time you got arrested it was Conway.

23 A. Yes sir.

24 Q. All right. And at some point you had spent a
25 significant time in prison because of one of those drug

1 charges, maybe both.

2 A. Yes sir.

3 Q. Okay.

4 MR. RICHARDSON: I have no further questions.

5 Your Honor, I would ask that he be released from his
6 Subpoena.

7 THE COURT: All right. Well, let me ask Mr. Fox.

8 On those questions just asked by the Solicitor, do you
9 have any questions?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right. Do you have any objection to
12 the defendant -- I'm sorry -- the -- Mr. Ford being released
13 from his Subpoena in this matter?

14 MR. FOX: Yes, Your Honor. I don't anticipate but it's
15 possible we would need to -- depending on the development of
16 the case we may need him.

17 THE COURT: All right, sir.

18 Mr. Ford, you are free to go. You remain under
19 subpoena, and you might be called back, but you are free to go
20 at this time. Okay.

21 A. Okay.

22 THE COURT: Thank you very much.

23 MR. RICHARDSON: Your Honor, one other question, just
24 to make sure. I've ---

25 THE COURT: Go ahead.

1 **MR. RICHARDSON:** Is this your same cell phone number
2 that you gave me, in case we have to get back in touch with
3 you?

4 A. 855.

5 **MR. RICHARDSON:** Yes sir.

6 A. Yes sir.

7 **MR. RICHARDSON:** Okay.

8 I've got his cell phone, Your Honor.

9 **THE COURT:** Great.

10 Thank you, sir.

11 A. All right.

12 **THE COURT:** All right. Solicitor, you indicated there
13 was a witness that you asked that we get to tonight; is that
14 correct?

15 **MR. TAYLOR:** That's correct, Your Honor. It is
16 Roderick Mishoe. He has exams tomorrow and ---

17 **THE COURT:** All right, sir.

18 **MR. TAYLOR:** Should be very quick, Your Honor.

19 **THE COURT:** Let's call him then, please.

20 **MR. TAYLOR:** Your Honor, we would call Roderick Mishoe
21 to the stand.

22 **RODERICK MISHOE,** being first duly
23 sworn, testifies as follows:

24 **DIRECT-EXAMINATION BY MR. TAYLOR:**

25 Q. Mr. Mishoe, at the time this shooting occurred, on

1 November 2nd, 2007, where were you employed?

2 A. Conway City Police Department.

3 Q. And how long, at that time, had you been employed at
4 that department?

5 A. Three years.

6 Q. Any prior law enforcement experience prior to Conway?

7 A. No.

8 Q. No. All right. What -- where were you on the date
9 that the call came out that there had been a shooting at Suggs
10 Street?

11 A. I was on regular patrol.

12 Q. All right. And where was ---

13 **THE COURT:** You've got to speak up now. Okay.

14 **MR. TAYLOR:** Can you speak into the mike there a little
15 louder, just so the jury can hear you, as well as the Court
16 Reporter.

17 A. I was on regular patrol that day.

18 Q. All right. And whenever the call came out were you the
19 first on the scene, or what was your -- when did you show up?

20 A. I arrived on scene with my corporal, my supervisor.

21 Q. Okay. And what happened once you arrived on the scene?

22 A. We arrived on scene. I seen a gentleman standing
23 outside the build -- outside of the home. Spoke with him
24 briefly. He said what he saw inside the residence, and we
25 secured the scene, me and ---

1 Q. Who was that individual that you eventually spoke with?

2 A. Mr. Muhammad.

3 Q. Okay. Now, after speaking with Mr. Muhammad then you
4 reached the front door and went inside, what did you see?

5 A. I saw the deceased laying on the floor.

6 Q. Okay. And did you notice any other evidence that was
7 lying on the floor to your right?

8 A. There was a casing there.

9 Q. A casing?

10 A. It was a bullet casing.

11 Q. Could you explain to the jury what that casing was?

12 A. A bullet casing.

13 Q. All right. Given your experience in law enforcement
14 you were well-versed in what a casing would be. You have to
15 qualify to shoot your pistol.

16 A. Right.

17 Q. No question in your mind that that was a bullet casing
18 on the scene.

19 A. No question.

20 Q. Now ---

21 **MR. TAYLOR:** Court's indulgence, Your Honor.

22 **THE COURT:** Yes sir.

23 **MR. TAYLOR:** Your Honor, may I approach the witness?

24 **THE COURT:** Yes sir.

25 Q. Mr. Mishoe, this is a photograph taken at the scene.

1 Do you recognize this photograph?

2 A. Yes.

3 Q. And can you -- what is this doorway leading here to?

4 A. That's the front door.

5 Q. All right. And where did you find the deceased?

6 A. In between -- like right here, between the couch and
7 where the ---

8 Q. Where number three is?

9 A. Roger.

10 Q. And where did you find the bullet casing?

11 A. To the side of his body.

12 Q. Would that be over here where number five would be?

13 A. I can't say, sir.

14 MR. TAYLOR: Your Honor, I would move to introduce this
15 as a State's Exhibit.

16 THE COURT: Any objection, Mr. Fox?

17 MR. FOX: No, Your Honor.

18 THE COURT: All right. State's ---

19 MR. TAYLOR: I believe it's number two, Your Honor.

20 COURT REPORTER: Seven.

21 THE COURT: All right. State's 7 is in evidence
22 without objection.

23 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
24 7.)

25 Q. Mr. Mishoe, that casing was collected as evidence in

1 this case, correct?

2 A. Yes.

3 Q. I hand to you and have you open this box for me. What
4 is this on the front of that box?

5 A. It says, "Evidence - Do not Tamper, nine millimeter
6 Luger spent cartridge, cartridge casing", the date would be
7 11/02/07, collected by R. Diehl.

8 Q. Now, that is, in fact, the date of this incident,
9 correct?

10 A. Correct.

11 Q. Would you open that box for me?

12 A. I've got it.

13 Q. Do you recognize that?

14 A. Yes.

15 Q. What is it exactly?

16 A. It's a bullet casing.

17 MR. TAYLOR: Your Honor, this is introduced as State's
18 Number 8.

19 THE COURT: Is there any objection?

20 MR. FOX: Yes, Your Honor. I believe that was
21 collected. There's not a sufficient chain shown. It was
22 collected by another officer who hasn't testified.

23 THE COURT: All right. At this point in time just mark
24 it for State's 8 for identification.

25 (BULLET CASING MARKED STATE'S EXHIBIT NUMBER 8, FOR

1 IDENTIFICATION ONLY.)

2 MR. TAYLOR: Thank you, Your Honor.

3 Q. Now, is this the casing that you said you saw in the
4 house?

5 A. Yes.

6 Q. Okay. And it was found to the right on entry into the
7 door -- doorway?

8 A. Right.

9 Q. Do you recognize these photographs?

10 A. They are of the casing. I didn't take these myself,
11 but ---

12 Q. This was, in fact, the rug that was to the right upon
13 entering the door?

14 A. That's right.

15 Q. And Number 5 there is consistent with the prior picture
16 that you saw with the casing laying on the floor?

17 A. That's right.

18 MR. TAYLOR: Your Honor, I would introduce these as
19 State's, I believe it's 8, 9, and 10.

20 THE COURT: All right. Is there any objection to -- it
21 would have to be ---

22 MR. TAYLOR: Excuse me, Your Honor. It's 9, 10 and 11.

23 THE COURT: ---Nine, ten and eleven.

24 Mr. Fox.

25 MR. FOX: No, Your Honor.

1 THE COURT: State's ---

2 COURT REPORTER: 9, 10 and 11.

3 THE COURT: All right. State's 9, 10 and 11 are in
4 evidence without objection.

5 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBITS 9, 10
6 AND 11.)

7 Q. Mr. Mishoe, was there any other evidence, or anything
8 else of interest that was found inside the home, anything
9 illegal?

10 A. There was a brown bag with crack cocaine in it.

11 Q. All right. And do you remember how big the crack
12 cocaine was?

13 A. I don't know the exact size of it, but it a rather
14 large size.

15 Q. Was it what is commonly referred to as a cookie?

16 A. As a -- as a cookie, yes.

17 Q. Although you may not remember the exact weight of it,
18 do you remember the size of it? Could you -- in your own
19 words, what you recall it being?

20 A. Probably about this big. (indicating)

21 Q. How thick was it?

22 A. I can't remember the thickness of it.

23 Q. All right. An estimate.

24 A. I can't -- I can't tell you the thickness of it.

25 Q. All right. And where was this crack cookie found?

1 A. Another officer found it, but he told me it was found
2 in the restroom.

3 Q. All right. And you actually saw it with your own eyes?

4 A. Yes, he brought it out to me.

5 Q. How many officers -- throughout the course of this
6 investigation how many officers do you believe were on the
7 scene, estimate?

8 A. Probably about eight, between eight and ten.

9 Q. Okay. How about EMS workers?

10 A. Three to four.

11 Q. Okay. Is it safe to say the scene was a madhouse,
12 everybody coming and going, trying to save Mr. Gowans?

13 A. Yes.

14 Q. Okay. At what point in time did you have occasion to
15 start taking witnesses' statements from anybody?

16 A. I can't remember taking witness statements from anyone.

17 Q. Okay.

18 MR. TAYLOR: Court's indulgence, Your Honor.

19 THE COURT: Yes sir.

20 Q. Mr. Mishoe, I just have one final -- the casing that
21 you observed, and you observed on the floor, you observed it
22 to be a nine millimeter casing?

23 A. I didn't pick it up to look, to see if it was a nine
24 millimeter casing or not.

25 Q. Okay. But the casing that was collected, this was the

1 casing that you saw on the floor?

2 A. Yes.

3 Q. All right. Which was read out to you -- that you read
4 out as being a nine millimeter Luger.

5 A. Nine millimeter casing, yes.

6 Q. Okay. And you looked at the casing that was inside
7 here?

8 A. Yes.

9 Q. Okay.

10 A. I didn't pick it over and look at it, but ---

11 Q. Do you recognize what caliber that would be by looking
12 at it?

13 A. Say it's nine millimeter.

14 Q. Do you recognize just by looking at that that would be
15 consistent with the size of a nine millimeter casing?

16 A. Yes.

17 Q. Forty caliber would be a little fatter?

18 A. A little fatter.

19 MR. TAYLOR: Your Honor, that's all the questions I
20 have.

21 THE COURT: Cross-examination.

22 MR. FOX: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. FOX:

24 Q. Were you the first patrol vehicle -- first officer on
25 the scene?

- 1 A. Myself and my corporal.
- 2 Q. And who is your corporal?
- 3 A. Corporal James Rhodes.
- 4 Q. Okay. And afterwards other patrol cars and EMS
- 5 arrived?
- 6 A. Yes.
- 7 Q. Okay. And you -- when you got there you said there was
- 8 a gentleman outside the house?
- 9 A. Yes.
- 10 Q. And that turned out to be Mr. Muhammad?
- 11 A. Yes.
- 12 Q. Okay. And you spoke to Mr. Muhammad?
- 13 A. I didn't physically speak to him myself.
- 14 Q. Could you hear what ---
- 15 A. Yes. He was -- he was upset.
- 16 Q. Okay. Did you go -- and you went on inside? He showed
- 17 you all inside the house and what you found inside, the body?
- 18 A. Yes.
- 19 Q. Okay. At any time did he mention that anyone was in
- 20 the house when the shooting occurred?
- 21 A. I can't remember.
- 22 Q. Did you see, when you arrived -- other than other
- 23 police officers and EMS workers did you see anyone else at the
- 24 scene, besides Mr. Muhammad?
- 25 A. I can't remember.

- 1 Q. Okay. Didn't speak to anybody else, did you?
- 2 A. No, I didn't.
- 3 Q. How long were you there on Suggs Street?
- 4 A. Total time?
- 5 Q. Yes.
- 6 A. Probably an hour, an hour and a half.
- 7 Q. Okay. Did you speak to anybody else other than police
- 8 officers, EMS, official responders, that sort of people, speak
- 9 to any other -- anybody else?
- 10 A. No, I didn't.
- 11 Q. Okay. Anybody come up to you and try to speak to you?
- 12 A. No sir. No.
- 13 Q. Okay. So you went in, saw that there was a body, could
- 14 fairly immediately see a shell casing on the floor, correct?
- 15 A. Yes.
- 16 Q. And to clarify, the shell casing is not the actual
- 17 bullet, right?
- 18 A. Right.
- 19 Q. The bullet is in the casing. When the gun is fired the
- 20 bullet goes toward the target, the casing -- depending on the
- 21 gun, but the casing falls by the wayside, correct?
- 22 A. Right.
- 23 Q. So one bullet, one casing, right?
- 24 A. Right.
- 25 Q. And you found how many casings?

- 1 A. One.
- 2 Q. One.
- 3 A. One.
- 4 Q. Okay. And did you walk around the house a little bit?
- 5 A. I generally stayed in the -- in the general area where
- 6 the body was. My -- I let my supervisor -- he did a lot of
- 7 walking himself.
- 8 Q. I'm sorry. I didn't mean to cut you off. So you
- 9 stayed near the area of the body?
- 10 A. In the general area.
- 11 Q. Near the front door?
- 12 A. Near the front, the front area, yes.
- 13 Q. Sort of two rooms that kind of come together there.
- 14 A. Yes.
- 15 Q. He was lying in between ---
- 16 A. Yes.
- 17 Q. ---The doorway of those two rooms. Could you kind of -
- 18 - in standing next to the body could you see pretty well into
- 19 those rooms?
- 20 A. Yes. Well, in that general area, yes.
- 21 Q. Right. You couldn't see all the way to the back of the
- 22 house, through the back rooms, but ---
- 23 A. No.
- 24 Q. ---Nothing else caught your eye?
- 25 A. Right.

1 Q. I know you don't know the actual weight, you didn't
2 collect, but you did see this crack cookie?

3 A. Right.

4 Q. During your time in law enforcement have you ever
5 arrested people -- what does a typical street sale involve?
6 What amount, or what dollar amount of crack is typically
7 involved?

8 A. For that size of a cookie?

9 Q. Well, just in your experience ---

10 A. Yes.

11 Q. ---Your typical -- someone goes out and even if they
12 are a crack user, they go to buy their hit for that evening,
13 don't they typically buy a Twenty Dollar amount, Twenty Dollar
14 rock?

15 A. About a Twenty, Twenty or Forty.

16 Q. And that's -- a Twenty is what, the size maybe of your
17 thumbnail, maybe?

18 A. Pinkie nail.

19 Q. Pinkie nail.

20 A. Yes.

21 Q. Okay. And then a forty, obviously, maybe a thumbnail
22 bigger?

23 A. Yes.

24 Q. So a crack cookie as big as you indicated to the jury
25 would have many, many Twenty Dollar pieces in it, correct?

1 A. Sure.

2 Q. Okay.

3 MR. FOX: Thank you. No further questions.

4 THE COURT: Any redirect, Solicitor?

5 MR. TAYLOR: Couple, Your Honor.

6 REDIRECT-EXAMINATION BY MR. TAYLOR:

7 Q. You worked in law enforcement for three years you said
8 at the time of this ---

9 A. At that time, yes.

10 Q. All right. How many -- you have to shoot your pistol
11 and be qualified with it on a regular basis, correct?

12 A. Yes.

13 Q. How many pistols do you know, semi-automatic pistols,
14 that fire nine millimeters that have an ejection port on the
15 left-hand side?

16 A. I don't know much about weapons, but ---

17 Q. The only one you've ever seen ejects from the right,
18 correct?

19 A. Every one I've shot was to the right side.

20 Q. And whenever you fire a pistol ejecting it goes to the
21 right?

22 A. Right.

23 Q. Within a short distance?

24 A. True.

25 Q. Upon entering the front door you see a body to your

1 left, and you see a shell casing within close proximity to the
2 right?

3 A. Right.

4 Q. Common sense says that that shell casing had to do with
5 this murder?

6 A. Yes.

7 Q. Now, you were asked about the crack cookie, and the
8 value of it. You said a small amount, about a thumbnail, is
9 about Twenty Dollars. What do you estimate the value size of
10 this crack cookie to be?

11 A. Maybe a couple of Thousand, or more.

12 Q. That would be trafficking weight for that, correct?

13 A. Yes.

14 Q. All right. Do you know what trafficking carries?

15 A. Life time sentence.

16 Q. So it's a very serious matter regarding being charged
17 with drugs?

18 A. Yes.

19 Q. And if it was your third offense it would be even more
20 serious, correct?

21 A. Uh huh (indicating positive)

22 MR. TAYLOR: I have no further questions. Thank you.

23 A. All right.

24 THE COURT: All right. Do you wish the witness to be
25 excused?

1 I'm sorry, sir. Hold on a second.

2 MR. TAYLOR: Yes sir, Your Honor. I'm sorry.

3 THE COURT: Any objection, Mr. Fox?

4 MR. FOX: No, Your Honor.

5 THE COURT: All right, sir. You are released from your
6 Subpoena. You can go back to your regular duties, sir.

7 All right, ladies and gentlemen, we are going to stop
8 for the evening. I'm going to ask that you be back in your
9 jury room tomorrow morning at nine o'clock. We will resume
10 the trial tomorrow morning at nine A.M.

11 Now, as I told you earlier, when you go home, see your
12 husband, wife, boyfriend, girlfriend, person down the street,
13 you can't talk about this case. Unintentionally they will
14 tell you their opinion about it. They don't have one. You
15 shouldn't have one at this point in time, so, don't talk about
16 the case, don't allow anybody to talk to you about it. As I
17 told you, can't do any research on your own. You can't go and
18 ride by wherever you think the scene of the crime might have
19 occurred, or look up anything on the internet, or tweet
20 anybody about it or anything. You can't communicate with
21 anybody about this case until it is over. All right.

22 See you back tomorrow morning, nine A.M.. Thank you
23 very much.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JURY.)

1 **THE COURT:** All right, Solicitor, is there anything we
2 need to cover before we recess for the night?

3 **MR. RICHARDSON:** Not from the State, Your Honor.

4 **THE COURT:** All right, sir. And Mr. Fox?

5 **MR. FOX:** No, Your Honor.

6 **THE COURT:** All right. Very good. I'll see y'all back
7 tomorrow morning at nine o'clock then. Thank you.

8 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, AUGUST 2,
9 2011, OUTSIDE THE PRESENCE OF THE JURY.)

10 **THE COURT:** All right, Solicitor, are you ready for the
11 jury in this case?

12 **MR. RICHARDSON:** Yes sir.

13 **THE COURT:** All right. And Mr. Fox?

14 **MR. FOX:** Yes, Your Honor.

15 **THE COURT:** All right. Great.

16 Ask the jury to come in, please.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 **THE COURT:** All right. Good morning, ladies and
20 gentlemen.

21 All right, Solicitor, your next witness, please sir.

22 **MR. RICHARDSON:** Thank you, Your Honor. The State
23 would call Ashley Hardee.

24 **THE COURT:** All right, please come around to be sworn.
25 Up here, sir. Thank you.

1 ASHLEY HARDEE, being first duly
2 sworn, testifies as follows:

3 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

4 Q. Ashley, where are you employed?

5 A. Horry County Police Department.

6 Q. And what is your title there?

7 A. I'm a Detective in the Special Operations Unit.

8 Q. Okay. Detective Hardee, where were you working in
9 November, 2007?

10 A. Was assigned to the Narcotics Unit, Horry County Police
11 Department.

12 Q. All right. So you were still with Horry County ---

13 A. Yes sir.

14 Q. ---Correct? All right. Let's talk about Suggs Street,
15 1217 Suggs Street.

16 A. Yes.

17 Q. Are you aware of that area?

18 A. Yes sir.

19 Q. Were you in that area on November 2nd, 2007?

20 A. Yes sir.

21 Q. Please tell the jury what you were doing.

22 A. At that particular morning I was doing pre-op
23 surveillance for a search warrant that was going to take place
24 at that residence the next day after this incident occurred,
25 and I was taking pictures of the residence that particular

1 morning.

2 Q. And that's -- describe the house for the jury.

3 A. It was a white wooden house with fluorescent green
4 trim, with a fence around the back of it.

5 Q. All right. And what, Detective Hardee, did y'all --
6 what had y'all done to gather enough information for a search
7 warrant?

8 A. We had been buying narcotics out of that residence from
9 Andrico Gowans.

10 Q. Okay. So Andrico Gowans, or Andy Gowans had sold to --
11 was it an agent or undercover ---

12 A. We had an informant that we were using for that
13 particular residence.

14 Q. Confidential informant?

15 A. Yes sir.

16 Q. All right. And suffice it to say that if you had made
17 the raid on that day or the next day who would have been
18 arrested?

19 A. Depending who was in the residence. Probably --
20 whoever was there that particular day probably would have been
21 taken into custody for what illegal narcotics were inside the
22 residence.

23 Q. Okay. And when you say surveillance, tell the jury
24 what sort of things that you were looking for from the
25 outside.

1 A. That particular morning I was looking for points of
2 entry for us, our safest route inside of the house, taking
3 pictures of any obstacles that may be in the yard that may
4 affect us initiating a warrant that particular morning that we
5 were going to do it.

6 Q. And at some point no doubt that the search warrant was
7 eminent?

8 A. Yes sir.

9 Q. You had enough to go ahead and make whatever search,
10 and any arrest that would be incident to the search warrant?

11 A. Yes sir.

12 Q. All right. Was there a time that you found out that
13 the search warrant was moot, there was no reason to go into
14 the house?

15 A. Once I made it back to our office I started typing the
16 search warrant, and received a phone call that there had been
17 a homicide at that particular residence.

18 Q. Okay. So it was the same day that you were riding
19 through there?

20 A. Yes.

21 Q. Did you see anything? Did you see any individuals in
22 the yard or anything like that?

23 A. No. No sir.

24 Q. All right. What were you driving on that day?

25 A. I was driving a white Nissan Pathfinder, four-door.

1 Q. And someone alerted you that Andy Gowans had been
2 killed?

3 A. Yes sir.

4 Q. The only other question is, in these past buys was the
5 C.I. -- do you know what type of drug that C.I. was buying
6 from Andy Gowans?

7 A. I believe it was cocaine, and also ecstasy, and I
8 believe that one particular time we actually had two C.I.s
9 because some other buys were done. I believe some crack was
10 bought from there also.

11 Q. So at some point ecstasy, crack and cocaine were being
12 bought from the Suggs Street address?

13 A. Yes sir.

14 Q. No doubt but that it was a drug house?

15 A. Yes sir.

16 Q. All right.

17 MR. RICHARDSON: I have no further questions. If you
18 would answer any questions Mr. Fox has for you.

19 THE COURT: Cross-examination.

20 MR. FOX: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. FOX:

22 Q. Detective, what time on November 2nd were you in the
23 area of Suggs Street; do you recall?

24 A. I want to say it was around eight o'clock in the
25 morning.]

1 Q. And then how long were you in that area?

2 A. Less than five minutes.

3 Q. So just long enough to take a couple of photos of the

4 outside of the residence?

5 A. In and out, yes sir.

6 Q. Okay. Just you in the vehicle?

7 A. Yes sir.

8 Q. Okay. Observe anybody entering or leaving the

9 residence?

10 A. No sir.

11 Q. Observe anybody out on the street that time of the

12 morning?

13 A. No sir.

14 Q. Okay. Were there -- at that time you were a narcotics

15 officer. How long were you in narcotics?

16 A. I think I was going on the second year, I believe.

17 Q. In your experience -- I'm sorry. Anything else?

18 A. No sir. You asked me about anybody -- are you talking

19 about vehicles also that I might have seen in the

20 neighborhood?

21 Q. No. No. I was just asking about ---

22 A. People ---

23 Q. Now you are not in narcotics, right? You are in the --

24 -

25 A. No. I'm in narcotics.

ASHLEY HARDEE - CROSS BY FOX

211

1 Q. Oh, you are still in narcotics?

2 A. Yes sir.

3 Q. How much total do you have -- narcotics experience do
4 you have now?

5 A. Going on my sixth year.

6 Q. Okay. And during your six years doing that would you
7 say being a drug dealer is a dangerous profession?

8 A. Yes sir.

9 Q. Okay. Literally life-threatening profession at times?

10 A. Yes sir.

11 Q. Okay. Because people that deal with drugs keep --
12 drugs have value?

13 A. Correct.

14 Q. Okay. And then people who deal drugs typically have
15 money and drugs around where they are dealing from?

16 A. Yes sir.

17 Q. Anybody other than -- you specifically mentioned Andy
18 Gowans as being a target of investigation. Were there any
19 other names you had in reference to the residence on Suggs
20 Street?

21 A. No sir.

22 Q. Okay. So your target was -- would you say it was
23 targeted -- the investigation and the search warrant was
24 targeted more for Gowans or more at the residence?

25 A. Well, we had identified as -- Gowans as the target at

1 that residence, identified by an informant.

2 Q. Okay. But anybody that had been in there -- if the
3 search warrant had been able to be executed, standard
4 procedure would have been, anyone present at the time where --
5 in a house where drugs were located would have been arrested
6 at that time, correct?

7 A. Yes sir.

8 MR. FOX: Thank you. No further questions, Your Honor.

9 THE COURT: All right. Redirect?

10 MR. RICHARDSON: Just a couple, Your Honor.

11 REDIRECT-EXAMINATION BY MR. RICHARDSON:

12 Q. Detective Hardee, you said it was first thing in the
13 morning.

14 A. Yes sir.

15 Q. You don't know exactly what time?

16 A. Not exactly. Around eight o'clock, some particular
17 time around that.

18 Q. All right. Is there any particular reason that you
19 would have went out at eight o'clock in the morning?

20 A. Less traffic on the road, not many people walking
21 around. I'm trying to get as many pictures as I can get
22 without anybody seeing me.

23 MR. RICHARDSON: Okay. I think that's all I have.

24 THE COURT: Anything on those questions, Mr. Fox?

25 MR. FOX: Just one.

1 **RE CROSS-EXAMINATION BY MR. FOX:**

2 Q. Would you expect, Officer, say if you had gone as late
3 as nine o'clock that now more people are going to work, it's
4 busy around, more likely to be traffic around?

5 A. That could be possible.

6 Q. Okay. Eight o'clock is early, and most people are not
7 stirring yet.

8 A. That's right.

9 Q. Later you get -- okay. Thank you.

10 **THE COURT:** All right, sir.

11 Do you wish the witness to be excused, Solicitor?

12 **MR. RICHARDSON:** Yes sir, please.

13 **THE COURT:** Any objection?

14 **MR. FOX:** No, Your Honor.

15 **THE COURT:** All right, sir. You are released from your
16 Subpoena. You may go back to your regular duties.

17 A. Thank you, sir.

18 **THE COURT:** Next witness, please.

19 **MR. RICHARDSON:** Your Honor, the State would call
20 Sylvia Randall.

21 **THE COURT:** All right.

22 **SYLVIA RANDALL,** being first duly
23 sworn, testifies as follows:

24 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

25 Q. Ms. Randall, good morning.

1 A. Morning.

2 Q. I'm going to stand over here so that you keep your
3 voice up, and that you will look at the jury, okay.

4 A. All right, sir.

5 Q. All right. Please tell this jury where you live.

6 A. [REDACTED].

7 Q. And that is in Conway?

8 A. Yes sir.

9 Q. Were you living there back in 2007?

10 A. Yes sir.

11 Q. Who was living there with you in 2007?

12 A. It was me and my boyfriend and my son.

13 Q. All right. What's your boyfriend's name?

14 A. Renard Brown.

15 Q. Renard Brown. What about your son's name?

16 A. Ronnie Atkinson.

17 Q. All right, Ronnie, does he have a nickname?

18 A. Stank.

19 Q. What do you call him, Ms. Randall?

20 A. Stank.

21 Q. Is it okay if I call him Stank as far as I'm ---

22 A. Yes sir.

23 Q. ---Asking these questions? But his real name is Ronnie
24 Atkinson.

25 A. Yes sir.

1 Q. What's Ronnie's dad's name?

2 A. Ronnie Stephen Wilson.

3 Q. What do you call him?

4 A. Steve.

5 Q. All right. Steve Wilson?

6 A. Yes sir.

7 Q. All right. So it was you, Mr. Brown, and Ronnie
8 Atkinson, or Stank, living there in 2007?

9 A. Yes sir.

10 Q. Did there come a time in 2007 that Stank was shot?

11 A. Yes sir.

12 Q. Who shot Stank?

13 A. Curtis Scott.

14 MR. FOX: Objection, Your Honor, unless she knows
15 firsthand or witnessed it. That would be hearsay.

16 THE COURT: All right. Why don't you clarify your
17 question, Solicitor.

18 MR. RICHARDSON: I will. Thank you, Your Honor.

19 Q. Do you know who shot Stank?

20 A. Curtis Wilson -- I meant Curtis Scott.

21 Q. Are you related to Curtis Scott?

22 A. No sir.

23 Q. All right. How do you know that Curtis Scott shot
24 Stank?

25 A. Because when they came to the hospital they called me

1 and told me that Curtis Scott was the one who shot my son.

2 MR. FOX: Objection, Your Honor, hearsay.

3 THE COURT: All right. Sustained.

4 Q. Okay. Let's move on. Was your son hospitalized as a
5 result of the gunshot wound?

6 A. Yes sir.

7 Q. And what were his injuries?

8 A. He been shot four times and I forgot where.

9 Q. Did he have to have any sort of medical treatment?

10 A. Yes sir. He have a colostomy bag on his side.

11 Q. Okay. And that came from the shooting?

12 A. Yes sir.

13 Q. All right. At some point in time did you meet Henry
14 Dukes, the Defendant in this case?

15 A. I think it was like a day -- a day after Stank got out
16 of the hospital.

17 Q. Okay. So Stank stayed in the hospital for a while ---

18 A. Yes sir.

19 Q. ---From a shooting?

20 A. Yes sir.

21 Q. And then the day after he got out Henry Dukes shows up
22 where?

23 A. To my house.

24 Q. To your house?

25 A. Yes sir.

1 Q. All right. How did Henry Dukes come to show up at your
2 house?

3 A. Ronnie Wilson brought him there.

4 Q. Is that Steve?

5 A. Steve, yes.

6 Q. And that is Stank's dad?

7 A. Yes sir.

8 Q. Stank's dad brought Henry Dukes to your house the day
9 that Stank got out of the hospital?

10 A. Yes sir.

11 Q. Okay. Did Henry Dukes live with you there at Ladson
12 Street?

13 A. He didn't live in the household. He lived in the truck
14 that they came in.

15 Q. All right. So, they -- your ex-boyfriend, Steve,
16 brings Henry Dukes in a truck?

17 A. Yes sir.

18 Q. Was there some discussion of Dukes staying in the house
19 with you?

20 A. No sir.

21 Q. All right. Where was his truck in relation to your
22 house?

23 A. Parked right on the side of the house.

24 Q. Okay. So you could see the truck from your house?

25 A. Yes sir.

1 Q. All right. Did you talk with Dukes from time to time?

2 A. He have asked me did I know where a blood transfusion
3 place was at. That's about it.

4 Q. Asked you about what?

5 A. A blood trans place, where you can get blood or
6 whatever.

7 Q. Okay. All right. But most of the time he wasn't --
8 y'all didn't talk an awful lot?

9 A. No sir.

10 Q. Did he -- did he eat with you?

11 A. I have fed him.

12 Q. Okay. All right, so he shows up the day after Stank
13 gets out of the hospital, and he stays until when?

14 A. Until the police came, I reckon.

15 Q. All right. And was that on November the 2nd, 2007?

16 A. Yes sir.

17 Q. Is that the time that you are talking about the police
18 coming?

19 A. Yes sir.

20 Q. Did they arrest Henry Dukes at that time?

21 A. They woke him up out the truck and I think my son was
22 sitting on the porch, and some other guys was out there along,
23 and Steve was -- Steve was out there too, so when the cop did
24 come then he swabbed everybody ---

25 Q. Okay.

1 A. ---And then everybody had to stay there to -- on the
2 porch until the thing -- the test come back, so when it came
3 back they said everybody can go.

4 Q. All right. So Henry Dukes was not arrested?

5 A. Not at that time, no.

6 Q. All right. Did Stank go with the police officers to be
7 interviewed?

8 A. Yes sir, he did.

9 Q. All right. And approximately how long did Stank stay
10 with the Conway Police?

11 A. I'd say about an hour.

12 Q. All right. When Stank came back were you at home?

13 A. Yes sir.

14 Q. All right. Who went and got Stank from the Police
15 Department?

16 A. They called me and told me that I can come and get him.

17 Q. All right. So you went and picked up Stank?

18 A. Yes sir.

19 Q. When you came back was Henry Dukes still at your house?

20 A. No sir.

21 Q. Did you ever see Henry Dukes again?

22 A. No sir.

23 Q. All right. So Henry Dukes was gone?

24 A. Yes sir.

25 Q. All right. And he was gone on November the 2nd, 2007?

1 A. Yes sir.

2 Q. All right. Did you -- regarding a white coat, do you
3 know anything about that coat?

4 A. My son gave him the white coat because it was cold.

5 Q. All right. Your son, being Stank, gave Henry Dukes a
6 white coat?

7 A. Yes sir.

8 Q. Do you know about that white coat?

9 A. Do I know about it? What do you mean?

10 A. How many coats did your son have?

11 A. He only had two at the time.

12 Q. He had two coats.

13 A. He had the white one and he had the black one.

14 Q. All right. He gave Henry Dukes the white coat?

15 A. Yes. He gave him because it was cold, and he had the
16 black coat.

17 Q. All right. Did -- did you ever see Henry Dukes wearing
18 that coat?

19 A. Yes sir.

20 Q. Did you ever say anything to Stank about having given
21 that coat to Henry Dukes?

22 A. No sir.

23 Q. It didn't bother you that he had given Henry Dukes one
24 of his coats?

25 A. No sir.

1 Q. Okay. But no doubt about it, Henry Dukes wore a white
2 coat, and wore it fairly regularly?

3 A. Yes sir.

4 Q. Where were you working -- were you working on the day
5 of November 2nd, 2007?

6 A. No sir. I was home.

7 Q. You were home that day?

8 A. Yes sir.

9 Q. Were you working on other days around the time of 2007?

10 A. I went back to work the next day, but I was off that
11 day.

12 Q. All right. You were off that day. Where did you work?

13 A. Sea Dip Motel.

14 Q. Okay. Did you see Henry Dukes the morning of November
15 2nd, 2007?

16 A. Inside the truck sleep.

17 Q. Okay. You did see him that morning?

18 A. (NODS HEAD AFFIRMATIVE)

19 Q. All right. And you saw him when the police showed up?

20 A. Yes, but it ---

21 Q. Is that when you are saying he was asleep when the
22 police came in?

23 A. Yes. When the police showed up and they tapped on the
24 window, got him out the car, out the truck.

25 Q. All right. Was that before or after lunch time?

1 A. It was before. It was before.

2 Q. Okay. And you haven't seen Henry Dukes before today
3 since he left your house on November 2nd, 2007?

4 A. No sir.

5 Q. All right. Did you know Andy Gowans, Andrico Gowans?

6 A. I have -- I have seen him before, but I don't know him.

7 Q. Okay. Do you know Cornelius Ford, C-4?

8 A. No sir. No sir. I heard of the name, but I don't know
9 him either.

10 Q. Okay. Nothing for or against either one of these young
11 men? You don't have any bias toward them one way or the
12 other?

13 A. No sir. No sir.

14 Q. Do you know the relationship between Steve, your former
15 boyfriend, and Henry Dukes?

16 A. Do I know the relationship between them?

17 Q. Are they related?

18 A. I don't know. I don't have the slightest idea. I
19 don't know.

20 Q. Where is Steve from?

21 A. Steve is from Lamar.

22 Q. Lamar.

23 A. Yes sir.

24 Q. Where is Dukes from?

25 A. I don't know.

1 Q. Okay. He just showed up at your house the day that
2 Stank was released from the hospital ---

3 A. Yes sir.

4 Q. ---Or the day after.

5 MR. RICHARDSON: Court's indulgence, Your Honor.

6 Q. All right. Were you ever given a reason as to why
7 Henry Dukes showed up at your house the day that Stank was
8 released from the hospital?

9 A. From what Steve said, he brought him there for
10 protection.

11 MR. FOX: Objection, Your Honor, that's hearsay.

12 THE COURT: Sustained.

13 Q. Did Henry Dukes ever tell you why he was at your house?

14 A. No sir.

15 Q. All right. Certainly you had some discussion about
16 this new truck being parked up at your house?

17 A. Uh huh (indicating positive)

18 THE COURT: Was that a yes, Ma'am?

19 A. Yes sir.

20 Q. All right. And were you for that? Were you happy with
21 the vehicle being parked at your house?

22 A. No sir, I wasn't.

23 Q. Were you happy about the prospect of Henry Dukes
24 staying in the house with you?

25 A. No sir.

1 Q. And that was definitely off?

2 A. Definitely off, yes sir.

3 Q. Okay. And you are fairly sure that it was mid-morning
4 when the police showed up, and the best of your recollection
5 it was Stank, one of Stank's friends, Stank's dad, Steve ---

6 A. Yes sir.

7 Q. ---And Henry Dukes?

8 A. Yes sir.

9 Q. And those are the people out there in the yard?

10 A. Yes sir.

11 Q. And did the police ever talk with you?

12 A. The Detective called me over to the side and he said
13 where was Stank, and I told him I said, Stank wasn't here,
14 Stank stayed at the beach at the Bermuda Sands, him and
15 Marlene, stayed at the motel on the beach, and he had just
16 came home that morning, and somebody called him to tell him --
17 told him there was a bunch of cops headed his way, but he
18 didn't run. He stayed on the porch.

19 Q. All right. And they took Dukes out of the truck and
20 talked to him?

21 A. Yes sir.

22 Q. All right. Approximately how long did they talk with
23 Dukes; do you know?

24 A. No sir, I was -- they had me standing way on the other
25 side by the tree.

1 Q. Do you know if it was over five minutes, less than five
2 minutes?

3 A. Less.

4 Q. Just a short period of time?

5 A. Yes sir.

6 Q. And the only one that they asked to come down to the
7 station was Stank?

8 A. Yes sir.

9 MR. RICHARDSON: I think that's all the questions I
10 have. If you would answer any questions Mr. Fox has for you.

11 THE COURT: All right. Cross-examination.

12 MR. FOX: Thank you.

13 CROSS-EXAMINATION BY MR. FOX:

14 Q. Ms. Randall, you say you weren't happy with Mr. Dukes
15 being -- living in that truck; is that correct?

16 A. Right.

17 Q. And this was a small pick-up truck, correct?

18 A. Yes sir.

19 Q. Not like a camper or a big SUV or anything?

20 A. No sir.

21 Q. Okay. So it was just a little cab and then the bed of
22 the truck?

23 A. Yes sir.

24 Q. And he was an unwelcome guest from your point of view;
25 is that fair to say?

1 A. Yes sir.

2 Q. Okay. Would not have been welcome inside your house?

3 A. No sir.

4 Q. He wouldn't dare go inside your house without being
5 invited, would he?

6 A. No sir, he wouldn't.

7 Q. And you basically -- he kept to him -- as far as you
8 were concerned, and your house, he stayed in his truck, or at
9 his place, and what he did away from there was his business;
10 you just didn't want to have to deal with him; fair to say?

11 A. Right.

12 Q. Okay. Now, you testified that you were there at the
13 house that morning, the police woke Henry up, or Jermaine
14 Dukes, Henry Jermaine Dukes, woke him up, and also around that
15 day were yourself ---

16 A. Uh huh (**indicating positive**)

17 Q. ---Ronnie Wilson ---

18 A. Yes sir.

19 Q. ---And is it Jerome Rush, the other fellow? Do you
20 know a Jerome Rush?

21 A. No.

22 Q. But there was another person there?

23 A. Yes. There was another person there but I don't know
24 those guys. Those are my friends' friends. I don't know
25 them.

1 Q. Okay. You didn't know the names of those people, but
2 the police gathered Mr. Wilson ---

3 A. I know him.

4 Q. ---Mr. Dukes, somebody else on the porch, correct?

5 A. Yes sir.

6 Q. Okay. And they did -- you say he swabbed them. What
7 do you mean by they swabbed them?

8 A. They did their mouths.

9 Q. Okay. Did they do anything else that you are aware of,
10 hands?

11 A. I think so, yes sir.

12 Q. Okay. Or they were testing to see if there was any
13 gunshot residue?

14 A. Yes sir.

15 Q. Okay. And all three of those gentlemen were let go,
16 correct?

17 A. Yes sir.

18 Q. Okay. Including Mr. Dukes?

19 A. Yes sir.

20 Q. Okay. Now, your son, at some point, either came back
21 or was brought back, correct?

22 A. Excuse me.

23 Q. Wasn't your son -- did you not see your son later
24 that -- while the police were there wasn't he brought back, or
25 was he not there?

1 A. I don't understand what you are saying.

2 Q. Was your son there?

3 A. Was my son where?

4 Q. At your house.

5 A. Yes sir, he was at my house.

6 Q. Okay. And when the police were there, correct?

7 A. Yes sir.

8 Q. Okay. In fact, then they took him off in the police
9 car, right?

10 A. Yes sir.

11 Q. They swabbed his hand also, didn't they?

12 A. Yes sir.

13 Q. Do you know if it was positive? Were you told -- did
14 your son tell you -- did you know that his gunshot residue
15 tests were positive?

16 MR. RICHARDSON: I'm going to object to that. That's
17 asking for hearsay.

18 THE COURT: Sustained.

19 Q. All right. Did they take your son away? Did the
20 police take your son away?

21 A. Yes. They took him to the station.

22 Q. Okay. Now, and the person that brought Mr. Dukes to
23 stay at your house was Ronnie Wilson and not your son?

24 A. No, not my son, no.

25 Q. And your son was the one who was shot, correct ---

1 A. Yes sir.

2 Q. ---Previously. Okay. Did the police, that you are
3 aware of, while they were there at your residence, you say
4 they went to that truck, woke Mr. Dukes up, got him out to
5 speak with him, got him on the porch with everybody else. Did
6 they search the truck, go through and look in the truck?

7 A. Yes sir, they did look in the truck.

8 Q. Okay. And it would have been just, again, truck --
9 open the door you can see the cab, right?

10 A. Yes sir.

11 Q. And then the bed of the truck is just open. You could
12 look into that, right?

13 A. Yes sir.

14 Q. Okay. And as far as you could tell they did that?

15 A. Yes sir.

16 Q. You said they searched your house?

17 A. Yes sir.

18 Q. Okay. In fact, you gave them permission to search your
19 house, didn't you?

20 A. Yes sir.

21 Q. Okay. And they found -- do you know what they found
22 inside?

23 A. They found a bunch of weapons.

24 Q. Okay. Your weapons?

25 A. Excuse me.

1 Q. Your weapons?

2 A. I don't have weapons, no sir.

3 Q. Do you know whose weapons they were?

4 A. They was in my son's room.

5 Q. Okay. Do you recall when your son was released from
6 the hospital?

7 A. No sir, I don't.

8 Q. Okay. That was in July, was it not, 2007?

9 A. Sir?

10 Q. Was that in July of 2007?

11 A. I don't remember.

12 Q. Okay. And ---

13 MR. FOX: No further questions, Your Honor.

14 THE COURT: Redirect.

15 MR. RICHARDSON: Just a few, Your Honor.

16 REDIRECT-EXAMINATION BY MR. RICHARDSON:

17 Q. When you -- you went to the police station certainly
18 Stank wasn't under arrest; he was turned loose you said within
19 an hour?

20 A. Yes sir.

21 Q. You went to pick him up?

22 A. Yes sir.

23 Q. And you never saw Dukes again?

24 A. No sir, I didn't.

25 Q. He was gone when you got home ---

1 A. Exactly.

2 Q. ---With Stank?

3 A. Yes sir.

4 Q. Was that truck gone, or was it still at your house?

5 A. The truck was still there.

6 Q. So who owned the truck?

7 A. I guess Steve did.

8 Q. Your former boyfriend, Steve?

9 A. Yes sir.

10 Q. And he brought the truck up for Dukes to live in ---

11 A. Yes sir.

12 Q. ---Because Dukes couldn't stay in the house?

13 A. No sir.

14 Q. What was the reason for not letting Dukes stay in the

15 house?

16 A. Because I didn't know him.

17 Q. Didn't know him. The day that your son was released

18 was the first day you had ever seen him?

19 A. That's the first time I ever seen him.

20 Q. Okay. Did -- when did that truck ever -- is that truck

21 still at your house?

22 A. No sir. My boyfriend and Steve got in a confrontation

23 because my boyfriend told Steve that he had to get that truck

24 out the yard, and Steve wanted to fight him, so we called the

25 police on Steve, and Steve moved -- had moved the truck.

1 Where he took the truck to I don't know.

2 Q. Okay. But however Henry Dukes left, he was gone?

3 A. Yes sir.

4 Q. And he didn't take the truck?

5 A. No sir.

6 Q. And he was gone immediately once the police got
7 involved, after Andy was killed?

8 A. Right. Yes sir.

9 Q. You never saw him again?

10 A. Never seen him again, no sir.

11 Q. And left the truck, and whatever was in the truck,
12 behind?

13 A. Right. Yes sir.

14 Q. Okay.

15 MR. RICHARDSON: I have no further questions.

16 THE COURT: Anything on those questions, Mr. fox?

17 MR. FOX: No, Your Honor.

18 THE COURT: All right. Do you wish this witness to be
19 excused?

20 MR. RICHARDSON: Yes sir.

21 THE COURT: Any objection?

22 MR. FOX: No, Your Honor.

23 THE COURT: All right, Ma'am, you are released from
24 your Subpoena. You may go back to your regular activities.

25 A. Thank you.

1 **THE COURT:** Your next witness, Solicitor.

2 **MR. RICHARDSON:** Your Honor, may we approach?

3 **THE COURT:** Yes sir.

4 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

5 **MR. TAYLOR:** Your Honor, the next witness is going to
6 be Willa Mae Dixon.

7 **THE COURT:** All right.

8 **WILLA DIXON,** being first duly
9 sworn, testifies as follows:

10 **DIRECT-EXAMINATION BY MR. TAYLOR:**

11 Q. Ms. Dixon, I know you've got some throat problems from
12 a recent surgery. I'm sorry for that. If you will just scoot
13 that microphone as close as possible so that the jury can hear
14 you over here, and it would help you as well in speaking so
15 that you don't exert yourself.

16 Ms. Dixon, what is your -- again you've stated your full
17 name. You are from Conway originally?

18 A. Yes, I am.

19 Q. How long have you lived here in Conway, in Horry
20 County?

21 A. Twenty-four years. I was born here.

22 Q. All right. Now there was an incident that occurred
23 where a young man was shot and killed on November the 2nd,
24 2007, but prior to that you had an occurrence when you had
25 some people over at your house. That's part of your testimony

1 or your statement to law enforcement a couple of days prior.

2 A. Well, yes.

3 Q. And you had somebody that is related to you somehow, a
4 guy named Steve, I believe his name is.

5 A. Uh huh (**indicating positive**)

6 Q. What is Steve's full name?

7 A. Steve Wilson, I think.

8 Q. And you have known Steve Wilson for how long?

9 A. A long time.

10 Q. How long -- estimate about how long that is.

11 A. About twenty-five years.

12 Q. All right. He, in fact, has children with your cousin?

13 A. Yes, he does.

14 Q. And he brought with him a guy named Henry Dukes, that
15 went by the name of Champ?

16 **MR. FOX:** Your Honor, objection to the leading
17 questions.

18 **THE COURT:** Solicitor, please don't lead your witness.
19 Thank you.

20 **MR. TAYLOR:** Yes sir, Your Honor.

21 Q. He brought a guy with him ---

22 A. He brought a guy, but he -- I never knew his name.

23 Q. Okay. And why -- what were they doing there on that
24 night, prior to November 2nd?

25 A. Coming to get something to eat.

1 Q. All right. How -- in a time frame, what can you
2 estimate that was prior to November 2nd, 2007?

3 A. About two weeks, maybe.

4 Q. Okay. How long were they at your house?

5 A. Not long.

6 Q. Okay. And you say they got something to eat then?

7 A. Just long enough to get something to eat and go.

8 Q. All right. Tell the jury, please, the conversation you
9 had, and what you told this person that was with your cousin's
10 friend.

11 A. Well, that night I didn't tell him nothing. I just
12 told him he could come back when he got ready because it was a
13 meal deal, but still, he came back and he knocked on the door.
14 I told him any time you want to, you know, to talk and need
15 some place to sleep just come on. So he came, and I thought
16 he was hungry. He said, Butch, I need to talk to you. I
17 said, what you -- what you need, baby. I said, you want
18 something to eat, you don't got no money. He said, no, he
19 goes, it's deeper than that. I said, well, if it goes deeper
20 than that I don't want to hear it.

21 Q. And this is on November 2nd?

22 A. Yes, it was. I said, I don't want to hear it. He
23 says, well, I need to talk. I said, I don't want to hear it.
24 He said, it's kind of bad. He says, some boys are chasing me.
25 I said, well then you need to call the police, and I don't

1 want to hear it. And I actually called the cops, and he came.
2 I said, well, this guy is scared somebody is going to beat him
3 up. I said, I don't know what happened, all I know I told him
4 I was going to call a cop. He said, well, there is nothing I
5 can do about it; we didn't get no complaints that he was
6 trespassing. I said, okay, you carry it on your head. He
7 said, well, Butch, can I use your phone. I said sure. So he
8 used the phone. So after he used the phone he said, well, can
9 you call me a cab. I said, I sure can. I called a cab. I
10 said, well, ---

11 Q. I'm sorry to interrupt you. Who did he call the first
12 time?

13 A. I don't have the slightest idea. He said he was
14 calling one of his friends or his mom, somebody. I don't
15 quite remember.

16 Q. All right.

17 A. But he did call, and I did get the cab, and I told him
18 I said, if you scared hop the fence and hop your -- in that
19 cab and get on, and I haven't see him since. As a matter of
20 fact, if I had to put my hands on him I couldn't do that now,
21 but this is the conversation that we held and whoever the guy
22 was.

23 Q. Can you describe his overall demeanor, how he was
24 acting that day?

25 A. He was nervous. He was really nervous. That's why I

WILLA MAE DIXON - DIRECT BY TAYLOR

237

1 told him, I said, go in the corner, whatever it is it's got to
2 be bad, go talk to God, I said, but I'm not talking to you
3 about it, so I didn't talk to him, you know.

4 Q. Was that because you were afraid also?

5 A. Yes. Yes. I didn't want to know. I really didn't
6 want to know it. I wasn't that type of a neighbor. I -- not
7 trying to be smart, but I can handle the small things. Big
8 things like -- it had to be big, because like I said, he was
9 nervous, and I said, well, whatever it is you go talk to God
10 and I'll call you a cab, and that was that.

11 Q. How long did it take the cab to get there?

12 A. Not long. About maybe ten or fifteen minutes.

13 Q. And during this time frame, this ten or fifteen
14 minutes, what was this guy doing?

15 A. Well, he was ---

16 Q. How was he acting while he was waiting?

17 A. Pacing, pacing, and he kept saying, Butch, I need to
18 talk, and I kept turning him down. I said, baby, if it's that
19 bad you need God, and it was -- this was a conversation that
20 we held till the cab came. And I'm like, I said, well, what
21 you got? I said, you need money to get in that cab if you are
22 going home. I said, but go ahead. I said, they are all
23 right, wherever you are going they will help you, they'll make
24 a deal with you, and he said, okay, thanks for everything. I
25 said, all right, you be careful, so he said okay, and I

1 haven't seen him since.

2 Q. Now Ms. Dixon I'm not -- I have to ask you some follow-
3 up questions, and I'm not doing this to, in any way, or harm
4 you, but I have to because defense counsel is about to ask you
5 this.

6 A. It's all right. I've got an answer for him.

7 Q. One way or the other it's got to be asked.

8 A. Go ahead.

9 Q. Now you've got a criminal record?

10 A. Sure do.

11 Q. In fact, in addressing that criminal record, you have
12 not been in any trouble since 1993, correct?

13 A. Maybe. I don't keep up with it.

14 Q. All right. You first got in trouble back in 1992.

15 A. Uh huh (**indicating positive**)

16 Q. You were charged and convicted of receiving stolen
17 goods.

18 A. Is that the first one, or was it sale of crack cocaine?

19 Q. Looks like that was the first one. Now, you had crack
20 cocaine conspiracy and possession in 1993.

21 A. Go ahead.

22 Q. And you had selling cocaine in 1993; you were convicted
23 of those charges.

24 A. I sure was.

25 Q. No denying that?

1 A. No.

2 Q. And those have nothing to do with what you have
3 testified to here today?

4 A. Why would it?

5 Q. I have to ask you.

6 A. Well, no.

7 Q. Okay. You are telling the truth today?

8 A. Yes sir.

9 Q. All right.

10 MR. TAYLOR: Thank you. I have no further questions.
11 Please answer any that opposing counsel may have for you.

12 A. Yes sir, I will.

13 THE COURT: Cross-examination.

14 MR. FOX: One moment, Your Honor.

15 CROSS-EXAMINATION BY MR. FOX:

16 Q. Ms. Dixon, you say Mr. Dukes came to you on about
17 November 2nd, 2007, asked to use your phone, asked to call a
18 cab, correct?

19 A. Yes sir.

20 Q. Okay. You didn't speak to the police about that though
21 until almost Christmas time of that year; isn't that right?

22 A. Yes. It was a long time.

23 Q. December 20th.

24 A. Maybe. That was a long time.

25 Q. Do you know Andy Gowans? Did you know Andy Gowans?

1 A. I don't even know Jermaine Dukes.

2 Q. Okay. Did you ever -- between the time you say Mr.
3 Dukes was at your house asking to use the phone, between that
4 time and the time you finally spoke to the police before
5 Christmas, did you learn, have -- ever get any information
6 that the police were looking for Mr. Dukes?

7 A. Of course. That was street talk.

8 Q. Okay. So when you heard that street talk did you do
9 anything to contact the police and let them know you had seen
10 Mr. Dukes on the date of the shooting?

11 A. I sure didn't.

12 Q. Did not?

13 A. No.

14 Q. Okay. So for six weeks you had information and knew
15 that Mr. Dukes had been to your house asking to use a cab, and
16 you sat on that information for six weeks, correct?

17 A. Yes. I mean, yeah.

18 Q. Okay. And the police had to come find you, correct?

19 A. I wasn't lost. They stood in my bedroom over me. They
20 walked in my house and stood over me, and asked me did --
21 well, whatever, whatever, and I told them yeah, I let him use
22 the phone. I said, how did you know. They came to me because
23 they traced my daughter's phone. That's how the police came
24 to my house, because I would have never told them.

25 MR. FOX: Thank you. No further questions.

1 **THE COURT:** Any redirect?

2 **MR. TAYLOR:** Yes sir, Your Honor.

3 **REDIRECT-EXAMINATION BY MR. TAYLOR:**

4 Q. Ms. Dixon, being that you've been in trouble before, do
5 you trust the police? Honestly?

6 A. No.

7 Q. Now, Ms. Dixon, being that you've also been in trouble
8 before, and you -- looks from your record you've been to jail.
9 Do you want to go back to jail?

10 A. No.

11 Q. All right. You don't want to involve yourself in this
12 matter, do you?

13 A. No. I told you that.

14 Q. In fact, you really don't want to be here today, do
15 you?

16 A. Thank you. No.

17 Q. And you are here today because we subpoenaed you?

18 A. Because you are hassling. You are telling me ---

19 Q. Yes Ma'am. We sent you a Subpoena to be here today?

20 A. Yes, you did.

21 Q. And again, that's the reason why you didn't go forward
22 to the police?

23 A. I got to live -- where I was at I had to live. I don't
24 get involved in anybody's whatever. The only involvement I
25 get in is mine, my own personally, because I know how to

1 attack it, or I know how to handle it. That was not my
2 business. I considered myself helping him because he wasn't
3 from here, and I know how it is when you are not from here in
4 a town where you don't know anybody, and yes, I done that, and
5 I'll do it again.

6 MR. TAYLOR: Yes Ma'am.

7 THE COURT: Anything else, Solicitor?

8 MR. TAYLOR: Nothing, Your Honor.

9 THE COURT: Questions on those questions, Mr. Fox?

10 MR. FOX: Yes, Your Honor.

11 RECROSS-EXAMINATION BY MR. FOX:

12 Q. In November of 2007, you weren't in any trouble.
13 You've testified your prior record was back in the nineties.
14 You hadn't been in trouble with the police since the nineties,
15 correct? So it had been over ten years since you had had any
16 trouble with the police, correct?

17 A. That's right. Right.

18 Q. And you weren't in any trouble then? You weren't doing
19 anything wrong on November 2nd?

20 A. No. Uh uh (NODS NEGATIVE)

21 Q. And you didn't know what this was all about, did you?

22 A. I sure didn't, and didn't want to know.

23 Q. Right. So the police were no threat to you?

24 A. No.

25 MR. FOX: Thank you.

1 **THE COURT:** All right, Ma'am.

2 Do you wish -- Solicitor, do you wish the witness to be
3 excused?

4 **MR. TAYLOR:** Yes sir, Your Honor.

5 **THE COURT:** Any objection?

6 **MR. FOX:** No, Your Honor.

7 **THE COURT:** All right, Ma'am, you are released from
8 your Subpoena. You may go back to your regular duties.

9 Thank you.

10 All right, your next witness, Solicitor.

11 **MR. RICHARDSON:** Yes sir, Your Honor. The State would
12 call Carolyn Heester.

13 **CAROLYN HEESTER,** being first duly
14 sworn, testifies as follows:

15 **DIRECT-EXAMINATION BY MR. RICHARDSON:**

16 Q. Ms. Heester, how about tell the jury where you are
17 from.

18 A. Originally?

19 Q. Well, you can -- where have you been the last ten or so
20 years?

21 A. I've lived in Myrtle Beach and the Conway area.

22 Q. Okay. Where were you living back in 2007?

23 A. In Conway.

24 Q. Did you have an occasion to go out on November 2nd,
25 2007, to -- around Suggs Street in Conway?

1 A. Yes.

2 Q. All right. Tell the jury what you were doing out that
3 way.

4 A. I was actually on my way to work. I worked at
5 Applebees in Conway, and I stopped at a friend's house to pay
6 a visit on my way to work.

7 Q. All right. Approximately what time was that?

8 A. It was about ten to ten in the morning.

9 Q. Ten till ten?

10 A. Uh huh (**indicating positive**)

11 Q. Tell the jury, please, what route you would have taken
12 to get from Conway to your friend's house.

13 A. I came down 501, and I made a left at the Wal-Greens.
14 I'm not sure. I think that's Sixteenth Avenue. I'm not sure.
15 I traveled down that road, made a right onto Dewitt, crossed
16 over Suggs Street, and made a left into their driveway.

17 Q. All right. Now, when you get to the stop sign did you
18 notice anybody on the road, anybody driving that caught your
19 attention?

20 A. Uh huh (**indicating positive**) There was a white SUV
21 traveling very slowly down the road. It was actually annoying
22 me because I was waiting to go through the intersection, and
23 there was a meter reader of some sort parked on the side.

24 Q. So a white truck goes by ---

25 A. Uh huh (**indicating positive**)

1 Q. ---Slows down, and when it goes by you proceed on to
2 your friend's house?

3 A. That's correct.

4 Q. All right. Park your vehicle. Tell the jury what you
5 did next.

6 A. I proceeded to the door which was located on the side
7 of the house, and I was standing there knocking on the door
8 when I saw someone running toward a house about two or three
9 backyards away.

10 Q. Okay. Back toward 378?

11 A. Back toward ---

12 Q. Suggs Street?

13 A. Uh huh (**indicating positive**)

14 Q. All right.

15 A. It was in the back yard.

16 Q. I'm sorry.

17 A. It was in the back yard. They were sort of running
18 toward the house, toward Suggs.

19 Q. Okay. Let's talk about that person you. You say
20 running.

21 A. A cantor, a trot, rather not running rapidly, but
22 trotting toward the house.

23 Q. Trotting toward the house. Now, was this -- were you
24 able to see the person?

25 A. I couldn't see their face, but when he saw me standing

1 there he stopped and looked right at me, and I was able to see
2 what he was wearing, and a description of him, but not any
3 facial features.

4 Q. All right. You see this person, they stop. Now,
5 approximately how far were you from that person when you are
6 standing on the porch?

7 A. I couldn't say in feet wise, but it was about two back
8 yards away.

9 Q. All right. Was it further back than the back of the
10 courtroom?

11 A. Maybe about the same distance.

12 Q. All right. And you see someone running, stop, look
13 directly at you?

14 A. And then ran back from where they came.

15 Q. All right. Ran back from where they came.

16 A. Uh huh (**indicating positive**)

17 Q. Tell us, was this a white person or a black person?

18 A. It was a black person.

19 Q. Male or female?

20 A. Was male.

21 Q. And were you able -- well, we'll talk about the police
22 later.

23 A. Okay.

24 Q. You -- what did you do then?

25 A. I went into the house, and I had made a comment to my

1 friend who lived in the house that I thought it was unusual
2 that that person was wearing such a heavy coat on a basically
3 warm morning.

4 Q. What color was the coat?

5 A. It was like a white ski jacket type, puffy.

6 Q. And you tell this friend that, and is there -- did that
7 cause him or her any concern?

8 A. No. It was just a matter of fact, ha ha type of thing,
9 didn't really pay it any attention.

10 Q. All right. Were you aware of what was going on at
11 Suggs Street?

12 A. Not at all.

13 Q. All right. Had you ever passed by that white and green
14 house before?

15 A. Yes. It was -- my friend lived there. I was in that
16 neighborhood fairly often.

17 Q. All right. But you didn't know there was drug sales
18 going on at that house?

19 A. No.

20 Q. Did he know?

21 A. I don't know. It was never ---

22 Q. Never brought up?

23 A. Uh uh (NODS NEGATIVE)

24 Q. All right. Now, after that day -- approximately how
25 long did you stay at the friend's house?

1 A. I was there just a couple of minutes. I was actually
2 dropping off a sandwich on my way to work.

3 Q. Okay. And at some point you hear that there has been a
4 murder at the Suggs Street address?

5 A. He had actually called me at work when all the media
6 and stuff started to arrive, and basically said that he
7 thought that perhaps I had seen something.

8 Q. Okay. He called you the same day?

9 A. Uh huh (*indicating positive*)

10 Q. Do you remember about what time he called you?

11 A. I was still at work, so it had to be before two in the
12 afternoon.

13 Q. All right. So you see this before ten ---

14 A. Uh huh (*indicating positive*)

15 Q. ---And then sometime before two you get the call that
16 maybe, of course, it was important.

17 COURT REPORTER: Excuse me, please. Answer yes or no,
18 please.

19 A. Oh, I'm sorry. Yes. I didn't realize that was -- I
20 thought he was just making a statement.

21 Q. Okay. Now, ---

22 THE COURT: Can you scoot behind the microphone, if you
23 don't mind, please Ma'am.

24 Thank you.

25 Go ahead, Solicitor.

1 Q. Did you contact Conway Police Department?

2 A. Yes sir, I did.

3 Q. And on what day did you contact them?

4 A. I want to say it was that same day, maybe that
5 afternoon.

6 Q. And at some point on, looks like you went by and talked
7 with them, gave them a statement.

8 A. Uh huh (**indicating positive**) I met -- God bless you.
9 I met them in a local area so we could talk.

10 Q. Did you meet on Church Street?

11 A. No. I met them at the Wal-Mart in Conway. Well, yeah,
12 that would be Church Street.

13 Q. Okay. So you meet an officer at the Wal-Mart in
14 Conway?

15 A. Uh huh (**indicating positive**) That's correct.

16 Q. Did you give Conway Police a written statement?a

17 A. Yes, I did.

18 Q. Just want to hand you what's marked for identification
19 purposes as State's Exhibit Number 14, and could you tell us
20 what that is.

21 A. That is my statement.

22 (HANDWRITTEN STATEMENT MARKED STATE'S EXHIBIT NUMBER 14,
23 FOR IDENTIFICATION ONLY.)

24 Q. All right. Is that your writing?

25 A. Yes, it is.

1 Q. All right. Would it help you to refresh your memory,
2 or do you need it?

3 A. No, I'm fine.

4 Q. You are okay. Regarding the description of the person
5 you saw, were you able to give the police an approximate
6 height?

7 A. Uh huh (**indicating positive**)

8 Q. And what was that?

9 A. About five foot nine, five foot ten.

10 Q. Five nine, five ten.

11 A. Uh huh (**indicating positive**)

12 COURT REPORTER: Answer yes or no, please.

13 A. Yes.

14 Q. And that was five foot nine, five foot ten?

15 A. Yes sir.

16 Q. Okay. And were you able to tell them about the white
17 coat?

18 A. Yes.

19 Q. And were you able to describe for them any sort of
20 pants that the Defendant may have been wearing?

21 A. Yes. He had on light-color bluejeans.

22 Q. Bluejeans.

23 A. Uh huh (**indicating positive**)

24 Q. Thank you. Did you ever tell them about any other
25 description?

1 A. Just that he had a thick build, and short cropped hair.
2 Q. Okay. Thick, stocky, and short cropped hair?
3 A. That's correct.
4 Q. You were unable to give a lot of facial features?
5 A. That's correct.
6 Q. All right. Do you know Henry Dukes?
7 A. No sir, I do not.
8 Q. Have you met him before?
9 A. No sir.
10 Q. Do you know Andy Gowans?
11 A. No sir.
12 Q. Cornelius Ford?
13 A. No sir.
14 Q. Any bias for or against any of those people?
15 A. Not at all.
16 Q. Basically you were able to say, I saw an individual
17 running across that Suggs Street address, the yard, white
18 coat, bluejeans, black male, stocky, short cropped hair?
19 A. That's correct.
20 Q. No name, no nothing?
21 A. No.
22 Q. And approximately about what time it was?
23 A. That's also correct.
24 **MR. RICHARDSON:** I have no further questions. If you
25 would answer any questions that Mr. Fox might have for you.

1 **THE COURT:** Cross-examination.

2 **MR. FOX:** Thank you, Your Honor.

3 **CROSS-EXAMINATION BY MR. FOX:**

4 Q. Ms. Heester ---

5 A. Yes sir.

6 Q. You went and -- on your way to work, stopped by a
7 friend's house in the neighborhood, and from what I
8 understand, you were, the best you can estimate, you saw this
9 person two yards, and you would say roughly from where you are
10 sitting to the back of the courtroom, correct?

11 A. That's correct. Uh huh (**indicating positive**)

12 Q. And daylight out?

13 A. Yes.

14 Q. Okay. And anything obstructing your view?

15 A. No sir.

16 Q. And no fences or trees or anything like that?

17 A. There was a tree, and that's where he had stopped,
18 turned and ran back.

19 Q. Okay. But as you described it, he was kind of at a
20 jog, or ---

21 A. Uh huh (**indicating positive**) Yes.

22 Q. Okay. And what caught your attention was, he had on a
23 coat that seemed a bit much for the weather outside?

24 A. That's also correct.

25 Q. Okay. And he stopped and you could see his face,

1 correct? Is that right?

2 A. I could see the front of his face, yes.

3 Q. Okay.

4 A. Yes.

5 Q. Eyes, nose?

6 A. Uh huh (**indicating positive**)

7 Q. Okay. Now later that same day you learned that, just
8 down from where you were there had been a shooting, right?

9 A. That's correct.

10 Q. Okay. And as a result of that what did you do?

11 A. I made a phone call to the Conway Police Department.

12 Q. That same day?

13 A. Uh huh (**indicating positive**) Later that afternoon.

14 Q. Didn't wait to see if the police would contact you, did
15 you?

16 A. No. I was actually scared because if it was, in fact,
17 what I did see I was in a uniform, they knew exactly where I
18 worked, and I was a little nervous about the situation.

19 Q. Okay. And in -- so -- so you were nervous, worried,
20 correct?

21 A. That's correct.

22 Q. But you managed to overcome that and pick up a phone
23 and dial it, right?

24 A. That's correct.

25 Q. Okay. Now, and then you met with the police that --

1 was it the same day you met with them?

2 A. I don't recall if it was -- I think it was the next
3 morning I met them at Wal-Mart.

4 Q. Okay. So the next -- you are pretty sure the next day,
5 in the morning ---

6 A. Uh huh (**indicating positive**)

7 Q. Okay. And you gave the police that statement that
8 we've seen that you used here in court this morning, correct?

9 A. Uh huh (**indicating positive**) Yes.

10 Q. The police, during that interview with you, ever show
11 you any photographs?

12 A. No.

13 Q. Okay. Now, when you came into that neighborhood that
14 morning you say you saw a white SUV; is that correct?

15 A. That's correct.

16 Q. And it got your attention because it was kind of slow
17 and annoying ---

18 A. Uh huh (**indicating positive**) Yes.

19 Q. ---Where you wanted to go; is that right?

20 A. That's correct.

21 Q. Do you recall what make vehicle that was, what brand,
22 Toyoto, Ford?

23 A. It was an American made vehicle, but I couldn't say for
24 sure exactly what it was.

25 Q. Okay. But a white SUV?

1 A. Uh huh (**indicating positive**)

2 Q. Okay. And then you saw -- one moment, please.

3 MR. FOX: Just one moment, Your Honor.

4 THE COURT: Yes sir.

5 MR. FOX: Thank you. No further questions, Ms.
6 Heester.

7 THE COURT: Redirect.

8 MR. RICHARDSON: Yes sir, Your Honor.

9 REDIRECT-EXAMINATION BY MR. RICHARDSON:

10 Q. I meant to do this earlier, Ms. Heester, but want to
11 pass to you what's been marked as State's Exhibit 12, State's
12 Exhibit 13, ask you if you can identify those photographs.

13 A. Uh huh (**indicating positive**) I can, yes.

14 THE COURT: You need to say yes or no, Ma'am.

15 A. Yes, I can.

16 Q. Please, starting with 12, tell us what that is.

17 A. This is the window by the side door of my friend's
18 house where I was standing knocking on the door, which is a
19 rear.

20 Q. Okay. Does that fairly and accurately depict
21 approximate distance and where you would have seen someone in
22 a white coat?

23 A. Yes sir.

24 Q. All right. And how about 13? Please tell us what that
25 is.

1 A. This is a closer shot of the backyard, leading to that
2 other house.

3 Q. Okay. Basically the same picture, one is a little
4 closer, taken from a different ---

5 A. That's correct.

6 MR. RICHARDSON: Your Honor, State would move State's
7 Exhibits 12 and 13 into evidence.

8 THE COURT: Any objection?

9 MR. FOX: No, Your Honor.

10 THE COURT: In evidence without objection.

11 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBERS 12 AND 13.)

13 Q. Ms. Heester, can you point to that tree that you say
14 you saw the man in the white coat?

15 A. Right there. (indicating)

16 Q. That's the tree -- that's where he stopped?

17 A. Uh huh (indicating positive) Yes.

18 Q. And you were standing up here?

19 A. That's correct.

20 Q. All right. Can you tell us if he was running that way
21 or this way when you first saw him?

22 A. He was running toward the tree, toward the house.

23 Q. Okay. And he stopped and ran back that way?

24 A. That's correct.

25 MR. RICHARDSON: That's all the questions I have.

1 THE COURT: All right. Mr. Fox, any on those
2 questions?

3 MR. FOX: No, Your Honor.

4 THE COURT: All right. Do you wish the witness to be
5 excused, Solicitor?

6 MR. RICHARDSON: Please sir.

7 THE COURT: Any objection?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right, Ma'am, you are released from
10 your Subpoena. You may go back to your regular activities.

11 A. Thank you.

12 THE COURT: Thank you.

13 All right, Solicitor.

14 MR. RICHARDSON: Your Honor, if we can have five
15 minutes.

16 THE COURT: All right. Very good.

17 All right, ladies and gentlemen, take a short break, for
18 about five minutes, please, and then we will come back.

19 Everyone else remain seated while the jury retires,
20 please.

21 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
22 PRESENCE OF THE JURY.)

23 THE COURT: All right, Solicitor, your next witness,
24 please.

25 MR. TAYLOR: Thank you, Your Honor. We would call

1 Bonnie Parlman to the stand, please.

2 THE COURT: All right, Ma'am. If you would come all
3 the way up front, please. Thank you.

4 BONNIE PARLIMAN, being first duly
5 sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. TAYLOR:

7 Q. Ms. Parlman, how old are you?

8 A. Fifty.

9 Q. And where are you from?

10 A. New York.

11 Q. New York. How long have you been living in Horry
12 County?

13 A. About twenty-eight years.

14 Q. Twenty-eight. And so obviously you were living here
15 November 2nd, 2007.

16 A. Yes.

17 Q. And on that date where were you employed?

18 A. Yellow Cab in Conway.

19 Q. Are you still employed there?

20 A. Yes.

21 Q. And what were you job duties and title on November 2nd,
22 2007?

23 A. A dispatcher. I took the calls come in and dispatch
24 the drivers.

25 Q. Okay. And in doing that did you keep a log for your

1 records, for the cab company's records as to what was going on
2 with the cabs?

3 A. Yes.

4 Q. Okay.

5 MR. TAYLOR: May I approach the witness, Your Honor?

6 THE COURT: Yes sir.

7 Q. Ma'am, does this look familiar?

8 A. Yes.

9 Q. And is that your handwriting on the front?

10 A. No. No.

11 Q. How about up here on the top?

12 A. Yes.

13 MR. TAYLOR: Your Honor, if I could mark this as
14 State's exhibit.

15 COURT REPORTER: State's 15.

16 (CAB LOG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 15.)

18 Q. On November 2nd did you receive a call to send out a
19 cab to Cherry Hill Apartments?

20 A. Yes, I did.

21 Q. All right. And located there on that book you would
22 have kept track of that cab, correct?

23 A. Yes.

24 Q. All right. And noticed on there, can you state where
25 that cab was going?

1 A. It went to Florence.

2 Q. Do you recall that cab, or that call for that cab?

3 A. Oh yes. Uh huh (**indicating positive**)

4 Q. Can you tell the jury what happened?

5 A. They called for a cab to go to -- pick up at Cherry
6 Hill Apartment, they -- and they said they wouldn't be able to
7 pay for it at that time; the mother would call -- pay for it
8 when they got in Florence.

9 Q. And who was the mother, the mother of who?

10 A. I don't know.

11 Q. Not sure.

12 A. No. Uh uh (**NODS NEGATIVE**)

13 Q. All right. What cab driver did you send?

14 A. Number fourteen.

15 Q. What's the name of number fourteen?

16 A. Walker Johnson.

17 **THE COURT:** I'm sorry, Ma'am. Speak up just a little
18 bit, please.

19 A. Walker Johnson.

20 **THE COURT:** Thank you, Ma'am.

21 Q. And when Mr. Johnson was sent out to that location, did
22 that fare actually go through - there was a person picked up
23 and taken over to Florence?

24 A. Yes sir.

25 Q. All right. And what was the amount that was paid?

1 A. Eighty-Five Dollars.

2 MR. TAYLOR: Court's indulgence, Your Honor.

3 THE COURT: Yes sir.

4 MR. TAYLOR: Your Honor, I have no further questions,
5 other than entering this in evidence.

6 THE COURT: All right.

7 MR. TAYLOR: Please answer any opposing counsel my
8 have.

9 THE COURT: I'm sorry. First, is there any objection
10 to State's 15?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right. It's in evidence without
13 objection.

14 (CAB LOG ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 15.)

16 THE COURT: You may proceed.

17 Yes sir, Mr. Fox. Thank you.

18 CROSS-EXAMINATION BY MR. FOX:

19 Q. Ms. Parlman, did your cab company, back in 2007,
20 sometimes takes fares out of the City, out of Conway?

21 A. Yes.

22 Q. Okay. So you wanted to verify you were going to get
23 payment, but that was not policy against doing that, was
24 there? It was something that happened fairly regularly?

25 A. Oh yeah. Uh huh (indicating positive) Yes.

1 **MR. FOX:** Thank you. No further questions.

2 **THE COURT:** Do you wish the witness to be excused?

3 **MR. TAYLOR:** Yes sir, Your Honor.

4 **THE COURT:** All right, Ma'am, you are released from
5 your Subpoena. You may go back to your regular duties.

6 All right, your next witness, please sir.

7 **MR. TAYLOR:** Walker Johnson, Your Honor.

8 **THE COURT:** All right.

9 **WALKER LEE JOHNSON, JR.,** being
10 first duly sworn, testifies as follows:

11 **DIRECT-EXAMINATION BY MR. TAYLOR:**

12 Q. Mr. Johnson, please state your full name and where you
13 are from.

14 A. Walker Lee Johnson, Jr., Conway, South Carolina.

15 Q. All right. And where were you employed on November
16 2nd, 2007?

17 A. Conway Yellow Cab.

18 Q. And what time did you go on duty that day?

19 A. My shift was from six PM to six AM.

20 Q. And what was your first call? Where did it go to?

21 A. My first call was to -- to go to Cherry Hill and ---

22 Q. Cherry Hill Apartments?

23 A. Yes sir.

24 Q. And when you got there what happened?

25 A. The regular routine, just pick my customer up. I ask

1 them where they are going. Well, I knew where he was going,
2 but -- he was going to Florence, so I was just ---

3 Q. How did you know where to go?

4 A. I was informed of where he was going because usually we
5 get our money up front, and -- but Ms. Bonnie had verified --
6 she talked to his mother, saying that he has the money in
7 Florence, so, you know, it's kind of like a blind trip, just
8 was just taking -- just hoping he didn't jump out the cab or
9 anything like that, so ---

10 Q. Do you recognize the person that you picked up?

11 A. Yes.

12 Q. Point out to the jury and the Court who that person
13 would be.

14 A. Mr. Dukes, right here.

15 Q. Sitting over here in the brown?

16 A. Yes sir.

17 Q. Discuss with the jury what happened on your ride over
18 to Florence, and what happened once you got there.

19 A. I mean, we got there and we pulled up into a house, and
20 we pulled up it was like, just drive around the house.

21 Q. He had you drive around the house?

22 A. Yes. He was just like, just ride around. So we got
23 there, pulled in the yard and drove around. We pulled around
24 to the front. I guess the lady that was there was his mother,
25 and then I guess when he got out, you know, he like -- was

1 like, you know, you didn't -- you didn't see me, something --
2 something kind of along them lines, like, you know, but it was
3 like, I heard that from like a lot of people that got in the
4 cab with me, like that was going placed, you know, like, you
5 ain't seen me or something, you know what I mean. I just
6 didn't think nothing of it.

7 Q. All right. So, how did it affect you when he said
8 drive around the house?

9 A. It didn't -- it didn't affect me. Like I said, I would
10 have hate to drove him all the way up there and he jumped out
11 on me, cause that had happened to me before while I was
12 driving a cab, taking somewhere like right here in town, and I
13 was -- I mean, just was hoping that -- so I mean, I was going
14 to a place I didn't know, you know, just hoping he didn't jump
15 ---

16 Q. So again, whenever he got out the car -- tell the jury
17 what he specifically said to you whenever he got out of the
18 car.

19 A. It was a couple of years ago, but I don't want to say
20 that he said you didn't see me and just walked out, but it was
21 something along them lines, like that was kind of pertaining
22 to that, like -- you know, like you didn't see me or nothing,
23 but I didn't think twice -- I didn't think too much about it.
24 I was just ready to just get the money and go back -- go
25 back -- get back into Conway.

1 Q. All right. Have you seen Mr. Dukes, seated to my
2 right, since then?

3 A. Yes. I actually been locked up in J. Reuben, and I --
4 we ---

5 MR. FOX: Object. Your Honor, can we approach?

6 THE COURT: Yes sir.

7 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

8 Q. Mr. Johnson, after you were locked up -- don't tell me
9 where after you were locked up.

10 MR. FOX: Your Honor, that's ---

11 THE COURT: Just get to the point, Solicitor.

12 MR. TAYLOR: All right. I'll withdraw the question,
13 Your Honor.

14 THE COURT: All right. Thank you.

15 Q. Now, let's deal with your record. There's a criminal
16 record of course I have to address with you. You have been in
17 trouble before.

18 A. Right.

19 Q. And as you said, you've been locked up. You were
20 arrested for assault with intent to kill, and served time, or
21 you had -- was it an assault and battery with intent to kill
22 that you were charged with a lesser offense, and you were
23 convicted of ---

24 A. No. I never was charged with intent to kill.

25 Q. Okay. But you pled to a lesser offense.

1 A. It was a CDV, high and aggravated nature, and assault
2 and battery high and aggravated nature.

3 Q. Okay. And you received some probation for that.

4 A. Three years.

5 Q. Okay.

6 MR. TAYLOR: Court's indulgence, Your Honor.

7 Q. That would have nothing to do with your testimony here
8 today, would it?

9 A. No sir.

10 Q. All right. So everything that happened today you have
11 no reason to be dishonest in any way.

12 A. No sir.

13 Q. And you don't know Mr. Dukes.

14 A. No -- not, no.

15 Q. You don't actually -- you don't know any of the parties
16 involved in this case, do you?

17 A. I didn't know neither one.

18 Q. You simply just picked somebody up.

19 A. Just picked -- got dispatched to go pick him up, you
20 know, and take him to Florence. That's all.

21 MR. TAYLOR: Thank you.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION BY MR. FOX:

24 Q. Mr. Johnson, if I understood you correctly, it's not
25 unusual with the people you -- you -- you drive cabs a lot at

1 night.

2 A. I wasn't really employed with them for that long. I
3 was only with them for like a few months.

4 Q. Okay. But during that time you ---

5 A. It was at -- my shift was at nighttime, yes.

6 Q. Okay. And so I think I understood you, that pretty
7 often that people get in or out of your cab and, in so many
8 words say, you don't know me; you ain't seen me.

9 A. Yes. It was a few cases, like if a guy was getting
10 dropped off somewhere, and that was married or something, and
11 he was going to see somebody, and he would get out the cab and
12 be like, you ain't -- you didn't see me, something --
13 something like that, you know.

14 Q. Okay. I've got you. And I think you testified you
15 didn't think twice about it in this case, I mean ---

16 A. Yes. Just -- yes.

17 Q. And other than a little bit strange to get paid at the
18 end of the ride ---

19 A. At the end. Yes.

20 Q. That being a little bit strange, the rest of the ride
21 was run of the mill, was it not, basic ride.

22 A. Yes, just usually get paid -- well ---

23 Q. And you got paid, right?

24 A. Right.

25 Q. Okay. And nothing bad -- when you got to Florence you

1 kind of drove around the house, but I mean, nothing bad
2 happened to you.

3 A. No. There ain't nothing bad, I mean, just, you know --
4 I know taxi cabs is not the safest occupation. I'm just
5 driving around -- just in a different location, a different
6 town, you know, not knowing nobody around there, you know,
7 just kind of being on my "P's" and "Q's" a little bit, just,
8 you know, not knowing if he was going to jump out and I would
9 owe the cab company Eighty-Five Dollars, you know.

10 Q. But he didn't jump out?

11 A. No, he didn't jump out, but I mean it ---

12 Q. And you got paid.

13 A. Yes. Yes.

14 MR. FOX: Thank you. No further questions.

15 THE COURT: Any redirect?

16 MR. TAYLOR: None, Your Honor.

17 THE COURT: All right. Do you wish the witness to be
18 excused?

19 MR. TAYLOR: Yes sir, Your Honor.

20 THE COURT: Any objection?

21 MR. FOX: No, Your Honor.

22 THE COURT: All right, sir, you are released from your
23 Subpoena, and you may go back to your regular activities.

24 A. Thank you.

25 THE COURT: Thank you, sir.

1 All right, Solicitor.

2 MR. RICHARDSON: The State would call Sharonda
3 Williams.

4 THE COURT: Okay.

5 SHARONDA JONIQUE WILLIAMS, being
6 first duly sworn, testifies as follows:

7 DIRECT-EXAMINATION BY MR. RICHARDSON:

8 Q. Sharonda, I'm going to stand over here. I want you to
9 look at the jury. I want you to keep your voice up, okay.

10 A. Okay.

11 Q. All right, Sharonda, tell the jury where you are from.

12 A. I'm from Texas.

13 Q. All right. Where have you lived for the last few
14 years?

15 A. In Miami, Florida.

16 Q. Miami, Florida.

17 A. Yes.

18 Q. Were you living in Miami in 2007?

19 A. Yes.

20 Q. And you don't have to give me the address, but is there
21 a certain section of Miami?

22 A. Coconut Grove.

23 Q. Coconut Grove. All right. Do you still live at that
24 same address?

25 A. No, I don't.

1 Q. All right. Back in 2007, who were you living in
2 Coconut Grove with?

3 A. With my kids' father's father.

4 Q. What's his name?

5 A. Walter Dials.

6 Q. Okay. With your boyfriend's father, at his house, and
7 his name is Walter ---

8 A. Dials.

9 Q. Dials.

10 A. Dials.

11 Q. How do you spell that last name?

12 A. D-i-a-l-s.

13 Q. Okay. What's your boyfriend's name?

14 A. Shalom Lewis.

15 Q. Are you still dating Shalom Lewis?

16 A. No.

17 Q. And with Shalom Lewis, how many children do you have?

18 A. Two.

19 Q. Two. And what are their ages?

20 A. Four and five.

21 Q. Four and five. So one of these children would have
22 been born in 2007.

23 A. At the end of 2006.

24 Q. End of 2006. Okay. And you have a new child?

25 A. Yes.

1 Q. And how old is that child?

2 A. Four months.

3 Q. Four months. And that child is not Shalom's?

4 A. No.

5 Q. You still live with Walter Dials?

6 A. No, I do not.

7 Q. Do you still live in and around Miami?

8 A. Yes.

9 Q. All right. Back in 2007 -- well, tell me about Henry
10 Dukes. How do you know him?

11 A. That's Shalom's cousin.

12 Q. Shalom's cousin, your ex-boyfriend's cousin.

13 A. Yes.

14 Q. All right. But first cousins -- did Walter have any
15 part in raising Henry Dukes?

16 A. Not that I know of.

17 Q. Okay. But you know -- has he been around to visit in
18 Miami before?

19 A. I never met him before, until 2007.

20 Q. Until 2007.

21 A. Yes.

22 Q. All right. When did he come to visit in 2007?

23 A. Around Thanksgiving.

24 Q. Thanksgiving. November of 2007 he shows up in Miami,
25 not particularly on Thanksgiving, but somewhere around that

1 time.

2 A. Yes.

3 Q. All right. And he shows up to the house that you share
4 with Walter.

5 A. Yes.

6 Q. All right. Where was Shalom living at that time?

7 A. In the same house.

8 Q. Okay, so he stayed there also.

9 A. Yes.

10 Q. All right. You, Shalom, his dad, and your two kids.

11 A. Yes.

12 Q. How about your mom; what's her name?

13 A. Sharon Van Dyke.

14 Q. Sharon Van Dyke.

15 A. Yes.

16 Q. Was she living there also?

17 A. Yes, on and off.

18 Q. On and off. Okay. And Henry Dukes comes in in
19 November of 2007. How did he get there; do you remember?

20 A. No.

21 Q. Do you remember anyone dropping him off?

22 A. No.

23 Q. Did -- when he came to visit did Henry Dukes have his
24 own car?

25 A. No.

1 Q. So he got there but it wasn't -- he didn't drive his
2 own vehicle.

3 A. No.

4 Q. All right. Do you know if it was a cab or anything
5 like that?

6 A. No, I do not.

7 Q. Was there a bus line or a metro nearby your house?

8 A. Yes.

9 Q. Okay. All right. Did -- now when he -- when he came
10 to Miami he stayed there with you guys.

11 A. I think so. Well, yes, he stayed -- when he came to
12 the Grove he stayed there.

13 Q. Stayed there. Was there a -- did you have enough room,
14 another bedroom, or anything like that?

15 A. No.

16 Q. All right. Where did he stay?

17 A. I can't remember.

18 Q. Okay. But he stayed in the house with you guys.

19 A. Yes.

20 Q. Were you or Shalom surprised to see him?

21 A. Yes.

22 Q. In other words, did he call ahead and say, hey, I'm
23 coming to visit?

24 A. I don't rem -- I don't think so.

25 Q. Okay. Just showed up.

1 A. Yes.

2 Q. All right. And how did he act upon getting there to
3 Coconut Grove?

4 A. Just seemed like nervous and to himself, quiet.

5 Q. Did he come right out and tell you anything -- what had
6 happened?

7 A. No. I don't think so.

8 Q. But at some point he come forward and said, hey ---

9 A. Yes.

10 Q. All right. Tell this jury who was in the room when he
11 said this.

12 A. I think it was just me and Shalom with him.

13 Q. You and Shalom.

14 A. Yes.

15 Q. How about your mom?

16 A. No, I don't think so.

17 Q. All right. And now tell the jury what -- what he said.

18 A. I don't remember word for word, but I just remember him
19 saying, like, he had killed someone, and that he had walked a
20 long time, like a long way or something like that.

21 Q. He had walked a long way.

22 A. Yes.

23 Q. Now, when he said he had walked a long way, did -- did
24 he say he had walked to the place, it had taken him a long
25 walk, or away from the place, or put that in perspective for

1 us.

2 A. I think going from, he walked there.

3 Q. Okay.

4 **THE COURT:** You need to speak up, Ma'am.

5 A. I think to the house, and from the house he walked
6 there.

7 Q. All right. To the house that he had killed someone.

8 A. Yes.

9 Q. All right. Didn't say anything about anybody driving
10 him or dropping him off.

11 A. I don't remember him saying that.

12 Q. All right. Your memory is that he told you he had
13 walked to and from.

14 A. Yes.

15 Q. Okay. With regard to that, Sharonda, did -- did he
16 mention the town that he had killed someone in?

17 A. No.

18 Q. Just said in South Carolina.

19 A. Yes.

20 Q. Did he give any identifying information about the place
21 that he had killed someone?

22 A. No.

23 Q. And I'm not meaning an address, but did he say it was
24 in a store, or it was in a home, or it was in a bus station,
25 or anything like that? He said he had killed someone at a

1 home.

2 A. Yes.

3 MR. FOX: Your Honor ---

4 THE COURT: Yes sir.

5 MR. FOX: ---I'm going to object to that last question
6 and ask that it be struck. He's testifying. She's ans -- he
7 asked the question, her answer was no. Was there any -- and
8 then the next question was a leading response. I would ask --
9 -

10 THE COURT: I did not hear as you describe it, Mr. Fox.
11 He -- the Solicitor did suggest certain different types of
12 areas that it might happen and she picked one, and then the
13 Solicitor repeated what she said, is what I understand
14 happened, so I don't believe that to be leading.

15 MR. FOX: Yes, Your Honor.

16 MR. RICHARDSON: Yes sir. Thank you.

17 Q. Did he say anything about the home, as to who owned the
18 home?

19 A. No.

20 Q. But it was at a home.

21 A. Yes.

22 Q. And he had killed someone.

23 A. Yes.

24 Q. Did he tell you when that it occurred?

25 A. No.

1 Q. So did you know any relationship from the time you sat
2 there listening to him say this, how far back it had been
3 since he had killed someone in their home?

4 A. I guess like recently.

5 Q. Recently, but you don't know a week, two weeks,
6 anything like that.

7 A. No.

8 Q. How long had he been staying with you and Shalom when
9 he finally told you this?

10 A. A couple of days.

11 Q. Okay. But from the beginning you knew something was
12 wrong.

13 A. Yes.

14 Q. All right. Did he tell you why he had killed someone?

15 A. I'm not really sure.

16 Q. You are not sure that he said anything as to why, or
17 you are not sure what he had said?

18 A. I don't really remember, but I have an idea of kind of
19 what he said.

20 Q. You just have an idea.

21 A. Yeah, like I kind of remember but I don't. I don't
22 want to lie.

23 Q. Did he say it was over a girlfriend?

24 A. Not that I can remember.

25 Q. Okay. Did he tell you any other reason that it was

1 over?

2 A. I'm not sure.

3 Q. Did you give a statement to Detective Livingston?

4 A. Yes.

5 Q. And you reviewed that statement.

6 A. Yes.

7 Q. All right. Were you able to tell Detective Livingston
8 anything -- I'm -- I don't want you to speculate, but as to
9 what Henry Dukes told you, the reason that he killed a person
10 in his home for.

11 A. I think I -- I said like, it might have been like over
12 drugs or something.

13 Q. Over drugs.

14 A. Yes. I think so.

15 Q. Okay. Now, at some point you called the police; is
16 that right, or what?

17 A. Yes. Yes.

18 Q. Okay. How long after Mr. Dukes made that statement did
19 you call the police?

20 A. Shalom and I talked about it and it's like maybe a
21 couple of days.

22 Q. Okay. And when I say police, did you call Horry
23 County, or did you call the local police?

24 A. Local.

25 Q. And the hat was Miami?

1 A. Yes.

2 Q. And that's in Dade County?

3 A. Yes.

4 Q. All right. And were you able -- tell the jury what you
5 told the police as to what you were calling them about.

6 A. Said -- we said that, like it was a family member here
7 visiting us; they told us they had killed someone in South
8 Carolina somewhere.

9 Q. Did you tell -- were you able to tell the police where
10 Henry Dukes would be?

11 A. Yes.

12 Q. And where did you tell the police that Henry Dukes
13 would be?

14 A. That he would be going to the metro station ---

15 Q. The bus station.

16 A. Yes, with my mom.

17 Q. With your mom. Okay. And to your knowledge was Henry
18 Dukes arrested at the bus station?

19 A. I think so, or on the way there.

20 Q. Okay. But he never came back to stay with you guys.

21 A. No.

22 Q. All right. Did -- did the -- did y'all -- were you and
23 Shalom, or any of y'all, back in 2007, were y'all buying or
24 selling drugs?

25 A. No.

1 Q. Okay. What did you do back then? I know you just had
2 a small child, but did you work outside the home?

3 A. Yes, I was working. I don't -- I don't think it was in
4 the area when he came. I think it was probably after -- it
5 was after or before he came, I was working at Whole Foods.

6 Q. At where?

7 A. At Whole Foods market.

8 Q. Okay. And did Shalom work?

9 A. He would go to work sometimes with his father.

10 Q. Where is Shalom now?

11 A. He's in jail.

12 Q. He's in jail, in Miami?

13 A. Yes.

14 Q. Do you know what that's over?

15 A. Yes.

16 Q. What? What is Shalom in jail over?

17 A. He violated his probation.

18 Q. All right. Probation, or his new charges, his
19 violation of probation, did that have anything to do with
20 drugs?

21 A. No.

22 Q. Okay. Do you know what he was on probation for?

23 A. Yes.

24 Q. What was that?

25 A. For burglary and assault.

1 Q. Okay. Did the burglary and the assault occur while you
2 were living with Shalom?

3 A. While he was staying with me.

4 Q. Okay. So you knew about the -- that, but it didn't
5 have anything to do with drugs.

6 A. No.

7 Q. All right. Did -- has Dukes, or anyone on his behalf,
8 threatened you or your mom, or any of your family?

9 A. No.

10 Q. Okay. You haven't got any word that you could been in
11 trouble, anything like that, for coming forward.

12 A. No.

13 Q. All right. Now, as far as coming forward, you are here
14 under Subpoena, correct?

15 A. Yes.

16 Q. Didn't want to be here?

17 A. No.

18 Q. As a matter of fact, in Miami they had to tell you if
19 you didn't come they were going to arrest you, correct?

20 A. Yes.

21 Q. All right. And when was that? When they tell in Miami
22 you had to come?

23 A. Last Thursday.

24 Q. So you really don't want to be here testifying against
25 Dukes.

1 A. No, I don't.

2 Q. But -- and you've hung up on our office many times.

3 A. Yes.

4 Q. Okay. Do you have any bias against Mr. Dukes?

5 A. No, I do not.

6 Q. So you are not mad with him in any way?

7 A. No.

8 Q. And you are telling the truth because you've been made
9 to come and tell the truth.

10 A. Yes.

11 Q. And you have given not only your testimony today, but
12 in the past you have sat down and given us a statement,
13 correct?

14 A. Yes.

15 Q. Did you talk with -- have you talked with Shalom? Is
16 there any way for you to visit him in jail?

17 A. I spoke to him.

18 Q. All right. Was he -- did he want you to come back and
19 testify or not?

20 A. No.

21 Q. Okay. Did he tell you that there could be any
22 consequences ---

23 MR. FOX: Objection. Hearsay.

24 THE COURT: Sustained.

25 MR. RICHARDSON: Yes sir. Improper question.

1 Q. But you didn't feel like you would be in any danger or
2 harm's way; you just didn't want to come.

3 A. I didn't want to come because it's family to me, and
4 I -- you know, I don't -- you know ---

5 Q. He's not personally related to you though, right ---

6 A. No.

7 Q. ---Henry Dukes is not. He's related to your children's
8 father ---

9 A. Yes sir.

10 Q. ---And to your children's grandfather.

11 A. Yes.

12 Q. Do you remember what Henry Dukes was wearing when he
13 came to visit in Miami?

14 A. Not exactly, no.

15 Q. Do you remember pants, shirt, coat, anything like that?

16 A. Yes. I think he just had -- he had on jean -- some
17 jeans on, and then maybe a jacket, cause it was cold.

18 Q. Okay. It was cold in Miami?

19 A. Yes. It's like -- it gets a little colder sometimes.

20 Q. Yes. Do you remember -- were the jean -- they were
21 jeans, right. Do you remember any tennis shoes or anything
22 like that, nothing that stood out.

23 A. No.

24 Q. How about a coat? Do you remember anything about that?

25 A. No.

1 Q. Do you remember the color?

2 A. No.

3 Q. Just that he had on a coat?

4 A. Yes.

5 Q. How about a gun? Did you ever see a gun?

6 A. No.

7 Q. All right. Any ammunition or anything like that?

8 A. No.

9 Q. Did he bring anything with him, like luggage?

10 A. No.

11 Q. Just showed up with what he had on his back?

12 A. Yes.

13 Q. Did he give you any other details about how many times

14 he had shot the guy, or anything like that?

15 A. No.

16 Q. Did he mention anyone having seen him shoot someone

17 else?

18 A. No.

19 Q. That's -- that's about all you know about the case?

20 A. Yes.

21 Q. Give me one minutes, okay, one second.

22 **MR. RICHARDSON:** Judge, Court's indulgence.

23 **THE COURT:** Yes sir.

24 Q. Do you see Henry Dukes here today?

25 A. Yes.

1 Q. Ma'am?

2 A. Yes.

3 Q. All right. Point him out for the jury, please.

4 A. He's right there.

5 Q. All right. And that's the Defendant sitting at the
6 defense table.

7 THE COURT: Ma'am, you need to answer.

8 A. Oh, yes.

9 Q. All right. Now, Sharonda, I -- I have been given an
10 NCIC, or a report as to your record. Just to be on the safe
11 side I want to cover some things, but I don't know that you've
12 ever been convicted of any of this.

13 A. No.

14 Q. You haven't been convicted of anything?

15 A. No.

16 Q. You've been charged before ---

17 A. Yes.

18 Q. ---But never convicted.

19 A. No.

20 Q. Okay. All the charges dropped that you have been
21 charged with in the past.

22 A. Yes.

23 Q. Suffice it to say, has anyone from this office, or
24 anybody from Miami promised you anything in exchange for your
25 testimony?

1 A. No.

2 Q. You didn't have any charges pending against you?

3 A. No.

4 Q. Okay.

5 MR. RICHARDSON: I believe that's all I have.

6 Mr. Fox represents the Defendant, and he's going to ask
7 you some cross-examination.

8 A. Okay.

9 THE COURT: All right, Mr. Fox.

10 MR. FOX: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. FOX:

12 Q. Ms. Williams, when Mr. Dukes supposedly spoke to you
13 and to your boyfriend about what happened in South Carolina it
14 was you and your boyfriend, Shalom, and Mr. Dukes present,
15 correct?

16 A. Yes.

17 Q. And that's it?

18 A. Yes.

19 Q. Now, the Solicitor asked you -- you spoke to an
20 investigator from the Solicitor's Office in Miami a couple of
21 months ago; did you not, Mr. Livingston?

22 A. Yes.

23 Q. Okay. In fact, Detective Sanchez from Miami Police
24 Department accompanied him to where you were living then?

25 A. Yes.

1 Q. Okay. And that's the -- and then you had a chance to
2 speak with Investigator Livingston, tell him what you knew
3 about all this; correct?

4 A. Right.

5 Q. Okay. And in fact, Mr. Richardson, the Solicitor, this
6 morning has referred to the statement, and they -- you've been
7 given a chance to review that statement; is that correct?

8 A. Yes.

9 Q. Okay. To remind yourself of the conversation you had
10 with the investigator. And at that time when you spoke to the
11 investigator you told them that your mother was present when
12 Mr. Dukes made this confession, right. Do you remember
13 telling the investigator that?

14 A. Yes.

15 Q. Okay. And this was Mr. Walter Dial's house that you
16 were staying at, correct?

17 A. Yes.

18 Q. Okay. And you also indicated -- and, in fact, you told
19 -- I'm going to ask you again about your mother. You told the
20 investigator two different times when they were investigating
21 that your mother was present when Mr. Dukes made this
22 statement to you about what happened in South Carolina, right.

23 A. Uh huh (**indicating positive**)

24 **THE COURT:** You need to say ---

25 A. Yes.

1 Q. All right. Now, then -- so Mr. Dukes makes this
2 statement some days after he arrived and starts staying with
3 you all, correct.

4 A. Correct.

5 Q. And you waited how long to call the police?

6 A. Maybe about a week.

7 Q. Okay. And he was still staying with you during that
8 week, Mr. Dukes was?

9 A. Yes.

10 Q. Okay. So with you and your boyfriend, Mr. Lewis, and
11 your children, correct?

12 A. Correct.

13 Q. Okay. And then your boyfriend's father also was in the
14 home; is that right?

15 A. Right.

16 Q. Okay. Now, did you not tell Investigator Livingston,
17 when you spoke with him a couple of months ago -- did you not
18 tell him that the plan was to send Mr. Dukes to stay with your
19 mother. Do you recall telling him that?

20 A. He needed a place to stay for a couple of days.

21 Q. Okay. But the information you had, you've testified,
22 and what you told to the investigator was, a man shows up on
23 your doorstep, that you don't know, says he's committed
24 murder, and is wanted by -- and you believe he's wanted by the
25 police, correct ---

1 A. Correct.

2 Q. ---And your plan was to send him to stay with your
3 mother; is that right?

4 A. Right.

5 Q. And your mother knew about that. Was she aware of the
6 plan? Was your mother aware of the circumstances?

7 A. Yes, but she didn't know that we had called the
8 Detective and spoke to the Detective.

9 Q. I understand. Now, when you called the Detective who
10 made that call?

11 A. I did.

12 Q. You did. And did anybody else know you were going to
13 make that call?

14 A. Yes.

15 Q. Who?

16 A. Shalom.

17 Q. So you discussed it with Shalom?

18 A. Yes, we discussed it.

19 Q. Okay. But you made the call.

20 A. Right.

21 Q. You provide a name when you called the police?

22 A. Provided who name?

23 Q. The police.

24 A. Provide my name?

25 Q. Yes.

1 A. It's suppose to be confidential ---

2 Q. I know, but did -- I understand. But did you give them
3 your name?

4 A. I think I did.

5 Q. And did you speak with -- do you know -- let me step
6 back. When Investigator Livingston from Conway came to speak
7 to you the Miami officer that came was Frankie Sanchez,
8 correct?

9 A. Yes.

10 Q. Okay. Had you met Detective Sanchez before then?

11 A. Yes.

12 Q. Okay. In any circumstances other than in connection
13 with this case?

14 A. No.

15 Q. Didn't know Frankie Sanchez for any reason before.

16 A. No.

17 Q. Never worked with him in his capacity as an officer
18 before?

19 A. No, I don't think so.

20 Q. Okay. Was that a -- you say you don't think so or you
21 didn't? You don't know, or you didn't?

22 A. No.

23 Q. Now, ---

24 MR. FOX: One moment, please, Your Honor.

25 THE COURT: Yes sir.

1 MR. FOX: Thank you, Your Honor. No further questions.

2 THE COURT: Any redirect?

3 MR. RICHARDSON: Court's indulgence just one moment.

4 THE COURT: Yes sir.

5 REDIRECT-EXAMINATION BY MR. RICHARDSON:

6 Q. Sharonda, do you have your statement with you?

7 A. It's in the other room.

8 Q. In the other room. I want you to read this ---

9 THE COURT: Well, you need to mark it.

10 MR. RICHARDSON: Yes sir.

11 (STATEMENT OF SHARONDA WILLIAMS MARKED STATE'S EXHIBIT
12 NUMBER 16, FOR IDENTIFICATION ONLY.)

13 Q. Sharonda, I'm going to hand you what's been marked as
14 State's Exhibit Number 16, for identification, okay.

15 A. Okay.

16 Q. Turn to page six. I want you to read something, but I
17 want you to read it to yourself, okay, and then I'm going to
18 ask you some questions about it.

19 A. You said six or sixteen?

20 Q. Six.

21 A. Okay.

22 Q. Start right here and read down to here, your response.
23 Okay.

24 A. Okay.

25 Q. I want to delve in ---

1 **MR. FOX:** Your Honor, may we approach?

2 **THE COURT:** Yes sir.

3 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

4 Q. Sharonda, when you met at Miami Prosecutor's Office a
5 week ago did your mother go with you?

6 A. Yes.

7 Q. Was there any indication at that time that she wanted
8 to come back -- come to South Carolina?

9 A. No.

10 Q. Did she come with you to South Carolina?

11 A. No. She's watching my kids at home.

12 **THE COURT:** I'm sorry. I need you to speak up, please.

13 A. She's watching my kids at home.

14 Q. All right. So the agreement was that she could stay
15 and watch your children.

16 A. Yes.

17 Q. But you were ordered to come.

18 A. Yes.

19 **MR. RICHARDSON:** Okay. Thank you so much.

20 Your Honor ---

21 **THE COURT:** You would like the witness to be excused?

22 **MR. RICHARDSON:** Yes sir.

23 **THE COURT:** Any objection, Mr. Fox?

24 **MR. FOX:** No, Your Honor.

25 **THE COURT:** All right, Ma'am, you are released from

1 your Subpoena and the Court Order, and you are free to leave.

2 A. Thank you.

3 MR. RICHARDSON: Your Honor, the State would call
4 Frankie Sanchez.

5 THE COURT: All right.

6 FRANKIE SANCHEZ, being first duly
7 sworn, testifies as follows:

8 DIRECT-EXAMINATION BY MR. RICHARDSON:

9 Q. Detective Sanchez, please, where are you employed?

10 A. For the City of Miami Police Department, in South
11 Florida, Miami, Florida.

12 Q. And do you know Sharonda?

13 A. Yes.

14 Q. All right. Did you meet her at any time before this
15 Henry Dukes incident occurred?

16 A. Yes, I did.

17 Q. All right. So you knew her from before.

18 A. Correct.

19 Q. All right. Had you ever met Henry Dukes before?

20 A. On one occasion.

21 Q. Okay. Before 2007?

22 A. No.

23 Q. Okay. Was it after he was accused of murder that you
24 met him?

25 A. Yes.

1 Q. All right. Now, at some point Miami Police Department
2 received a call that Henry Dukes was in town.

3 A. Correct.

4 Q. I don't want to get into any statement, okay. Just ask
5 you this, was Henry Dukes arrested?

6 A. Yes, he was.

7 Q. Where?

8 A. In the City of Miami, in Miami Dade County.

9 Q. Miami Dade County.

10 Q. Is there a particular place?

11 A. Yes. According to information we received a
12 neighborhood in the City of Miami called Coconut Grove, with
13 the streets of Fro Avenue and Brooker Street, is where he had
14 come to be apprehended.

15 Q. Is that at a bus station?

16 A. It's in an area close to a main highway where there is
17 a metro rail terminal.

18 Q. Okay. So he wasn't arrested at a bus station?

19 A. I'm sorry.

20 Q. He was not arrested at a bus station?

21 A. No. It was closer to a train system.

22 Q. Train system. Any altercation?

23 A. No, none whatsoever.

24 MR. RICHARDSON: That's all the questions I have.

25 Please answer any questions that Mr. Fox might have.

1 THE COURT: Cross-examination.

2 MR. FOX: None, Your Honor.

3 THE COURT: All right, do you wish the witness to be
4 excused?

5 MR. RICHARDSON: Yes sir, please.

6 THE COURT: All right, Detective, you are released from
7 your Subpoena and any Order, and you are free to go back to
8 Florida and resume your duties.

9 A. Thank you, sir.

10 THE COURT: All right, sir.

11 MR. RICHARDSON: Your Honor, if we may approach.

12 THE COURT: Absolutely.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 THE COURT: All right, ladies and gentlemen, the next
15 witness is the medical examiner or doctor, and he's at the
16 hospital at the present time and is unavailable until two PM,
17 so to accommodate the duties that the Doctor has we are going
18 to break until two PM. We will resume the trial at that point
19 in time and hear from that remaining witness at that point in
20 time.

21 So, you are free to go. Remember, don't talk about the
22 case, don't allow anybody to talk to you, don't look up
23 anything on your own, decide the case solely and completely on
24 the evidence you hear in this courtroom, from no other source.

25 I'll see you back -- be back in your jury room by 2 PM,

1 please. Thank you very much.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right, Solicitor, is there anything
5 from the State before we come back?

6 MR. RICHARDSON: No sir.

7 THE COURT: And from the defense?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right. Very good. We will resume at
10 that point in time.

11 Mr. Fox, I guess I would ask you to -- since we have a
12 break here, an extended break, take the opportunity to talk to
13 your client about his Constitutional Rights and testifying
14 because it appears I'll be talking to him about that this
15 afternoon, so if you can cover that with him beforehand that
16 would be great. All right.

17 MR. FOX: Yes sir.

18 THE COURT: All right. See y'all back at 2 PM then.
19 Thank you very much.

20 MR. TAYLOR: Thank you, Your Honor.

21 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
22 OUTSIDE THE PRESENCE OF THE JURY.)

23 THE COURT: All right, Solicitor, are you ready for the
24 jury?

25 MR. RICHARDSON: Yes sir, Your Honor.

1 **THE COURT:** All right. And Mr. Fox.

2 **MR. FOX:** Yes, Your Honor.

3 **THE COURT:** All right. Very good. Ask the jury to
4 come in, please.

5 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
6 **JURY.)**

7 **THE COURT:** All right, Solicitor, your next witness,
8 please.

9 **MR. TAYLOR:** Thank you. May it please the Court. We
10 call Dr. Lee Proctor to the stand.

11 **THE COURT:** All right, sir. Please come around to be
12 sworn, sir.

13 **EDWARD LEROY PROCTOR, JR.,** being
14 first duly sworn, testifies as follows:

15 **DIRECT-EXAMINATION BY MR. TAYLOR:**

16 Q. Dr. Proctor, how old are you?

17 A. I am fifty-nine.

18 Q. And how -- where are you currently employed?

19 A. I am self-employed.

20 Q. Okay. And what do you do?

21 A. I am a medical doctor engaged in the practice of
22 Pathology, to include Anatomic Pathology, Clinical Pathology,
23 and Forensic Pathology.

24 Q. And could you give me your educational background.

25 A. I went to Clemson University, got my medical degree

1 from the Medical University of South Carolina, and did a
2 residency in Pathology at Walter-Reed Army Medical Center.

3 Q. And I'm assuming you are Board Certified in South
4 Carolina.

5 A. I am Board Certified by the National Board of Medical
6 Examiners, and the American Board of Pathology in Anatomic,
7 Clinical and Forensic Pathology.

8 MR. TAYLOR: All right. Your Honor, I believe Dr.
9 Proctor has been admitted as an expert in this Court many
10 times. Would ask at this time that he be admitted as an
11 expert in his area of practice.

12 THE COURT: Do you wish to voir dire the witness or
13 have any objection?

14 MR. FOX: No, Your Honor.

15 THE COURT: All right. Very good.

16 MR. TAYLOR: Now, Dr. Proctor ---

17 THE COURT: The -- I'm sorry.

18 MR. TAYLOR: I'm sorry, Your Honor.

19 THE COURT: Dr. Proctor is qualified to give his
20 opinion in the field of Pathology and Forensic Pathology.

21 You may continue.

22 MR. TAYLOR: I'm sorry for interrupting the Court, Your
23 Honor.

24 THE COURT: It's all right.

25 Q. Now Dr. Proctor, you were the doctor that examined the

1 body of Andrico Gowans on November -- the shooting death of
2 him on November the 2nd ---

3 A. That's correct.

4 Q. ---2007.

5 A. Yes sir, I was.

6 Q. When did you actually inspect the body?

7 A. I was contacted by the Deputy Coroner, Mr. Burroughs,
8 on the 2nd of November, and the actual examination was
9 performed on the 3rd.

10 Q. Okay. And can you explain to the jury what your job
11 duties are when you examine the body? Go through the process.

12 A. Yes sir. What we do in Forensic Pathology is, we get
13 what information is available from the Coroner or
14 investigative authorities. We do an external examination of
15 the body. We do an internal examine. We draw blood or other
16 fluids for toxicologic evaluation. We take samples that we
17 need to use to look at microscopically, and once we assemble
18 all of this data we put together a report to determine the
19 cause and manner of death.

20 Q. After your examination what did you determine to be the
21 cause of death? Explain that to the jury.

22 A. Yes. Mr. Gowans was shot. There was a gunshot wound
23 that came from his left side. It went through the outer
24 aspect of his left arm, traversed the arm, entered the chest,
25 left chest, at the fourth rib interspace, crossed the chest,

1 penetrating the left upper lung, penetrating the aorta,
2 penetrating the right lung, and we removed a jacket projectile
3 from the subcutaneous tissues in the right lateral chest.

4 Q. And what did you determine this to be?

5 A. This was a gunshot wound with associated trauma and
6 massive hemorrhage, and the -- that was the cause of death.
7 The manner of death would be homicide.

8 Q. Now Dr. Proctor, you said you inspect the body, inspect
9 the wound area. Would you explain to the jury why you do
10 that, and what you are looking for.

11 A. When we inspect a wound we look closely for evidence of
12 residue and stippling. Residue is actually the powder, or the
13 smoke that comes out of the end of the gun. It can leave
14 markings on the skin, and stippling is actually the hot
15 powder, burning powder that comes out of the gun, and
16 stippling will actually burn the skin, and you can see the
17 areas of stippling if it's close enough.

18 Q. All right. And what did you find in the wound area in
19 this case?

20 A. There was no stippling, no residue.

21 MR. TAYLOR: Okay. Court's indulgence, Your Honor.

22 THE COURT: Thank you, sir.

23 MR. TAYLOR: Your Honor, defense counsel has informed
24 me there's no objection to these photographs.

25 THE COURT: All right. Well, let's have them marked

1 first.

2 MR. TAYLOR: Yes sir, Your Honor.

3 MR. TAYLOR: Your Honor, may I approach the witness?

4 THE COURT: Just a second. 17, 18, 19 and 20 have been
5 offered into evidence. Is there any objection, Mr. Fox?

6 MR. FOX: No, Your Honor.

7 THE COURT: All right. They are in evidence without
8 objection.

9 You may proceed.

10 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBERS 17, 18, 19, AND 20.)

12 MR. TAYLOR: Thank you, Your Honor.

13 Q. Dr. Proctor, these are some photographs taken at the
14 time of the autopsy, and I'm going to ask you some questions
15 regarding those.

16 A. Yes sir.

17 Q. First I would ask -- there is a photograph there, and
18 it shows the entry wound prior to being cleaned and then after
19 it was cleaned. Would that be the entry wound?

20 A. There are two photographs here, Number 19 and Number
21 20. Number 19 is prior to being cleaned, and 20 is after
22 being cleaned, and what we mean by cleaning these wounds is,
23 we do not rub anything; we just dab the blood away, to
24 preserve any residue or stippling that might be there.

25 Q. Okay. And next picture shows where you found the

1 wound, and could you explain again where that was located?

2 A. Yes sir. There is a photograph showing the projectile
3 in the subcutaneous tissues of the right chest.

4 Q. All right. And the final photo is ---

5 THE COURT: I'm sorry. What number ---

6 A. And that is Exhibit Number 18, sir.

7 THE COURT: Thank you.

8 Q. And the last one.

9 A. Exhibit Number 17 is a photograph of the projectile
10 that we removed.

11 MR. TAYLOR: Your Honor, I would ask that we move these
12 into evidence at this time.

13 THE COURT: They are already in evidence.

14 MR. TAYLOR: Thank you, Your Honor.

15 Court's indulgence, Your Honor.

16 THE COURT: Yes sir.

17 Q. When you did the toxicological report on the victim in
18 this matter what did it come back in as far as what was in his
19 system?

20 A. As part of the autopsy we draw blood, and under chain
21 of custody we send this to National Medical Services, which is
22 a forensic testing laboratory, and the toxicologic evaluation
23 in this case, we do alcohol and drugs of abuse. Our
24 toxicology was -- showed no evidence of alcohol, and drugs of
25 abuse, it was positive for marijuana and marijuana metabolite.

1 Q. Okay.

2 MR. TAYLOR: Thank you, Your Honor. Your Honor, I have
3 nothing further.

4 Thank you very much, Dr. Proctor.

5 Your Honor, I have no further questions.

6 THE COURT: All right. Cross-examination.

7 MR. FOX: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. FOX:

9 Q. Dr. Proctor, could you -- did you, or could you
10 estimate a time of death?

11 A. I was given a time of death by the Coroner's Office as
12 approximately nine AM on November the 2nd. I did not see the
13 body until the 3rd.

14 Q. And your examination revealed one gunshot wound to the
15 body.

16 A. That's correct.

17 Q. And no other wounds of any kind, right?

18 A. No sir. He had some abrasions on the back of his right
19 elbow, but no -- no other significant wounds.

20 Q. Okay. Nothing that would have caused his death,
21 certainly.

22 A. Nothing that would have caused death.

23 Q. And then in examining that wound -- and you've
24 identified the picture -- you found one bullet, one projectile
25 ---

1 A. That's correct.

2 Q. ---In that wound. Okay. And nothing else.

3 A. Nothing else.

4 MR. FOX: Thank you. No further questions.

5 I'm sorry, Your Honor. I do have ---

6 Q. Dr. Proctor, you said that this -- the cause of death
7 was determined to be a homicide.

8 A. That is correct.

9 Q. That being what, not a suicide, correct?

10 A. Homicide, in forensic terms, means death at the hands
11 of another.

12 Q. Okay. But you wouldn't be able to tell from your
13 examination, for instance, if you had a situation of self-
14 defense, or mutual combat, or anything of that nature.

15 A. No sir.

16 Q. Simply that it wasn't at the victim's own hands.

17 A. That's correct.

18 Q. Okay. Thank you.

19 MR. FOX: No further questions.

20 THE COURT: Any redirect?

21 MR. TAYLOR: None, Your Honor.

22 THE COURT: Do you wish the witness to be excused?

23 MR. TAYLOR: I do, Your Honor.

24 THE COURT: Any objection?

25 MR. FOX: No, Your Honor.

1 **THE COURT:** All right, Doctor, you are released from
2 your Subpoena. You may go back to your regular duties, sir.

3 A. Thank you, Your Honor.

4 **THE COURT:** All right, sir.

5 All right, Solicitor, further witnesses by the State.

6 **MR. RICHARDSON:** Your Honor, the State would have no
7 further witnesses. The State rests.

8 **THE COURT:** All right. Very good.

9 All right, Mr. Fox, do you have any matters of law for
10 the Court at this point in time?

11 **MR. FOX:** I do, Your Honor.

12 **THE COURT:** All right. Very good.

13 All right, ladies and gentlemen, if you would go to your
14 jury room for a few minutes. There are some matters of law I
15 have to take up outside your presence, and so you will -- you
16 be at ease and we will call you back in just as quick as I
17 can. All right. Thank you very much.

18 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
19 **JURY.)**

20 **THE COURT:** All right, Mr. Fox.

21 **MR. FOX:** Your Honor, at this time, at the conclusion
22 of the State's case, the defense would make a motion for a
23 directed verdict on the indictment charging murder, on the
24 basis that there is no credible evidence, no physical
25 evidence, certainly, tying Mr. Dukes to this homicide, to this

1 murder, and that there is insufficient evidence to go to the
2 jury, and as a matter of law there should be a directed
3 verdict, Your Honor.

4 **THE COURT:** All right. Thank you.

5 Regarding a directed verdict, defendant is entitled to a
6 directed verdict when the State fails to produce evidence of
7 the offense charged. The Trial Court's duty is to look at the
8 existence of evidence, not to weigh the evidence. That's the
9 jury's job. My job is to find out whether or not the evidence
10 exists in this particular matter. If there is any direct
11 evidence or substantial circumstantial evidence reasonably
12 tending to prove the guilty of the accused the case properly
13 goes to the jury. I would grant a directed verdict motion
14 when the evidence merely raises a suspicion that the accused
15 is guilty, a suspicion being, or implying a belief or opinion
16 as to guilt based on facts and circumstances which do not
17 amount to proof.

18 In this particular matter I find from the testimony
19 presented that there is more than sufficient evidence, if so
20 believed by the jury, to convict the Defendant of the crime of
21 murder beyond a reasonable doubt, this being far in excess of
22 the standard necessary, but the evidence presented by the
23 State, if it is believed by the jury, is of such that well
24 exceeds the standard of reasonably tending to prove the guilt
25 of the accused, therefore I respectfully decline to grant your

JURY OUT/COURT TO DEFENDANT

307

1 motion for a directed verdict.

2 Further motions from the defense at this point in time.

3 **MR. FOX:** No, Your Honor. I think this would be the
4 appropriate time to question -- for the Court to question Mr.
5 Dukes regarding his ---

6 **THE COURT:** Constitutional Rights.

7 **MR. FOX:** ---Constitutional Right to testify, Your
8 Honor.

9 **THE COURT:** All right. Very good.

10 All right, Mr. Dukes, if you would please stand at this
11 time, sir.

12 And Madam Clerk, can you place Mr. Dukes under oath.

13 **HENRY JERMAINE DUKES**, being first
14 duly sworn, states as follows:

15 **THE COURT:** All right, Mr. Dukes, at this point in time
16 I'm going to explain to you certain of your Constitutional
17 Rights so, if at any point in time you don't understand what
18 I'm talking about, what we are discussing, or you have a
19 question, anything like that, you need to indicate that to me.
20 You can raise your hand, you can tell your attorney, but in
21 some way you need to tell me that you don't understand, or
22 you've got a question and we need to talk about that. Are we
23 in agreement there?

24 A. Yes.

25 **THE COURT:** All right. Very good. We've reached the

1 stage of the trial where you can present your defense. Now,
2 you have the right to claim the protection given to you by the
3 Fifth Amendment to the Constitution of the United States of
4 America. That states, in part, that no person shall be
5 compelled in any criminal case to be a witness against
6 themselves. That means nobody can make you testify; nobody
7 can force you to testify in this case. You can if you want
8 to. It is your choice. You can either exercise your
9 Constitutional Rights or you can decide to testify, but it's
10 your choice and nobody else's decision; do you understand
11 that?

12 A. Yes.

13 **THE COURT:** All right. Now, if you decide to testify
14 you will be under the same rules that have governed all the
15 other witnesses that have testified in this case, meaning that
16 you will be examined or questioned by your attorney, and then
17 the State can cross-examine, or ask you questions on any
18 matters the Court would deem relevant or proper. Now one of
19 those might be a criminal record. I don't know what your
20 record is.

21 Solicitor, is there anything that you would intend to
22 examine Mr. Dukes about regarding any past criminal record?

23 **MR. RICHARDSON:** Your Honor, I do see that in Kings
24 County, New York -- well, no, Your Honor, that's a juvenile
25 charge. I don't think that would be anything that could come

1 out. It's a drug charge.

2 He's got a '99 possession of controlled substance third,
3 not third offense but third degree, fraudulent obtaining
4 transaction, it looks like, in 2006. That is in New York City
5 Police Department, Mid-Town, and I believe that's it, Your
6 Honor.

7 Of course that first one I was telling you about looks
8 to be a juvenile, and we wouldn't try to admit that.

9 **THE COURT:** All right, sir. The other one about the
10 criminal record, as to -- you said it was in 2009, about the
11 prescriptions, New York City.

12 **MR. RICHARDSON:** Your Honor, that was fraudulently
13 obtaining transcription in New York City.

14 **THE COURT:** Okay. And what was the other one? That
15 one the Court would find to be proper. What -- what was the
16 other one?

17 **MR. RICHARDSON:** The other one was a criminal
18 possession of controlled substance, third degree, and received
19 a year of probation. That was in New York City.

20 **THE COURT:** All right.

21 **MR. RICHARDSON:** And I do need to check. Let me ask
22 you, cause right above that is -- it says, "Adjudicated
23 Juvenile Delinquent".

24 Is that your understanding, Mr. Fox, '99?

25 **MR. FOX:** Yes. The '99, my understanding is that's a

1 juvenile.

2 **MR. RICHARDSON:** Yes sir. I think, in all fairness,
3 the only thing would be a 2006 fraudulent obtaining. The
4 other one looks to be a juvenile, Your Honor.

5 **THE COURT:** All right. Very good.

6 All right. So, Mr. Dukes, what the Court is talking to
7 the Solicitor about is Rule 609, Rules of Evidence in South
8 Carolina. If you have any convictions involving dishonesty,
9 or false statements, or for a crime punishable by imprisonment
10 for more than one year, and it falls within certain time
11 limits, and the Court determines that the probative value of
12 allowing the State to ask this question or admitting this
13 evidence, outweighs any prejudice to you, then the Solicitor
14 could ask you about this, or it could be made part of this
15 case on the issue only of credibility or believability.

16 I do find it's relevant. I do find it's probative value
17 outweighs any prejudice to you, so the State would be able to
18 ask you about that particular conviction, whether or not you
19 were convicted of that crime. If you admit that you were
20 convicted of the crime that's the end of it. The Solicitor
21 can't ask any more questions of you. If you denied it then
22 the State would be able to proceed to try and prove that you
23 were actually convicted of that crime; do you understand that?

24 A. Yes.

25 **THE COURT:** All right. Now, if you decide to testify

1 it's got to be your decision. It's got to be made
2 intelligently, freely, voluntarily, with knowledge of the
3 protections given to you by the Fifth Amendment to the
4 Constitution of the United States, and the things that we have
5 talked about in that regard.

6 If you decided not to testify I would instruct the jury,
7 as part of my charge of the law, that they can't give that
8 fact any consideration whatsoever, that there is no prejudice
9 to you because you didn't testify; they can't talk about it in
10 the jury room. I'll tell them it's not part of this case in
11 any way, and explain that to them.

12 Now, it being entirely left up to you to decide whether
13 or not you want to testify, first, do you understand what we
14 have talked about?

15 A. Yes.

16 **THE COURT:** Do you have any questions?

17 A. No.

18 **THE COURT:** Do you want to ask your lawyer, or talk to
19 your lawyer for a minute before I see if you want to testify
20 or not?

21 A. Yes.

22 **THE COURT:** All right. Very good. Go ahead.

23 (DEFENDANT CONFERS WITH HIS COUNSEL.)

24 **MR. FOX:** We are ready to proceed, Your Honor.

25 **THE COURT:** All right. Very good.

JURY IN
WALTER DIALS - DIRECT BY FOX

312

1 All right, Mr. Dukes, don't tell me what y'all talked
2 about, but did you have sufficient time to talk to your lawyer
3 about whatever question you had?

4 A. Yes, Judge.

5 THE COURT: All right. Very good. Do you wish to
6 testify in this particular case?

7 A. No.

8 THE COURT: All right. Very good, sir. Thank you very
9 much.

10 A. Yes.

11 THE COURT: All right, Mr. Fox, with the decision being
12 made by your client not to testify in this, will be the --
13 will there be any other -- or any presentation of evidentiary
14 value to the jury by the defense?

15 MR. FOX: Yes, Your Honor. We would call Walter Dials.

16 THE COURT: All right. So you will be calling Mr.
17 Dials as a witness?

18 MR. FOX: Yes sir.

19 THE COURT: All right. Very good. Are you ready for
20 the jury to come back in now?

21 MR. FOX: Yes, Your Honor.

22 THE COURT: All right. Very good.
23 Ask the jury to come back in, please.

24 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
25 JURY.)

JURY IN
WALTER DIALS - DIRECT BY FOX

313

1 THE COURT: All right, Mr. Fox, you may proceed, sir.

2 MR. FOX: Defense would call Walter Dials.

3 THE COURT: All right.

4 WALTER DIALS, being first duly
5 sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. FOX:

7 Q. Mr. Dials, make sure you speak up nice and loud so
8 everyone can hear.

9 Would you please give us your date of birth?

10 A. [REDACTED] 1959.

11 Q. Okay. Mr. Dials, where do you live?

12 A. Now?

13 Q. Yes sir.

14 A. I live [REDACTED], Apartment [REDACTED].

15 Q. And where is that?

16 A. South Carolina.

17 Q. In Conway?

18 A. No.

19 Q. Where?

20 A. Darlington.

21 Q. Darlington.

22 A. Yes.

23 Q. Do you have any connection to Miami area of Florida?

24 A. Yes.

25 Q. Have you ever lived in Miami?

JURY IN
WALTER DIALS - DIRECT BY FOX

314

- 1 A. Yes.
- 2 Q. When did you live in Miami?
- 3 A. Last year, October.
- 4 Q. Okay. How long did you live in Miami?
- 5 A. Fifty-one years.
- 6 Q. Okay. Is that pretty much your whole life?
- 7 A. Yes.
- 8 Q. Okay. In any particular area in Miami that you lived?
- 9 A. Coconut Grove.
- 10 Q. Okay. Were you living in Miami in November of 2007?
- 11 A. Yes.
- 12 Q. Okay. Anybody else living with you in Coconut Grove?
- 13 A. My son, Shalom, and his girlfriend, Sharonda.
- 14 Q. Is that Sharonda Williams?
- 15 A. Yes.
- 16 Q. Do they have any children that you know of?
- 17 A. Yes.
- 18 Q. Where is your son now; do you know?
- 19 A. He's in jail.
- 20 Q. How long has he been in jail?
- 21 A. Around one year now.
- 22 Q. Is that the first time he's been in jail?
- 23 A. No.
- 24 Q. Do you know Henry Jermaine Dukes?
- 25 A. Yes.

JURY IN
WALTER DIALS - DIRECT BY FOX

315

- 1 Q. How do you know him?
- 2 A. That's my cousin.
- 3 Q. You are related to his mother; is that right?
- 4 A. Yes.
- 5 Q. How well do you know him?
- 6 A. I know him -- I know him well.
- 7 Q. Describe how, I mean, what circumstances, how you know
- 8 him, how you spend time with him.
- 9 A. Well, we always had family outings, and you know, we
- 10 just was family.
- 11 Q. Okay. You lived in Miami for fifty-one years.
- 12 A. Yes.
- 13 Q. At any time did -- and what do you call him, Henry,
- 14 Jermaine? What do you call him?
- 15 A. Jermaine.
- 16 Q. Jermaine. Did Jermaine ever live in Coconut Grove or
- 17 Miami?
- 18 A. Yes.
- 19 Q. Do you know when that was?
- 20 A. He stayed there when he was going to the junior high
- 21 school.
- 22 Q. Okay. Was it a week, a month, a year; do you know?
- 23 A. It was years.
- 24 Q. Years.
- 25 A. Yes.

JURY IN
WALTER DIALS - DIRECT BY FOX

316

- 1 Q. More than one year?
- 2 A. Yes.
- 3 Q. Okay. Does he have relatives -- do you know -- does he
- 4 have relatives, other than yourself, in the Miami area?
- 5 A. Yes.
- 6 Q. Okay. In fact, your sister is is Miami; is she not?
- 7 A. My sister.
- 8 Q. And what is your sister's name?
- 9 A. Lottie Dunlap.
- 10 Q. All right. And did Jermaine, at some point, move away
- 11 from Miami, Coconut Grove?
- 12 A. Yes.
- 13 Q. Okay. After he moved did he ever come back and visit?
- 14 A. Yes.
- 15 Q. How often would he come back to visit?
- 16 A. He came back like every year, three or four times out
- 17 the year.
- 18 Q. And how long would he stay when he came?
- 19 A. How long did he what?
- 20 Q. How long would he stay to visit when he would come?
- 21 A. Sometimes they stayed for months, sometimes he would
- 22 stay for weeks, and sometimes they would come for weekends.
- 23 Q. Okay. Would he always announce prior to coming to
- 24 Coconut Grove that he was on the way?
- 25 A. Did he what?

JURY IN
WALTER DIALS - DIRECT BY FOX

317

1 Q. Always -- would he let you know that he was on his way
2 before he came?

3 A. No.

4 Q. Did he -- would he come alone, come with other people?
5 How would he usually come visit?

6 A. Sometimes he came by himself, sometimes he came with
7 his family, his mama.

8 Q. Would he stay with you sometimes when he came?

9 A. He stayed with me one time.

10 Q. Okay. Would you see him when he came visiting? When
11 he came to visit would you see him?

12 A. Yes.

13 Q. How about your son, Shalom, other than when he was in
14 prison, or in jail, would Shalom be around during these
15 visits?

16 A. Yes.

17 Q. Okay. Any of these visits take place in the past --
18 starting in November of 2007, okay, let's go back to November,
19 2007. All right. You were living in Coconut Grove then,
20 right?

21 A. Yes.

22 Q. Had Jermaine visited in the previous ten years?

23 A. Yes.

24 Q. Okay. Had he visited when Shalom was around?

25 A. Yes.

JURY IN
WALTER DIALS - DIRECT BY FOX

318

- 1 Q. Had he visited when Sharonda was around?
- 2 A. Yes.
- 3 Q. So Sharonda would have met Jermaine before November of
- 4 2007?
- 5 A. Yes.
- 6 Q. Any question in your mind about that?
- 7 A. No.
- 8 Q. Now, in November of 2007, did you see Jermaine?
- 9 A. Yes.
- 10 Q. And how did you come to see him?
- 11 A. He came to Coconut Grove. First he was to my sister's
- 12 house in Carol City, so then he came to my house.
- 13 Q. Do you know how long he was in -- you say Carol City?
- 14 A. Yes. That's in Miami also.
- 15 Q. Okay. So just another part of Miami?
- 16 A. Yes.
- 17 Q. Did you know he was there at the time?
- 18 A. Yes.
- 19 Q. Okay. At some point did he come to your house?
- 20 A. Yes.
- 21 Q. Okay. And you saw him yourself?
- 22 A. Yes.
- 23 Q. Okay. How long did he stay with you?
- 24 A. Maybe like two weeks, maybe three weeks.
- 25 Q. Okay. So there wasn't any question; you knew he was

JURY IN
WALTER DIALS - DIRECT BY FOX

319

1 staying there.

2 A. Yes. I know he was staying there.

3 Q. Okay. And he was staying with your permission?

4 A. Yes.

5 Q. They didn't -- nobody had to sneak him around or hide
6 him from you?

7 A. No, because I was going out of town for Thanksgiving,
8 and I gave him my key.

9 Q. Did you ever come to have knowledge that the police in
10 South Carolina were looking for Jermaine?

11 A. Well, I didn't know right away, but later on I heard.

12 Q. And was there any information -- I don't want to hear
13 what people said or did. I don't want to know what people
14 said, but to your knowledge was there any information in the
15 community, in Coconut Grove, regarding the police looking for
16 Jermaine?

17 A. Yes.

18 Q. Do you know what that was?

19 A. No.

20 Q. Okay. Was there anything, any information coming from
21 the police that you know of regarding -- to the community at
22 large regarding ---

23 A. No. They just ---

24 Q. ---Jermaine?

25 A. ---Was looking for him.

JURY IN
WALTER DIALS - DIRECT BY FOX

320

- 1 Q. Okay. Now, it was near your house -- were you around
2 when Jermaine was arrested by the Miami Police?
- 3 A. Yes.
- 4 Q. Okay. And that was close to your house, correct?
- 5 A. It was like right on the street where I live at.
- 6 Q. Okay. Did -- could you see when the police approached
7 Jermaine?
- 8 A. Well, it was nighttime.
- 9 Q. Okay. Could you see what was going on though?
- 10 A. Well, it was a helicopter and a lot of policemen, and
11 I saw him and my son, Shalom, coming back toward the house, so
12 I heard my son said, what did my cousin do; what did my cousin
13 do; he ain't do nothing.
- 14 Q. Did you see or hear any problem between Jermaine and
15 the police?
- 16 A. No.
- 17 Q. They didn't have to chase him down or anything?
- 18 A. Well, they was coming back to the house, so I don't
19 know whether they was chasing him or not.
- 20 Q. Well, was he running?
- 21 A. No. I didn't see him running.
- 22 Q. Okay. So that was the end of November, 2007, correct?
- 23 A. Yes.
- 24 Q. Afterwards was your son and Sharonda still living with
25 you after that?

1 A. Yes.

2 Q. Continued to live with you for a period of time?

3 A. Yes.

4 Q. You are still living in Miami. Did you ever have any
5 discussions with Sharonda Williams about Jermaine?

6 A. No.

7 Q. How about your son?

8 A. No.

9 MR. FOX: Please answer any questions.

10 THE COURT: All right. Cross-examination.

11 CROSS-EXAMINATION BY MR. RICHARDSON:

12 Q. Mr. Walter ---

13 A. Yes.

14 Q. ---Now you say your sister's name was Lottie?

15 A. Yes.

16 Q. How -- is that L -- can you spell that, please?

17 A. L-o-t-t-i-e.

18 Q. Okay. And she lives in Carol City?

19 A. Yes sir.

20 Q. How far is that from your house?

21 A. It's maybe like eight miles.

22 Q. Okay. And you live in Lamar now?

23 A. Darlington.

24 Q. Darlington. Is it -- do you live in the City of
25 Darlington?

1 A. Yes.

2 Q. Is Lamar around there, around Darlington?

3 A. No, it's not around Darlington. It's south of

4 Darlington.

5 Q. All right. How far is Lamar from Darlington?

6 A. I don't know, maybe eleven or fifteen miles.

7 Q. Okay. Do you have any family in Lamar?

8 A. Yes.

9 Q. Do you know Steve Wilson?

10 A. No, I don't know Steve Wilson.

11 Q. He also goes by the name of Ronnie Wilson.

12 A. No, I don't know them.

13 Q. Do you know Ronnie Atkinson ---

14 A. No.

15 Q. ---From Conway?

16 A. No.

17 Q. Okay. Are you aware that at some point Mr. Dukes was

18 living in Lamar?

19 A. No, I don't know he was living at -- I only know he was

20 living in Darlington with his mom.

21 Q. All right. In Darlington.

22 A. Right.

23 Q. Did you know that there was a time that he came to live

24 in Conway?

25 A. No. I was living in Miami.

- 1 Q. But did you ever talk with Henry Dukes?
- 2 A. Not when he was here. The only time that I talked to
3 him is when he comes to Miami.
- 4 Q. Well, does it surprise you to know that he was, in
5 fact, living in a truck in Conway?
- 6 A. Surprise me, yes.
- 7 Q. Okay. Cause he had a place to live in Darlington.
- 8 A. Yes.
- 9 Q. He had a house, a place to stay.
- 10 A. Yes.
- 11 Q. And it would be a surprise to you if he were living,
12 basically homeless, in a truck in Conway.
- 13 A. Correct.
- 14 Q. No reason for that, is there?
- 15 A. No.
- 16 Q. When you say he was living in Darlington with his mom;
17 is that right?
- 18 A. Yes.
- 19 Q. And is that the same Lottie?
- 20 A. No. Lottie is my sister.
- 21 Q. Okay. How is she related to Dukes?
- 22 A. Cousin.
- 23 Q. Okay. Cousin. All right. It's my understanding, Mr.
24 Dials, and correct me if I'm wrong, but it's my understanding
25 you played a big part in raising Henry Dukes.

- 1 A. Yes.
- 2 Q. All right. And that was in and around Miami.
- 3 A. Yes.
- 4 Q. How close in age is your son, Shalom, to Henry Dukes?
- 5 A. Maybe like a year apart.
- 6 Q. So they were very close growing up.
- 7 A. Yes.
- 8 Q. And Henry -- what do you call him?
- 9 A. Jermaine.
- 10 Q. You call him Jermaine?
- 11 A. Yes.
- 12 Q. You ever heard him called Champ?
- 13 A. Yes.
- 14 Q. All right. He goes by Champ sometimes?
- 15 A. That was in Coconut Grove.
- 16 Q. Okay. You ever -- anybody -- it's kind of -- I don't
- 17 know, but has anybody ever called him big mouth?
- 18 A. Not that I know of.
- 19 Q. Not in Coconut Grove.
- 20 A. No.
- 21 Q. But you've heard him referred to as Champ.
- 22 A. Right.
- 23 Q. And he and Shalom kind of grew up together, your boy.
- 24 A. No, they didn't really grow up together.
- 25 Q. All right. Did -- did you -- you said you had a big

1 part in helping raise him.

2 A. When he was small, when he used to go to school I used
3 to like encourage him to do what's right, or when he was
4 boxing ---

5 Q. I've got you. Who was his manager, his boxing manager?

6 A. I don't know his manager.

7 Q. Okay. But he -- he was into boxing when he was
8 younger?

9 A. Yes. Yes.

10 Q. He still boxes now, correct? Wasn't he a professional
11 boxer?

12 A. Yes. Yes.

13 Q. All right. Was that around Miami, or here in South
14 Carolina?

15 A. In Miami.

16 Q. All right. Did you ever go attend any of his fights?

17 A. No.

18 Q. All right. How about Shalom, did -- how would you
19 characterize the relationship between Jermaine and Shalom?

20 A. It was like partners.

21 Q. Partners.

22 A. Yes.

23 Q. Brothers?

24 A. Yes, something like that, partners.

25 Q. Okay. Would it surprise you to know that Shalom and

- 1 Sharonda, together, called the police?
- 2 A. Yes, that surprised me. I wouldn't doubt it.
- 3 Q. Wouldn't doubt it.
- 4 A. No.
- 5 Q. And told them, if you are looking for Henry Dukes he's
- 6 going to the metro.
- 7 A. Surprise.
- 8 Q. It would surprise you.
- 9 A. Yes.
- 10 Q. But you wouldn't doubt it.
- 11 A. I wouldn't doubt it.
- 12 Q. And you knew that the police were looking for him at
- 13 some point.
- 14 A. Yes.
- 15 Q. He never told you anything about killing anybody in
- 16 South Carolina.
- 17 A. No. No.
- 18 Q. Would he come to you in a situation like that?
- 19 A. I don't think so.
- 20 Q. Probably wouldn't?
- 21 A. No.
- 22 Q. Would he be more likely to go to Shalom?
- 23 A. I don't know.
- 24 Q. I mean, if something was really troubling him, would he
- 25 be more likely to go to you or Shalom for something like that?

- 1 A. Well, I know he wouldn't come to me because I'll tell
2 him, you have to turn yourself in if anything happen.
- 3 Q. You were pretty much a guiding light, even when he was
4 a little boy, and up into age, trying to keep him on the right
5 path.
- 6 A. Right.
- 7 Q. So he would know better to come to you with ---
- 8 A. Right.
- 9 Q. ---Such as that.
- 10 A. Right.
- 11 Q. You would have immediately said, go to the police, turn
12 yourself in.
- 13 A. Yes.
- 14 Q. Like, you know, do whatever you need to do.
- 15 A. Right.
- 16 Q. So it's probably more likely that he would have gone to
17 somebody and -- besides you and gotten the answer that he
18 wanted.
- 19 A. Yes, but he wouldn't have never came to me with that.
- 20 Q. When y'all all got together at times that Jermaine
21 would go down there, was there a particular place that you
22 guys would go to meet up?
- 23 A. Yes.
- 24 Q. And where was that?
- 25 A. Well, we went to some of my sisters' house, or we went

1 to the beach, or our aunts' houses, family.

2 Q. Would they ever go to your house there in Coconut
3 Grove?

4 A. Yes.

5 Q. So basically in different communities around Miami
6 everybody would gather up ---

7 A. Yes.

8 Q. ---For family cookouts, or such as that.

9 A. Yes.

10 Q. And in late November of 2007, you were as surprised as
11 anybody else when Henry Dukes showed up, I mean, excuse me,
12 Jermaine. He didn't call or anything like that saying I'm
13 coming?

14 A. Well, we always surprised when we see our family come
15 from out of town.

16 Q. Yes sir. But this would have been no different. You
17 didn't expect to see him ---

18 A. No.

19 Q. ---There. There wasn't a family gathering scheduled?

20 A. No, it wasn't. Well, they always came even if there
21 wasn't a family gathering. They would just pop up.

22 Q. What's his mom's name, Henry Dukes' mom?

23 A. Charlene.

24 Q. Charlene.

25 A. Yes.

- 1 Q. Did she show up in late November of 2007?
- 2 A. No.
- 3 Q. No. Just Dukes. How did he get to Miami?
- 4 A. I can't tell you. He went to my sister and them house
- 5 first.
- 6 Q. In Carol City.
- 7 A. Yes.
- 8 Q. And then he left there and went to Shalom -- your
- 9 house, where Shalom lived?
- 10 A. Yes. I don't know where he went from there, but I know
- 11 he came to my house.
- 12 Q. All right. When he usually stayed in Miami would he
- 13 stay at his mom's -- no, at your sister's, or at your house?
- 14 A. He would stay at my aunt's house in Coconut Grove ---
- 15 Q. Yes.
- 16 A. ---Or he will stay with my sister's house, in Carol
- 17 City, or he would come to my house.
- 18 Q. Okay. To have a place to stay.
- 19 A. Yes. Or he had a girlfriend there also.
- 20 Q. Okay. And he didn't go to her house this time?
- 21 A. I don't know where he went.
- 22 Q. He went -- he was staying at your house.
- 23 A. He came to my house, yes.
- 24 Q. How long did he stay at your house?
- 25 A. I don't know, maybe two, three weeks.

- 1 Q. And during that two or three weeks you say you were
2 going out of town.
- 3 A. I didn't -- I went out of town, I think it was for
4 Thanksgiving.
- 5 Q. Just for a few days.
- 6 A. Yes.
- 7 Q. You say out of town, where were you going?
- 8 A. Atlanta.
- 9 Q. Okay. You've got family there too?
- 10 A. No. My wife and them had a reunion, or we just go for
11 Thanksgiving.
- 12 Q. So he stayed back with Shalom and Sharonda. And was
13 Sharonda's mother also living with you?
- 14 A. She wasn't living, but she was mostly there with
15 Sharonda and the kids.
- 16 Q. She was there a good bit.
- 17 A. Yes.
- 18 Q. And those two kids are your grandchildren ---
- 19 A. Yes.
- 20 Q. ---Four and five now.
- 21 A. Yes.
- 22 Q. How long did Sharonda live with you in Coconut Grove?
- 23 A. Maybe about two years.
- 24 Q. Two years. Tell us about the circumstances of her
25 leaving. How did she no longer stay with you in Coconut

1 Grove.

2 A. Because we got into an argument where her and my son
3 always kept arguing, and I kept telling them to stop doing it
4 in front of the kids, so they just got mad at me and they
5 left, but Shalom, he went to jail, so Sharonda, she just left.

6 Q. Where did she go?

7 A. She moved somewhere into Liberty City.

8 Q. In right downtown Miami?

9 A. It's past -- it's north of downtown Miami.

10 Q. All right. And that was after, of course, November of
11 2007, when she moved out.

12 A. Yes. It was like after Christmas.

13 Q. Did she or Shalom ever tell you, daddy, we are the ones
14 that called the police on Henry Dukes?

15 A. No.

16 Q. Even until today you didn't know that ---

17 A. No, I didn't know.

18 Q. ---Sharonda had called?

19 A. No, I didn't know.

20 Q. And the family coming around after that time, has
21 anybody said anything in your presence, or to your knowledge,
22 to Sharonda about, you don't need to testify; you don't need
23 to go to South Carolina?

24 MR. FOX: Objection. Hearsay.

25 A. No.

1 **THE COURT:** Sustained.

2 **MR. FOX:** Hearsay.

3 **THE COURT:** Sustained.

4 Q. Did you ever tell Sharonda not to come to South
5 Carolina and testify?

6 A. No. I ain't never tell her that. I told Sharonda, you
7 have to do what you have to do.

8 Q. But you didn't -- would you have known what she was
9 coming for?

10 A. No.

11 Q. She has been moved out from your house for a while. As
12 a matter of fact, you've moved to South Carolina now.

13 A. Right.

14 Q. Right.

15 A. Uh huh (**indicating positive**)

16 Q. Okay. When Jermaine -- Henry Dukes came to your house
17 in November, you knew he was coming from South Carolina, did
18 you not?

19 A. Yes.

20 Q. You -- did you know he was coming from Conway?

21 A. No, I didn't know that.

22 Q. You didn't know he had even lived in Conway.

23 A. No, I didn't know that.

24 Q. So he shows up, and do you remember what he was
25 wearing?

- 1 A. No, I don't remember.
- 2 Q. I know it's been a long time ago. How about, did he
3 bring like a suitcase or anything like that?
- 4 A. No. I just never ---
- 5 Q. He just came with the clothes on his back.
- 6 A. Yes.
- 7 Q. What did he wear when he was around there? Did y'all
8 get him some new clothes or something?
- 9 A. No. I didn't get him nothing. He just was there. He
10 was Jermaine. Either he went back to my sister's house, or to
11 my aunt's house, wherever he went. I don't know where he got
12 his clothes from.
- 13 Q. Did he -- did you notice him wearing the same clothes,
14 or did he get different ---
- 15 A. He had change some clothes.
- 16 Q. So he did have a change.
- 17 A. Uh huh (**indicating positive**)
- 18 Q. But you don't remember him bringing any suitcases or
19 anything with him ---
- 20 A. No.
- 21 Q. ---When he first come up. Were you at home when he
22 first -- that first day that he came over there?
- 23 A. No, I was like -- where we live at it's called the
24 tree, and we would be up under the tree, either we are
25 shooting pool, or you know, something like that, so I saw him

1 so I said, hey, Jermaine, how are you doing, like that; what's
2 going on.

3 Q. And he didn't ever -- he didn't ever say anything about
4 it?

5 A. No.

6 Q. How did he act? Did he seem nervous, tense, anything
7 like that?

8 A. No. He -- he just acted like Jermaine to me.

9 Q. Okay. So you had no clue ---

10 A. No, I didn't know.

11 Q. ---What had taken place?

12 A. No, I didn't know.

13 Q. And if you had known you would have told him, you need
14 to go ---

15 A. Right.

16 Q. ---Go back and make this right?

17 A. Right.

18 Q. And not only would you know that, but Jermaine knew
19 that too; he knew it ain't no need to go to -- what did he
20 call you, Uncle Walter or ---

21 A. He called me black man.

22 Q. Black man.

23 A. Yes.

24 Q. He knew there weren't no need to go to black man.

25 A. Right.

1 Q. Mr. Walter, give me just a second.

2 MR. RICHARDSON: Mr. Walter, I appreciate you coming
3 for Mr. Dukes. I have no further questions. He might have
4 some reply. Okay.

5 THE COURT: Any redirect?

6 MR. FOX: Just briefly, Your Honor.

7 REDIRECT-EXAMINATION BY MR. FOX:

8 Q. Mr. Dials, in your experience was Jermaine particularly
9 close to Sharonda?

10 A. Yes.

11 Q. Okay. And they had definitely talked and seen each
12 other before, correct.

13 A. Yes.

14 MR. FOX: Okay. Thank you. No further questions.

15 THE COURT: All right. Do you wish the witness to be
16 excused, Mr. Fox?

17 MR. FOX: Yes, Your Honor.

18 THE COURT: Any objection, Solicitor?

19 MR. RICHARDSON: No sir.

20 THE COURT: All right, sir, you are released from your
21 Subpoena, and may go back to your regular activities, sir.

22 A. All right. Thank you.

23 THE COURT: Thank you.

24 All right. Further witnesses on behalf of the defense.

25 MR. FOX: No, Your Honor.

1 **THE COURT:** All right. The defense rests at this time.

2 **MR. FOX:** Defense rests, Your Honor.

3 **THE COURT:** All right. Very good.

4 Solicitor, any reply witnesses?

5 **MR. RICHARDSON:** No sir.

6 **THE COURT:** All right, ladies and gentlemen, there is,
7 again, a matter of law that I must take up outside your
8 presence. We have finished the evidentiary portion of this
9 trial. Obviously the trial is not over with. What remains
10 are the closing arguments of the attorneys, and the charge on
11 the law to you by the Court. I will call you back into the
12 courtroom as soon as I can.

13 Please go to the jury room.

14 Thank you.

15 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
16 **JURY.)**

17 **THE COURT:** All right. Any motions, Mr. Fox?

18 **MR. FOX:** Your Honor, at this time we would renew our
19 motion for a directed verdict.

20 **THE COURT:** All right, sir. Based upon the Court's
21 recitation of the law, and the statement the Court made
22 earlier, I'm going to respectfully decline to grant your
23 motion for a directed verdict. I do find that there is more
24 than enough substantial evidence to submit the case to the
25 jury for their consideration. Obviously their job to judge

1 credibility and believability, the weight of the evidence, but
2 I do find that more than sufficient evidence exists to send
3 the case to the jury, and I respectfully decline to grant the
4 motion for a directed verdict.

5 Any other motions on behalf of the defense?

6 **MR. FOX:** Not at this time, Your Honor.

7 **THE COURT:** All right. All right, gentlemen, before --
8 we will take a short break in just a minute before we go into
9 the closing arguments in this case. Let me go over briefly
10 what I've put together as far as the charge on the law, so
11 that we will -- you can tell me if you have any additions or
12 changes that you would like to it. Obviously we will talk to
13 the jury about the things that we always talk about with them,
14 that being their jobs regarding the credibility and the
15 believability of the witnesses, talk to them about direct and
16 circumstantial evidence, indicating that the law doesn't make
17 any distinction between the two, and that their job is to
18 weigh all the evidence, find that evidence which convinces
19 them of it's truth, talk to them about expert witnesses, the
20 witness that I qualified, one witness, to give his opinion,
21 but that doesn't give them any special status, that they weigh
22 all the evidence the same, look at all the evidence, find that
23 evidence which convinces them of it's truth, talk to them very
24 briefly about Rule 609, the prior record of a witness, that
25 the testimony of a witness may be discredited or impeached by

1 showing the witness has been convicted of a crime for which
2 they could be imprisoned for more than one year, a crime that
3 involves dishonesty, a person has a past criminal record can
4 testify, their past record does not affect their ability to
5 testify, but it is considered, if at all, in determining their
6 credibility and believability.

7 I will talk to the jury -- and talk to them about the
8 fact the Defendant did not testify, and I will tell them and -
9 - it's not a factor to be considered by them, it's not to be
10 considered in their deliberations in any way, they can't talk
11 about it in the jury room, the defendant has a Constitutional
12 Right to remain silent, and it cannot be used against him in
13 any manner, the burden of proof is on the State of South
14 Carolina to prove the Defendant beyond a reasonable doubt.
15 I'll talk to them about the presumption of innocence, the --
16 obviously that the burden is on the State, and the person
17 charged with committing a criminal offense in South Carolina
18 is never required to prove anything to the jury; it's the
19 State's burden of proof, talk to them about reasonable doubt,
20 reasonable doubt being the kind of doubt that would cause a
21 reasonable person to hesitate to act.

22 On the issue of identification, since there was such by
23 a witness, that the State has the burden of proving identity
24 beyond a reasonable doubt, they must be satisfied beyond a
25 reasonable doubt of the accuracy of the identification before

1 they can convict the defendant of the crime charged, and talk
2 to them about what identification testimony, again -- or
3 identification testimony is, and again, reiterate that the
4 burden is on the State of South Carolina to prove the accuracy
5 of the identification, and if they have a reasonable doubt as
6 to the accuracy they would need to find the Defendant not
7 guilty.

8 I will define murder to them, obviously that the State
9 has to prove, beyond a reasonable doubt, that the Defendant
10 killed another person with malice aforethought, and define
11 malice, and talk about malice aforethought, and I will also
12 state that motive is not an element of the offense of murder,
13 and the State doesn't have to prove motive, and then talk to
14 them about the verdict form, the verdict form being
15 straightforward with the caption of the case, and that on the
16 charge of murder we, the jury, by unanimous consent, find the
17 Defendant -- and we've got two blocks -- not guilty or guilty,
18 and that being the only submission that the Court is
19 considering at this point in time to the jury.

20 So, is there anything as to that from the State?

21 MR. RICHARDSON: No sir.

22 THE COURT: From the defense?

23 MR. FOX: No, Your Honor.

24 THE COURT: All right. Very good.

25 Gentlemen, if you would like to look at the verdict form

1 I'll be glad for you to do so. It's straightforward, but I'll
2 be glad for y'all to come on up and look at it if you would
3 like.

4 All right. So is there any changes to the -- by the
5 State?

6 MR. RICHARDSON: None from the State, Your Honor.

7 THE COURT: And from the defense?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right. Very good.

10 All right, gentlemen, obviously -- well, not obviously.

11 Mr. Fox, you are going to require to -- the State to
12 give an opening in this matter, or will you allow them to
13 close in full? What is your choice in this particular matter?

14 MR. FOX: They can close in full, Your Honor.

15 THE COURT: All right. Very good. So you will give
16 your complete argument, and the State will give it's complete
17 argument, and then obviously I'll charge the jury at that
18 point in time, and submit the case to them for their
19 deliberations in this particular matter.

20 All right. Let's take a short break, for about five
21 minutes or so, and then we will come back in and charge the
22 jury. Thank you very much.

23 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
24 THE PRESENCE OF THE JURY.)

25 THE COURT: All right. Solicitor, are you ready for

JURY IN
COURT TO JURY

341

1 the jury to come in?

2 MR. RICHARDSON: Yes sir.

3 THE COURT: And Mr Fox.

4 MR. FOX: Yes, Your Honor.

5 THE COURT: All right. Very good.

6 Ask the jury to come in, please.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Mr. Foreman, ladies and
10 gentlemen of the jury, I have told you that we have finished
11 the evidentiary portion of the trial. We are now going to go
12 into the closing arguments of the attorneys, and as I told you
13 at the very beginning, the opening and closing arguments of
14 the -- counsel, or the attorneys, are not evidence, and cannot
15 be used by you as evidence in this case. You've heard all
16 that from the witnesses and the documents or photographs that
17 were introduced into evidence in this case.

18 The closing arguments are important. They are each
19 side's summation to you of what they believe the evidence has
20 shown to you during the course of the trial, remembering, of
21 course, that you are the judges of the facts of this case, and
22 your duty and responsibility to find that evidence which
23 convinces you of it's truth, and weigh that evidence against
24 the State's burden to prove the Defendant guilty beyond a
25 reasonable doubt.

1 After the attorneys get done with their closing
2 arguments I will give you the law that you will apply to the
3 facts that you find to be true in this case, and then I'm
4 going to submit the case to you for your deliberation and your
5 unanimous decision in this particular matter.

6 So if you would, give your attention to the attorneys
7 for their closing arguments, please.

8 Mr. Fox.

9 **MR. FOX:** Thank you, Your Honor. May it please the
10 Court.

11 **THE COURT:** Yes sir.

12 **MR. FOX:** Ladies and gentlemen, I'm going to do my very
13 best not to retry this whole case. It's been a fairly fast
14 case, yesterday and today, but there's been an awful lot
15 packed into these two days. You have heard an awful lot of
16 evidence, many witnesses, and a lot to sit through. I promise
17 you I'm not going to go through every line of testimony again,
18 but there's a lot of things that I think you need to be
19 reminded of.

20 The Judge will tell you you can believe everything a
21 witness tells you from the witness stand; you can reject every
22 single thing they tell you, or you can believe some and not
23 others. This case is all about the witnesses, because there
24 is not one shred of physical evidence that connects the death
25 of Andy Gowans to Henry Jermaine Dukes, not the first thing.

1 The only piece of physical evidence you have in this case,
2 well, that you've heard talked about -- it's not actually in
3 evidence -- is a shell casing that was found on Suggs Street
4 where Andy Gowans was. Officer Mishoe testified yesterday.
5 He said he was one of the first ones on the scene, he walked
6 in, saw the body, and he found a shell casing, and he seemed
7 to be able to identify it here yesterday; this looks like the
8 same one. So, one shell casing, that is it.

9 Now, might as well stay with that. One shell casing.
10 Does any physical evidence in this case support the eye
11 witnesses, or the witnesses in this case? Now, the Judge will
12 tell you, if you believe everything a witness says, you -- and
13 we are talking about Cornelius Ford, right, this whole case is
14 Cornelius Ford. If you choose to believe Cornelius Ford, his
15 version of events, that is your providence. You are the jury.
16 You are the finders of fact. You can do that. I believe go
17 through with you many, many, many reasons why C-4 should not
18 be believed, other than maybe saying that this was Conway,
19 South Carolina. Other than that I'm not sure I would trust
20 him to tell me the sun was coming up in the morning. But, is
21 there anything, independent of C-4, the admitted drug dealer,
22 that can verify what he's been telling you? Well, you sure
23 haven't been given anything. The only thing you have been
24 given is one shell casing, and that itself contradicts with
25 what C-4 told you. C-4 was adamant, said it over and over

1 again, two gunshots. He told the police, and he testified
2 here yesterday, two gunshots. The Officer testified he found
3 one shell casing. Nobody else told you any different. Dr.
4 Proctor, just a little while ago, told you, I found one wound
5 on Mr. Gowans, and in checking that wound I found one bullet,
6 right off the bat. And that's the only physical evidence
7 you've got. No weapon was ever recovered, no ---

8 We've heard this guy talk a little about the jacket, the
9 white jacket. No one brought you a white jacket. There is
10 not one piece of physical evidence that connects Henry
11 Jermaine Dukes to the death of Andy Gowans.

12 Now, Cornelius Ford. In deciding whether someone is
13 telling you the truth, I think the place you start first is,
14 how consistent -- now, perfect consistency -- if you are
15 trying to recall in that three and a half years before, and
16 come and explain it, I would agree, perfect consistency over
17 every little thing is not to be expected, but you also don't
18 expect fact after fact after fact to be different, to be
19 wrong, to be contradicted directly by other people or other
20 evidence.

21 We've talked about the shell casing. Mr. Ford wants you
22 to believe that one reason he can identify the shooter is that
23 he had seen Mr. Dukes two times before, once briefly coming
24 out of the Food Lion, but that got his attention because he
25 was with this Ronnie Atkinson, this Stank, that had been

1 involved in this whole feud that doesn't seem to have anything
2 to do with Henry Dukes or Cornelius Ford, but he knew Stank,
3 and when he saw Jermaine Dukes with Stank that got his
4 attention.

5 Now, when he talked to the police eventually, on
6 November 2nd, 2007, he did not mention that he saw Henry Dukes
7 with Stank. He simply said, one time before I saw Henry Dukes
8 at the Food Lion, just while I was going in he was coming out,
9 or maybe vice-versa, but just in passing. He was asked three
10 different times by the Detective, so you've only seen him once
11 before; you saw him one time before; have you ever seen him
12 before, three different opportunities, and seven different
13 times Mr. Ford answered, when he talked to the police, I've
14 only seen him once; I only ever saw him once; I only seen him
15 once before; I never saw him but the once. Seven times he
16 said that.

17 He wasn't afraid of the officers. They gave him ever
18 chance. The Officer told him, you are not in trouble; you've
19 got nothing to worry about. I'm sure he didn't enjoy being in
20 there talking to the police, but it's not like he was being
21 interrogated; it's not like he was a suspect. Thought about
22 that also. It's not like he was threatened, coerced,
23 pressured in any way; he was given a free opportunity to tell
24 what he knew. Once he decided to drag his sorry butt down
25 there, and after he talked to the police, after he left his

1 friend, supposedly his best friend, lying dead on the ground,
2 but he had three different chances -- he had the whole time he
3 was talking to the police, but specifically three times, have
4 you ever seen Henry Dukes before; one time, and he said that
5 seven different times, and not once did he mention that that
6 time he had seen Henry Dukes he saw him with Stank, that
7 yesterday seemed to be so important and got his -- on his
8 "P's" and "Q's". He never mentioned that.

9 Yesterday he testified, I actually saw Henry Dukes two
10 times. I saw him at Food Lion with Stank -- that's new -- and
11 I saw him over at Suggs Street before; he came with some other
12 guy; I didn't know him, and they stayed around for a while.
13 He made no mention of that when he talked to the Detective at
14 Conway Police Department back on November 2nd, 2007. Now, one
15 word about that, and the explanation, apparently, is, well, he
16 was protective of everybody. He didn't want to implicate
17 them, so he said that himself, I don't want to implicate
18 myself. There was stuff going on at Suggs Street; I didn't
19 another to connect that with the police.

20 Now, self-preservation is a might strong instinct in
21 everybody, and I certainly understand if you've been busted
22 for selling drugs before and been to prison for selling drugs
23 before, that you do not want to go back for an even longer
24 period of time for selling drugs; however, when the police
25 look a you and say, we know what's going on at Suggs Street,

1 and frankly we don't care cause now there's a dead body, and
2 they tell you that face to face, and they don't ask you thing
3 one about your drug dealing activities; they don't bring it
4 up; they don't mention it; they don't say a thing, and you
5 still don't tell them everything you know, I think that
6 justification, that rationale goes right out the window. I
7 don't think it is at all plausible that he's withholding
8 information from the police -- well, it is plausible, he
9 probably is afraid to deal with the police; however, he's been
10 basically told, we ain't worried about your drug activity
11 there.

12 There's been testimony and evidence about -- well,
13 testimony, not evidence, testimony about Mr. Dukes leaving
14 Conway, and leaving South Carolina, about his flight, so to
15 speak. Well, there's another person that absolutely took
16 flight, and that's Cornelius Ford. He hung up on 911, he
17 called his daddy, and he left. He didn't check on Andy
18 Gowans, his best friend, he didn't talk to the police, he
19 didn't talk to EMS and let them know how this happened; he
20 took off in his car and went home, and he didn't call the
21 police at any time and let them know what was going on. His
22 best friend has been shot, for all he knows, is dead, and he
23 can't be bothered to take the time to pick up the phone and
24 call the police and say, I saw who did it. He took off. And
25 amazingly, no one ever bothered to check his car or to check

1 his residence to see if maybe there's a reason he took off,
2 but we've got no testimony about that, but he's -- no question
3 that by ten o'clock in the morning the police and EMS are on
4 the scene, and that by Mr. Ford's own testimony it is -- and
5 he can't tell you if it's three, four or five o'clock before
6 he talked to the police. His daddy said it was 7:30. At the
7 minimum it was five hours, and it might have been as much as -
8 - what is that, eight, nine and a half hours, depending on who
9 you want to believe, between Cornelius Ford and his daddy.
10 That's not much of a choice right there.

11 Now, so for many, many hours he is gone. It's lots of
12 these little things that don't add up. All right. Mr. Ford -
13 - how did Mr. Ford tell you he learned that Andy was actually
14 dead, no question he's dead? Now he could have found out if
15 he had stuck around, talked to the police, but he didn't. How
16 did he find out? He testified that his former girlfriend,
17 Andy's cousin, told him. He's calling everybody cause he's so
18 concerned. He's talking to family. Not talking to the
19 police, but he's talking to family. And he tells you, I heard
20 it from my ex-girlfriend, all right, from Andy's cousin. What
21 does Rasheed Muhammad tell you? Rasheed Muhammad said, I told
22 him. All right. He testified and said, I didn't want to; he
23 didn't seem to know yet; he had asked me about him and finally
24 I had to tell him. Remember that. Both those things ain't
25 true. Both those things, I think, should make you say, I

1 wonder what else they are not giving me completely right, may
2 be inaccurate, maybe they are outright lies, but at least
3 inaccurate. C-4's credibility, his ability to remember and be
4 truthful about some of these little things directly impacts if
5 he's telling you the truth about the big things, how many
6 times he saw Henry Dukes, where he saw Henry Dukes, who he saw
7 Henry Dukes with, where he went, why he went, who told him
8 what happened to Andy Gowans. All these things by themselves
9 may not be significant, but together they are very
10 significant.

11 What else from Mr. Ford? He says the person came in,
12 couldn't quite hear what was said, at one point he heard give
13 it up, two shots, right, two shots, one bullet, and the person
14 -- and Mr. Ford says, I'm sitting back a little ways from the
15 front door, actually he said he couldn't see Andy at this
16 point; he saw the fellow that fired the gun, but actually
17 didn't see Andy, so he doesn't know what was going on between
18 Andy and this fellow, but anyway, in court Cornelius Ford
19 said, I went in this other room and I grabbed the mattress and
20 pulled it up like I had a gun or something, like I was hiding
21 a gun, but I got a mattress and I pulled it up on me. All
22 right. Well, when he talked to the Detective six, seven,
23 eight, nine hours after the shooting he made no mention of
24 that, and he was very specific, and he went through his
25 statement on the stand. He was very specific with the

1 Detective, I went in, I got in the closet; if you check the
2 room you will see the closet door; I was in the closet. He
3 said that over and over and over again. It's important
4 because the closet ain't the mattress, right; it's another
5 little thing. Well, did you go in the closet or did you get
6 the mattress. Was the mattress in the closet? No, the
7 mattress was in the middle of the room. Well, which was it?
8 It ain't both of those things. Another little detail. C-4 is
9 misleading, or doesn't remember, or is lying to you about.

10 There's a photograph that he claims to have identified
11 Mr. Dukes with when he finally did go see the police, right.
12 Mr. Ford said, I spontaneously saw this person right here.
13 The Detective stood up as he went to into the other -- going
14 to go in the other room to look at, I guess mug folks,
15 whatever; we got up the leave, the photograph fell out, there
16 it was. Well, okay, you all can choose whether or not that
17 was critical; however, the police officer that interviewed him
18 said, I showed him four photographs, one at a time, and that's
19 in the stipulation. That little small snippet, little video
20 we showed yesterday afternoon, clearly that was the end of the
21 interview. In fact, they do stand up and everyone leaves, and
22 you can watch them leave. You can see the Detective, his arm,
23 step out of the door, and you can see very well Mr. Ford and
24 his father get up and walk right out the door, and nobody
25 stops to pick anything up, no one says anything; that's the

1 end of the tape. There wasn't anything dropped; he didn't see
2 anything.

3 Six and a half hours, at least, is a long time to think
4 about what you are going to tell the police when you are gone.
5 That is a long time to think about what you want to tell the
6 police or not to tell the police, and that's how long, at
7 least, by his own admission, Mr. Ford stayed gone.

8 His daddy, Mr. Muhammad, is another piece of work. Mr.
9 Muhammad apparently gets a call from his son saying this very
10 bad thing has happened, what do I do, and quite understandably
11 Mr. Muhammad goes there. When the police arrived Mr.
12 Muhammad, there as a helpful citizen, takes them inside to
13 show them the body and is, at some point, taken -- excuse me --
14 -- by a Detective back to the substation so he can write out a
15 statement of what happened. Well, what was his statement to
16 the police, knowing that his son was there, and apparently
17 witnessed a murder? Mr. Muhammad, under no suspicion himself,
18 under no threat, given all the time that he needed to make the
19 statement, to write out, tell the police anything he needed
20 to, what did he tell them? One sentence. I got a call to
21 take him, him being Andy Gowans, to pay a fine, and when I got
22 there I found him dead on the floor, basically that. No
23 mention of his son, no mention that there's an eye witness to
24 this heinous crime, never bothered to tell any of the police
25 when they are on the scene and his son has disappeared. Never

1 said anything about my son was here. Went back, got his car,
2 said, yeah, go ahead, take a look in the van, but you know, I
3 need my van, I've got to go to church, and they said okay, and
4 they do a quick look, and again, still didn't tell anybody.
5 And he went back and went to Friday's service, cause that's
6 important. That's more important than letting the police know
7 that there's an eye witness for murder. Now, I don't begrudge
8 a man his religion. I don't care what the faith is, but it is
9 bizarre, beyond description, to say I'm going to go to church
10 and not deal with the police till later; I am going to -- I've
11 got to go to service, my lord, there will be no service
12 without me. Well, maybe, what I think, the congregation would
13 understand, and I'm pretty darn sure whether you call him God
14 or Yahweh, or Buddha or Muhammad, or Allah rather, that they
15 would understand; you've got something to deal with here. It
16 might be a good idea to deal with this, but he couldn't be
17 bothered to do that.

18 Service is over, he goes -- decides now it's a good
19 time, and I can take my son to talk to the police. He lied to
20 them, by omission, no, no, he lied directly. He didn't get a
21 call to go take Andy Gowans to pay any fine. That was days
22 before, right. He admitted that. That call that he wrote in
23 his statement, that was several days, if not the week before.
24 That is not true, by his own words, that is not true. You are
25 willing to lie to the police and you admitted it. I mean,

1 he's a father. He admitted he would do anything to protect
2 his son, right, and he showed that includes lying to the
3 police, shown by his own action, his own words, that he is
4 willing to lie to the police to protect his son. That may not
5 make him unusual as a father, but it don't make it right.

6 Cornelius Ford, I submit to you, is not to be believed
7 because of all those things that he either lied, or wanted to
8 add to his testimony or change about his testimony, and there
9 were many, and again, there is no physical evidence, not one
10 iota of physical evidence that corroborates support what
11 Cornelius Ford told you happened.

12 Who else? Sylvia Randall. Sylvia Randall was the lady
13 who testified this morning. She is Stank's mother. She is
14 the lady where Mr. Dukes' truck -- that wasn't his truck, but
15 where he was staying in the truck. What did she tell you?
16 She was there when the police came by, and she lives on Ladson
17 Street, her son stays there, her current boyfriend, Mr. Brown,
18 was staying there, and Mr. Dukes was sleeping in a truck. And
19 what did she tell you that she saw? Police arrived, and in
20 her words they woke Mr. Dukes up, and by her testimony, or
21 description, this was late in the morning. We know the
22 shooting was around ten o'clock. She said this was before
23 noon. They woke Mr. Dukes up, they got him out of the truck,
24 along with Mr. Ronnie Wilson, who is actually Ronnie
25 Atkinson's father, right, Stank's father -- although he didn't

1 live there he was there then -- Ronnie Wilson, and another
2 fellow whose name she wasn't sure of, but he was there, and I
3 couldn't tell, I couldn't be sure, he was a friend of Stank's
4 father or a friend of Stank, but regardless, he was -- there
5 was another person there, so there's three people, and the
6 police talked to them, sat them down on the porch, swabbed
7 their mouths and their cheek -- their mouths, cheeks, and
8 their hands, mouth for DNA I suppose, hand for gunshot
9 residue. They have a chance, they look through the truck,
10 they look through her house with her permission. They find
11 weapons, nothing connected with this shooting, not the murder
12 weapon, but they found weapons in her son's room. Go through
13 the truck, nothing in the truck, apparently. We certainly had
14 nothing brought into this courtroom that was taken from the
15 truck, a jacket, murder weapon, gloves, anything.

16 But anyway, they have a chance to talk to Mr. Dukes;
17 they have a chance to look through the truck where he's
18 staying; they have a chance to swab him for gunshot residue,
19 and then they turn them loose, and the police leave. You can
20 be darn sure that the gunshot test on Mr. Dukes was negative
21 for two reasons, number one, the police let him leave, number
22 two, you've got no gunshot residue report in this courtroom
23 this week, and you can be darn sure if Mr. Dukes had tested
24 positive for the presence of gunshot residue that there would
25 be a report introduced in evidence in this courtroom. I think

1 it's a very safe assumption that he was negative for gunshot
2 residue. So before noon on the day of the shooting Mr. Dukes
3 has been at least talked to by the police, apparently wasn't
4 taken into custody, has been tested to see if he's fired a
5 weapon recently, and they looked through his living quarters,
6 which basically is the front seat, the cab of a pickup truck,
7 as well as anything that might be in the back, in the bed, and
8 he's been turned loose. He is free to go. Why does that
9 matter? Well, aside from the gunshot residue it matters
10 because he can go wherever he wants at that point, and the
11 fact that he may leave town, that he has no connections to,
12 where people are getting shot left and right, right. You
13 heard testimony that Stank was involved in something, and he
14 shot at this one, and the girlfriend got hit instead, and C-4,
15 and they are worried about all this, that and the other, and
16 in fact, now keep in mind, Ronnie Atkinson, Stank, the one who
17 was first shot apparently, and who sounds like retaliated,
18 that's his mama's house where Henry is staying now. Okay.
19 And the police come, and in fact, mama testified at one point
20 her son, Stank, is in the police car; they take him away; they
21 question him. Now he comes back, but it's a point where the
22 police have arrived at that residence, and they have
23 questioned Henry Dukes, and they've turned him loose. At that
24 point what he knows is, bodies are falling all over town, the
25 place where I stay, that guy seems to be tied into it and the

1 police are taking him away. So he leaves, and he goes to a
2 place where he grew up, or lived a good bit when he was a kid,
3 and he goes back to family. He gets out of there. Now, I'm
4 sure the Solicitor will sat, well that's evidence of guilt;
5 the guilty flee where the innocent man would stay, or whatever
6 that phrase is. But it's also common sense, the place I'm
7 staying is not safe, there is craziness all around me; I'm
8 getting out of here.

9 Willa Mae Dixon was the lady who, good lord, would
10 rather have touched a hot stove than come sit in that chair
11 this morning, but do you think -- and she's the one who --
12 they called the cab from her place, right. Remember her this
13 morning. All right. Well, Willa Mae, who obviously didn't
14 want to be here, do you think, having observed her in that
15 witness chair, and observed what she said, and her whole
16 demeanor, do you think that she would hesitate for a split
17 second, if Henry Dukes had said anything like, I just shot
18 somebody, or I've got to get out of here, or anything like
19 that, I mean, do you -- does she strike you as the kind of
20 person who would hesitate to say anything? No me. And all
21 she said was, Henry said some people are after me. Well, that
22 goes along with the craziness going on with Stank and Curtis
23 Scott and all that mess, and that's all she would say, nothing
24 more.

25 The cab driver, Mr. Johnson, also credible, probably

1 didn't want to be here, seemed like a very nice fellow. Mr.
2 Johnson, you know, no question that Henry took a cab and went
3 out of town. And the lady from the cab company and Walker
4 Johnson said, well, that's not that unusual, I mean, we take
5 fares out of town quite often; it's not really unusual to get
6 paid -- we usually get paid up front, we prefer to get paid up
7 front, but if we can verify we are going to get paid we'll get
8 paid on the back end, and we verified this time, so there's
9 nothing really particular -- that didn't get -- it certainly
10 didn't make them stop taking Mr. Dukes out of town, and there
11 was nothing eventful about the ride itself. Mr. Johnson said
12 we rode -- I got there, he told me to pull around, I pulled
13 around, I got paid, didn't have any problem. He said, you
14 ain't seen me, but he said, good lord, a great number of the
15 people that I give rides to say that, or something to that
16 effect, and in fact he said, I ain't sure exactly what he
17 said, but he said something like, you know, you don't know me
18 kind of thing, but he admitted that didn't get any attention
19 from him before he hears that all the time. So, it's
20 innuendo, it's kind of rumbled, but I submit to you, that's
21 not evidence of flight.

22 So now Mr. Dukes goes back where he has family, where
23 he's known, where he goes several times a year with his mama,
24 sometimes without. He's got friends all over Miami, Coconut
25 Grove, Carol City. He stays with his aunt; he stays with his

1 uncle; this is not unusual, the fact that he goes is not
2 unusual.

3 And while he's there he gets -- he sees Sharonda,
4 Sharonda Williams. That was the young lady who testified this
5 morning, and Sharonda claims that basically Henry confessed to
6 her; however, Sharonda -- again, it's these little things that
7 she said don't add up. She says, he told -- and today she
8 says, he told me and my boyfriend, Shalom, all right, and
9 that's Mr. Dial's son, the uncle's son, where Henry was
10 staying. So he told me and my boyfriend that he had shot
11 somebody, no details about that, nothing about it; he had to
12 walk somewhere to get there, but that is it. When she talked
13 to the police, and when I asked her if she had a chance to
14 speak with the Solicitor and the investigator in Miami before
15 she came up here this week, and to tell everything she knew
16 about it, and she wasn't a suspect, she wasn't in any trouble,
17 she wasn't pressured, she had time to say anything she wanted,
18 she wasn't threatened or coerced in any way, and at that time
19 she said, oh, it was me and my boyfriend and my mama. Well,
20 not mama today, mama then, but not mama today. She also said,
21 and I find this bizarre, that this person is apparently --
22 this person that's related to her to the boyfriend, but not to
23 her, this person, Mr. Dukes, confesses this to her, and now
24 she knows that he has shot somebody, the police are after him
25 to the point where she says she called the police, however,

1 that was about a week later, so she's got, according to her, a
2 murderer in her home, with her small children, but priorities
3 are priorities -- I don't know if she had church services to
4 get to also, I don't know -- but priorities are priorities,
5 she could not pick up the phone and let anybody know that for
6 a whole week, full week, and the plan, in the short run, was
7 to send the murderer to her mama. Now, does something not
8 sound right about that? Does something make you say, huh, I
9 know some foolish dang people in my life, but I don't know too
10 many that had a murderer in their home and say, stay here,
11 murderer, around my children, or when you leave, you must get
12 out, go stay with my mama. It is almost too ridiculous --
13 well, it's not almost, it is too ridiculous to be believed.

14 Now, ladies and gentlemen, all of those things that I've
15 pointed out, that's all testimony, came from the witness
16 stand, other than, I think the very logical inference you can
17 make about the gunshot residue on Mr. Dukes' hands was
18 negative because the police wouldn't have let him go, and
19 there would have been some report in here if it had been
20 positive. Other than that, everything that I've talked to you
21 about came from the witness stand. It's their own words. If
22 they had contradicted -- the things I've pointed out aren't
23 things I've imagined, they are things that they have told
24 other people, previous statements to police, things from the
25 witness stand that don't add up, in their own words, have put

1 them in a box, and they've got to live with those, but each of
2 those things might seem small by themselves, but boy, how long
3 did it take me to go through all of those different things
4 just now. There are a great number of them, more than I can
5 count, and what each of those things have in common is that
6 they create doubt. In each one of those doubts there is a
7 reason and a basis for it. The Judge is going to define a
8 reasonable doubt for you as a doubt which causes the normal
9 person, an average person, to hesitate to act, make you pause.
10 That doesn't mean that you go back in the jury room and
11 deliberate, and talk amongst yourselves before you reach a
12 verdict that that, in and of itself, is doubt. I would hope
13 that you would discuss this thing -- that is your duty, and I
14 respect that -- but each of those little inconsistencies, each
15 of these outright lies -- and there are many of those that you
16 have -- are doubts. You don't all have to reach the same
17 doubt. One of you may doubt a certain point, another of you
18 another, but if you have a doubt, any doubt you have is going
19 to be based on the evidence or the lack of evidence that you
20 have, the consistencies, the credibility of the witnesses,
21 which is their whole case, because you have no physical
22 evidence, any doubt you have is going to have a reason for it,
23 and the Judge will tell you, if you have those doubts your
24 duty and your oath require you to return a verdict of not
25 guilty.

1 **THE COURT:** All right, Solicitor.

2 **MR. RICHARDSON:** Thank you, Your Honor.

3 **THE COURT:** Yes sir.

4 **MR. RICHARDSON:** Part of my job, ladies and gentlemen,
5 is to instruct you on the law, but now Judge John is also
6 going to do the same thing, and if there's anything I tell you
7 that confuses you, or anything that is separate from what he
8 says, you take his word for it. I'm hopeful that this will
9 clarify instead of confuse, but I want -- instead of clouding
10 the water I want to try to make it a little clearer.

11 So, I started off at the very beginning of this case by
12 telling you there wasn't any doubt that this was, in fact, a
13 murder. It's basically a who-done-it, but not that it was a
14 murder, and I was able to say that with such confidence
15 because murder itself doesn't have this long list of elements
16 that you would expect, and already today you already know that
17 there was a killing. Right. Young man is dead. Dr. Proctor
18 told you that. Several people told you the man is dead.
19 There's a killing. He called it a homicide, in other words,
20 he didn't kill himself. So number one is there. There can't
21 be no question about that. A person, another person -- Andy
22 is a different person from Henry Dukes. Again, it just goes
23 to whether or not it's homicide versus suicide. Easy enough,
24 right. And then with malice aforethought, angry heart. The
25 Judge will talk with you about that, but malice, some ill-

1 will, can be express, where I'm going to kill that person; I'm
2 so made with him, or it can be implied, taking a weapon,
3 running into someone with a car. You can imply without
4 someone having to say, I'm going to kill so and so. That just
5 makes sense. You don't have to come out and state your
6 intent. You can also imply it by use of a deadly weapon.

7 Now, I think one and two is very easy. Number three,
8 we'll talk about it, and this should clear up the fact that
9 there was, in fact, a murder. But Dr. Proctor told you
10 something very interesting, and it may have went right by you,
11 but he said that there was no stippling on the arm, there was
12 no burn, had to have been created by a distance of over two
13 feet, other than two feet. What does that tell you? They
14 were not -- nobody was engaged in a fight. In other words, it
15 wasn't self-defense. Somebody got shot from a distance,
16 right? No, this isn't about self-defense. You haven't heard
17 a thing about self-defense. Malice, use of a gun to shoot
18 someone. It can be assumed that when you first a gun you
19 understand the consequences of that action, could easily
20 result in death. If you don't care about the person that you
21 are firing -- enough to fire a gun into it, that can be
22 malice. A lot of things that can be malice, get em up. Even
23 if you want to take those words, that's malice. So, let there
24 be no doubt that a murder occurred. I think that's simple
25 enough.

1 Now the rest of it is, who did this dastardly deed. Who
2 did it? Right? I mean, isn't that -- that's the question,
3 not that there's a dead guy. A murder occurred.

4 Now, a lot of this deals with Cornelius Ford, and it
5 should. Cornelius Ford come out and said, I saw this, and Mr.
6 Fox has made a great deal of it. None of you nor I picked
7 these witnesses, none of you nor I picked this victim. Henry
8 Dukes picked the victim; he picked the witnesses, and I'll
9 submit to you that if you cast a play in hell you are going to
10 have to get some demons for players. If he had robbed the
11 church, or shot a preacher, you would have deacons and
12 clergymen coming in here and talking to you, but when you
13 shoot a drug dealer you are going to have other drug dealers,
14 if anybody, to see it. Right. I mean, it just makes sense.
15 You get to pick your victim, and that's what he did. He
16 picked Andy Gowans. And if you believe C-4, he picked him
17 too, because he tried to shoot him.

18 Now, there's been a lot to do about C-4 said this, C-4
19 said that; that wasn't true, whether or not he was in a
20 closet, whether or not he went into a bedroom, you know. I
21 submit to you, that's red herring, doesn't really matter where
22 he went. There are some key parts to it. Some of the stuff
23 can, undeniably, be backed up, and the important part of it
24 is, is it can be backed up, and C-4, even though he waited a
25 time, he told the story, and he locked himself into that

1 story, right. He told that story before there was an autopsy,
2 and he said me and -- was that Andy had woke me up and Andy
3 had started smoking marijuana. Nobody told him to say that.
4 And boy, wouldn't there have been a lot of egg on our face if,
5 when Dr. Proctor took this stand he said, there wasn't no
6 marijuana in that boy's system. That's something that just
7 Andy (SIC) could have known, cause he said they -- we were the
8 only two in there; he smoked some marijuana that morning.

9 And Dr. Proctor said, I don't know Andy; I don't know
10 Cornelius Ford, but I know that boy smoked marijuana, had
11 marijuana in his system. He backed that up, an uninterested
12 third party. Speaking of which, he talked about this guy
13 coming up to the house, and he said he said he had a white
14 coat on. Again, no police officer, nobody had mentioned white
15 coat, nobody. He would have -- how about if he had said a
16 blue or a black, or a yellow coat, or no coat, but he said he
17 had on a white coat, and guess what, a third party,
18 unconnected to this case, just happened to be two yards back,
19 and Carolyn Heester, she said, I saw -- I'm up at this
20 doorstep looking back -- and you've got that photograph that
21 you can see -- and I see a young black man run across, stocky
22 build, run across that yard, stop, look directly at me, too
23 far away to get the facial features but I know this, had on
24 blue jeans and a white coat; I walked in and told my friend
25 about it, a guy is running around there with a white coat on.

1 Didn't think nothing about it, could have been a full white,
2 but again, Carolyn Heester, she said, I don't know Andy Gowans
3 or Cornelius Ford from Adam's housecat. If he's lying, if C-4
4 is lying about that, Cornelius Ford, he's a mind-reader too,
5 cause he stuck himself on that, said the guy had on a white
6 coat; I know who the guy is; the guy had on a white coat. And
7 then unbeknown to him, two yards over, this woman says, I saw
8 a guy in a white coat running over there, stopped and ran
9 back. I can't tell you, I don't think anybody can tell you,
10 if the murder had just been committed, or if it was about to
11 be committed, because we never -- she couldn't ever say, no
12 gunshots. She didn't hear any of that stuff. She went on
13 into the house. But she saw that, and that checked out, and
14 that, you can believe from C-4 because you've got someone else
15 that credited -- same with the marijuana. C-4 said -- if you
16 were making this stuff up -- C-4 said he didn't have a mask
17 on; I could see his face. She said, I can't tell the facial
18 features; he didn't have a mask on; he didn't have any of that
19 on, nothing covering his face; I saw him. See, these two
20 didn't get together and make up a story. That is believable,
21 because it's backed up by someone else that saw the same thing
22 he saw.

23 C-4 said, I can't tell you. Now I submit to you, if
24 somebody is wanting to lie, and lie good about it, he could
25 have come up and said, hey, it was a -- I don't know, Colt

1 semi-automatic 40. He said, I don't know; I know it was a
2 small black gun, about that big; it was a semi-automatic, and
3 I know he shot, and then he chased me around and it went
4 click, click. We know that that's true too, because even
5 though you don't have the casing itself, that casing is there,
6 and that casing was kicked out of the semi-automatic. Won't
7 get kicked out of a revolver, stay right in the cylinder. So
8 if he made it up he made that up too, and he's a mind-reader.
9 That is -- there ain't no need to bring the thing in. There
10 was no fingerprints or anything like that to take off of the
11 shell casing, but you will see a photograph of the shell
12 casing, and he told you it's a semi-automatic. Nobody else
13 could have known that. And I submit to you it's a fifty/fifty
14 chance, if you are making it up, you could have said revolver
15 or semi-automatic, but he said semi-automatic, and that's one
16 more thing that you can know, beyond the shadow of a doubt,
17 that happened. You can know that some male, some black male,
18 in a white coat, with a black semi-automatic -- well, hold on.
19 I can't tell you for sure it's a black semi-automatic, but
20 that a semi-automatic was fired. You can tell that his friend
21 was shot, and died right there, and you can back that up by
22 other people that C-4 did not know, every bit of that. The
23 fact -- around about time, that was backed up. He said it was
24 sometime early morning, sometime before ten o'clock, nine
25 o'clock, early morning like that. Carolyn Heester said at ten

1 till ten I was going through to see this friend; I had a
2 schedule to be on; I had to go to work; that's the time I saw
3 the guy in the white coat, same time Andy (SIC) was telling
4 you, around about mid-morning. The police officer says, I was
5 coming through at that time, driving a white truck. I can't
6 tell for sure, none of us can, but she did see a white truck
7 come through. We know she was there. She called the police
8 and said I was there. She called the police and said, I
9 didn't think much of it -- about at the time, but I hear y'all
10 are looking -- that there was a murder at Suggs Street, and
11 guess what I saw, and she told them, and she told them before
12 knowing C-4. Nobody got these stories together. People, that
13 happened. That happened. He was shot by a semi-automatic, by
14 a guy wearing a white coat, and it was a black guy, stocky
15 build. And something else he told you that can be confirmed.
16 He never said, I don't know who did it. He continuously --
17 and he said seven or eight times, continuously told them, I
18 know who he is; I can -- if you show me a picture I can tell
19 you who it is. That's important in a couple of ways, cause
20 first, he ain't biased. He didn't jump up -- I submit to you
21 if somebody is biased, and they wanting to pin this on Henry
22 Dukes, the first thing out of his mouth, Henry Dukes did it,
23 Henry Dukes did it, come on boys, let's ride over there, we'll
24 get Henry Dukes. He never said Henry Dukes did it. He didn't
25 know his name. He needed to put a name with a face, and he

1 kept saying, if you'll show me a photograph I can show you the
2 killer; I know who he is. Y'all all know people like that.
3 You meet them all the time at the grocery store. You see them
4 and you say, I know who that is, but I can't put a name with
5 it. Think about if someone were to come to you later and say,
6 who were you talking with at the grocery store. Somebody at
7 the ball field, it's so and so's wife, or whatever, but you
8 may not very well know the name. He kept saying, I know who
9 it is, and that was backed up, because as soon as he saw that
10 he says, that's the guy; I'm a hundred percent sure that's the
11 guy. I submit to you it's a red herring of whether he saw it
12 in this room or across the hall in another room. It's been
13 four years ago. Don't get caught up on, you know, nonsense
14 like that. Certainly it doesn't necessarily mean he's a liar.
15 I'm not vouching for his credibility, but surely it doesn't
16 mean he's a liar because he mistakes this room for that room.
17 It's been four years ago. But he said, undeniably, at that
18 time -- and it's in evidence, through stipulation -- he said,
19 I know exactly who it is; that's him; a hundred percent sure.
20 That can be backed up, all of that. That's stipulated to.

21 Now, he said, I called 911, and then I called my dad.
22 Police said, we got a 911 call and we went out. There is --
23 those key elements are all true because they've got to be
24 true.

25 Now, whether or not he reached up under the bed, or went

1 to the closet first, whether or not a bunch of different stuff
2 happened, or where he went, and all of that stuff, it's red
3 herring, because if you get back to the key, and the actual
4 killing of Andrico Gowans, he was telling you the truth. It
5 had to have happened by a guy, a stocky built black guy, in a
6 white coat, that he said I saw -- he told the police, I saw
7 him before.

8 Now, when he come in here he says, I saw him one other
9 time to that; they were over there -- it was a dope deal, and
10 I didn't want to implicate myself, but he never said I had
11 never seen him before. He had seen him before, and he had
12 recognized him as being some kin to Stank. Now he -- he knew
13 that sort of stuff, and whether he saw him one time, two
14 times, and I would submit to you this would be a third time,
15 that is all irrelevant.

16 There ain't no doubt he knew that he had to get out of
17 that house. For whatever reason, he left. There was drugs in
18 the house. Drugs were found. They were Andy's drugs. He
19 said, when I sold drugs I didn't sell Andy's drugs; I sold
20 mine, and I sold them out of that house. His drugs wasn't
21 found there, just Andy's. I -- I submit to you, you can
22 certainly take -- take from it that he may have taken
23 something from the house to keep himself from being in
24 trouble.

25 And when Mr. Fox said he didn't check on his friend,

1 that's not necessarily true. He said that he did stop, that
2 he looked, and he checked on Andy, and that Andy was shot, and
3 Andy was bleeding and moaning. So it wasn't like he run right
4 over his friend. These two were friends. He was friends with
5 a lot of bad people, Cornelius Ford was. I'm not saying that
6 Andy was a bad person. There was people that come in and said
7 he was a good-hearted young man, and there was another feud
8 going on, and you heard testimony about that. Judge John is
9 going to tell you, we don't have to prove motive; we just have
10 to prove those three elements.

11 But I submit to you, it could have been a drug deal,
12 wanting drugs up front, and hey, give it up, could have been a
13 robbery, drug deal. It could have been -- and it's a safe
14 assumption, that it was retaliatory, because there's no doubt
15 about it from the witnesses, people that really didn't have
16 anything to do with it, that Andy and Cornelius Ford were
17 great friends. They stayed together a bunch of time; they
18 sold drugs together. And Andy and Rasta, or Curtis Scott,
19 were cousins. These three were thick as thieves, right. Hey,
20 it gets lost because there's a lot of stuff going on, but
21 these three are really thick. On this side you've got Stank,
22 and Ronnie Atkinson, and Ronnie Atkinson comes up and has a
23 beef with Curtis Scott and gets shot, goes to the hospital.
24 The very day he got out of the hospital who was at his house?
25 Henry Dukes. Ms. Randall said, I had never seen him before in

1 my life. Imagine coming home today, somebody you had never
2 seen before in your life, ready to come in and move into the
3 house with you. You ain't moving in with me. I submit to you
4 that he wouldn't be moving into a truck beside my house, but
5 that's what he did. As a matter of fact, the police saw the
6 truck there. That's uncontroverted. He moved in on the very
7 day that his cousin, or some relation, gets out of the
8 hospital. So Stank and Henry Dukes are over here. They are
9 all living at the same house. Stank is inside, Henry Dukes,
10 or Champ, is outside in the truck. These people are getting
11 shot up. Cornelius Ford says, after Curtis Scott, Rasta, shot
12 him in the stomach, my girlfriend got shot in the stomach at
13 my house the same night. There's shooting going on back and
14 forth.

15 Drug dealing is a dangerous, dangerous game. There
16 ain't no doubt about that. I think defense counsel said the
17 same thing. You line yourself up to sell drugs; you line
18 yourself up with some unsavory people. And C-4 looks gentle,
19 seems gentle enough, but he told you he sells drugs, and Andy
20 sold drugs, and who knows, that is not a death penalty
21 offense. You don't get to kill drug dealers. Their life
22 matters too. There is a system, and the police had already
23 started the process of enacting that system on Andy, and they
24 were going to arrest Andy, and C-4, and everybody else that
25 was in that house trafficking drugs out of that house. The

1 police said they were riding around getting ready to exact
2 that same punishment. They were doing their undercover study,
3 ingress, egress, how do you get in and out of house; we are
4 going, the search warrant is imminent, some people are going
5 to jail for selling drugs. But that one right there beat them
6 to it, because he was doing the studying too. And he had gone
7 around and he had asked about C-4, and he had asked about Curt
8 Rasta, and you might not believe everything that Rasheed
9 Muhammad said, I don't know -- Mr. Fox has toyed with that a
10 good bit. But you can believe this, he took Cur Rasta to
11 jail, had him turn himself in, because Curt Rasta was on the
12 street. They couldn't get to Curt Rasta. He was at the J.
13 Reuben Long. So who do you get? Your cousin is shot in the
14 stomach, on a colostomy bag, C-4 was riding with the shooter,
15 Andy is his cousin. I don't have to prove motive. It could
16 have been a rip; it could have been retaliation. There is
17 more than enough reason for Henry Dukes to have killed him.

18 Now, Sylvia Randall also told you, unbeknown to what
19 Carolyn Heester was saying, unbeknown to what Cornelius Ford
20 was saying, she said, my son, Stank, had two coats,
21 uncontroverted, a dark one and a white one, and Stank gave
22 Henry Dukes that white coat, saw him wear it a bunch of times.
23 Was he wearing it that day? I don't know. She said, I don't
24 know; I ain't seen him; the first time I saw him was when they
25 woke him up in the truck. But that is three people that

1 couldn't have gotten their stories together. That weaves
2 through the entire thing, that white coat, and that proves
3 that at least somebody with stocky build, black, darker black,
4 with a white coat, and a nine millimeter handgun, shot and
5 killed Andrico Gowans.

6 Now, evidence of flight. Mr. Fox told you that there is
7 a lot of people getting shot up in Conway, so he wanted to
8 flee to a much safer, friendlier Miami, Florida. Miami may be
9 safer, I don't know. I don't spend a lot of time in Miami.
10 That doesn't seem like the refuge that you would go to, but
11 he's got family there, so we'll give him that. But he shows
12 up and he tells Sharonda -- I think it's key that he tells
13 Sharonda and Shalom, I had to get out of there; I killed a man
14 in South Carolina; I had to get out of there.

15 Did Sharonda look like she wanted to testify for the
16 State? She didn't want to tell that information. She told
17 you that a court in Miami said, you've got to get on a plane
18 and you've got to go to Conway, South Carolina, and you've got
19 to take that witness stand and you've got to swear to tell the
20 truth; I don't want to; I ain't want -- in no way am I going,
21 but a governor's warrant made her come, and when she came she
22 gave you some important information. Again, ladies and
23 gentlemen, please, information that she could not have known
24 had she not known from Henry Dukes, because see, Conway may be
25 more dangerous than Miami, but it's a long ways away, and the

1 scuttle-butt that's going on here wasn't going on in Miami.
2 This information got to her by Henry Dukes. And listen to
3 some things that she said, that she couldn't have known.
4 Henry Dukes said, I killed a man. That's -- could have easily
5 said man, woman, whatever, but he said, I killed a man; I
6 killed a man in South Carolina. Could have picked other
7 forty-nine states. Killed a man; I killed him in South
8 Carolina. I killed him at the grocery; I killed him at the
9 airport; I killed him on the street. Killed him at his house.
10 He told her that. No other way she would have known that.
11 And you know what else, there's no other way she would have
12 known. He said, I had to run a long way to do it, and a long
13 way back; nobody dropped me off; I had to run up there and do
14 it, and I had to run back. It's in evidence where he was
15 staying. [REDACTED] Ladson.

16 MR. FOX: Your Honor, objection.

17 THE COURT: I ---

18 MR. FOX: Approach.

19 THE COURT: Yes sir. Y'all come on over here.

20 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

21 MR. RICHARDSON: Ms. Randall said that he was staying
22 at Ladson Street in Conway. The murder occurred on Suggs
23 Street in Conway. I can't show you a map. I can't tell you
24 the distance, but one thing that you've got to know is that
25 neither could Sharonda. She couldn't tell you that either.

1 She didn't know a map. She simply came in and said, he ran a
2 long ways there, and he ran a long ways back. It wasn't like
3 it was easy. She told you a bunch of stuff that no one else
4 could have known, and I submit to you that it's very important
5 that she had no bias; she did not want to come, and she said,
6 well, me and Shalom called the police together. I submit to
7 you that there's a reason that a period of time lapsed from
8 the time they were told that he had killed somebody in South
9 Carolina until the time they called the police. It's not easy
10 to tell on a family member at all, and Mr. Walter -- can't
11 think of his last name right now -- he said, I pretty much --
12 Shalom is my son, and I was with Henry Dukes from when he was
13 a little boy, trying to point him to the right direction, and
14 they were close. He said they were like brothers. That ain't
15 easy to jump on the phone and say, police, if you want a man,
16 and Henry Dukes, that killed somebody in South Carolina, he's
17 heading to the bus station. That ain't an easy thing to do,
18 but apparently not only Sharonda it, but Shalom, his brother.
19 It's really his cousin, but they grew up together. That ain't
20 an easy thing. He trusted him enough, and trusted them enough
21 to tell them what had been eating at him for a long time, and
22 he said, I killed a man in South Carolina, that's what I'm
23 doing back in Miami; I showed up unannounced; I showed up with
24 no clothes except the ones on my back, and I am here because I
25 am in deep trouble, the same deep trouble that he was trying

1 to tell Willa Mae Dixon about and she apparently assumed
2 plausible deniability because she didn't want to be here
3 either, and she said, he kept saying, it's deep, Butch, it's
4 deep; this stuff is terrible. Go talk to God, don't talk to
5 me; I don't want to hear it. He wanted to tell someone, but
6 Mr. Walker said, he couldn't tell me, didn't he? He said, he
7 knew better than to tell me, because I would have had him turn
8 himself in. Were you surprised at your son and the mother of
9 your grandchildren are the ones that called? It's surprising,
10 but I don't doubt it, don't doubt it a bit; I know he wouldn't
11 have told me because I would have called them. And he never
12 did tell him.

13 In distance Henry Dukes assumed safety. He assumed, if
14 I can get out of this County, if I can get out of -- back to
15 mama's house it will be all right. So he hailed a cab, his
16 mama helped him pay for it, and he left here and he went to
17 Darlington, and the cab driver, he tried to minimize too, and
18 Mr. Fox minimized a little bit, but he didn't just drive up to
19 the house. You remember his testimony. Asked him to drive
20 around the house a couple of times. When you go home you
21 don't do that. You go home. When you are driving around you
22 are seeing what's up, what's here waiting for me. That's his
23 mama's house. He's been gone to Conway, living, now he comes
24 home, he's got to see what's changed. So he rides back with
25 Mr. Johnson, drives around a few times. That's strange, but

1 okay. You are saying for it. Drives him around, gets out,
2 you ain't seen me. And Mr. Johnson, again, minimizes it, he
3 said a lot of people tell me that, but we ain't here to try a
4 lot of people, and a lot of people don't have the evidence
5 stacked against them, with the white coat, with the handgun,
6 and with the witness that's got to be telling you the truth as
7 to who he saw, when he saw him, and what he was carrying.
8 This rules out a lot of people. This is about Henry Dukes,
9 and Henry Dukes' actions on that day. I can't tell you if
10 it's a revenge hit; I can't tell you if it was just a lick,
11 but either way, Henry Dukes is the man that killed Andrico
12 Gowans, killed the twin, killed the son, killed a friend. And
13 I never tried to make Andy out to be a great guy. That ain't
14 my job. I'm here to try to explain to you, through witnesses,
15 what happened. I'm not here to try to hide the ball. And I
16 think we've tried to do that.

17 On November 2nd, 2007, Horry County Police were looking
18 to make a bust on Andy Gowans, in that house on Suggs Street.
19 Henry Dukes beat them to it. They were there to arrest. He
20 was there to rob, or collect revenge, either way, and he used
21 a semi-automatic gun to do it. I was up front with you. I
22 told you this isn't a CSI case. All we have tried to do is
23 put the witness, the only witness that said he was there, but
24 all of his warts, and then we've tried to put up people that
25 were independent witnesses that didn't know him, to back up

1 what he had said. I never asked you to believe stuff that we
2 couldn't back up with someone else.

3 I submit to you it's very important that evidence of
4 flight is there, and no doubt he took off. Can't believe he
5 thought it was too unsafe in Conway, shootings, I went to
6 Darlington, my mama's house, thought it was too unsafe there,
7 stuck out to Miami. Too much, people. I mean, basically his
8 brother called, and his brother's girlfriend called, said we
9 ain't into this, come get him.

10 Judge John is going to talk with you about reasonable
11 doubt, and it's not beyond any doubt; it's not that you would
12 say, well, I doubt, you know, some -- anybody could have been
13 wearing a white coat, anybody could be a stocky, black built
14 man wearing a white coat. One of the other things that when
15 he was trying to identify him, he says, he's got a big -- big
16 mouth, big grin. Anybody could have a big grin, very dark
17 skin, wearing a white coat and blue jeans, could have been
18 anybody out there that morning. You've got to decide if all
19 of those circumstances lining up is reasonable; does that even
20 make sense. Ain't but one person that did this, and it was,
21 in fact, a murder, and that person is Henry Dukes. And one
22 other key concept. Judge John is going to go into a lot more
23 detail in explaining it to you, and this may very well shock
24 you, but direct evidence, I saw it; I heard it; I smelled it,
25 is not elevated or decreased by circumstantial. One is as

1 good as the other. One is just as good as the other. You
2 don't have to have something to hold. Very few times people
3 kill somebody in front of a video. As a matter of fact, very
4 few times people kill someone and a secondary eye witness is
5 right across the street looking. Now she didn't see him kill
6 him, but she saw everything that led up to or left it.
7 Circumstantial evidence is just as good a direct. I promise
8 I'm about through. But tonight, if y'all go home, everything
9 is -- well, it's been raining a little bit, but say it's just
10 as dry as a dust bowl, like it's been, you wake up the next
11 morning and there's puddles everywhere, the television is out,
12 there's puddles all over the place, you don't have any
13 electricity, the ground is saturated, the ditch banks are
14 full, it is safe to assume that it rained. You didn't see it
15 rain. You were in the house. You were asleep so you didn't
16 hear the thunder and the lightening -- now I'm a light sleeper
17 so I would have -- but you slept through it. It's safe to
18 assume, not only did it rain, but there must have been some
19 lightening that knocked out the power somewhere. There's a
20 lot of other things that you could come up with. You could
21 say, well, must have forgotten to pay the cable and the lights
22 all at the same time and somebody, some idiot drove through
23 here with a water truck and sprayed down the house, and
24 sprayed down the yard, but that's unreasonable. You know what
25 has happened. It's rained. I mean you can string together

1 facts and circumstances like Carolyn Heester, Sylvia Randall,
2 Ms. Butch, whatever she said, the girl there -- Sharonda in
3 Florida, you string that together you know what happened, you
4 are convinced of what happened, and you can go back and
5 discuss it. Doesn't necessarily mean it's unreasonable just
6 because you had discussion points, but on the key factors,
7 whether or not there was a murder, there cannot be a doubt,
8 and on the key factors that C-4, Cornelius, told you about,
9 they are all backed up by something else, but you can believe
10 that. You can believe, Judge John will tell you, all of what
11 a witness says, part of it, but you can string together enough
12 to find him guilty of murder.

13 And I told you at the beginning of this that selling
14 drugs is a dangerous game, but murder is too, and when you
15 commit a murder, at some point you are going to have to sit in
16 front of a group -- may not this group, but a group of twelve,
17 thirteen -- and you will have to face justice, and that's all
18 we are looking for. I submit to you, if you've got to go back
19 and look for doubt -- you didn't swear in saying, I swear to
20 look for doubt. If you will remember back, you swore to look
21 for justice, and that's the only thing that needs to be on
22 your mind; is the boy dead; is Andy Gowans dead; and did that
23 fellow shoot him. There's more than enough testimony that
24 that's him, that's Henry Dukes. He was picked out, a hundred
25 percent sure. Henry Dukes murdered Andy Gowans. He killed

1 another, and he had malice aforethought.

2 And I appreciate your attention. It's been a short
3 trial. You will be welcome to deliberate as long or as short
4 as you want to. You are welcome to look at this, replay or
5 hear anything in testimony, but your job is critical, because
6 justice depends on your verdict.

7 Thank you.

8 **THE COURT:** All right, ladies and gentlemen, it's
9 important that you understand the law to apply to the facts
10 that you find to be true in this matter, so I'm going to take
11 a short break, about five minutes. You go to your jury room,
12 take a short break. You will come back in and I will give you
13 the law that you are going to apply to the facts you find to
14 be true in this case.

15 Go to your jury room.

16 Everyone else remain seated.

17 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
18 **JURY.)**

19 **THE COURT:** All right. We'll be at ease for about five
20 minutes.

21 Thank you very much.

22 **(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE**
23 **PRESENCE OF THE JURY.)**

24 **THE COURT:** All right, ladies and gentlemen, it's now
25 my duty and responsibility to give you the law that you are

1 going to apply to the facts that you find to be true in this
2 particular case. Now I told you at the very beginning that I
3 wouldn't indicate to you -- and I believe that I have not --
4 what I believe the facts of this case are because it's not my
5 job; it's not my responsibility. That's your job and your
6 responsibility.

7 In that same vein, if you came in the courtroom with any
8 preconceived ideas of what the law is, what it ought to be,
9 what it should be, what you hoped it would be, you will
10 disregard that. You will take the law as I now give it to you
11 and apply it to the facts you find to be true in this case.

12 I told you at the very beginning that one of your jobs
13 as the jury in this particular matter is to judge the
14 credibility, that is, the believability of the witnesses that
15 have come before you and testified in this particular case.
16 Now, you can believe one witness against several, several
17 against one; you can believe a portion of what a witness says
18 and disregard the remaining portion; if you've got a good and
19 sound reason for it you can disregard the entirety of the
20 testimony of a particular witness. You look at whether or not
21 that witness has exhibited to you any kind of motive,
22 prejudice, bias that they might have in giving you the
23 testimony they gave you from the witness stand. They --
24 regarding that, you can consider their demeanor; how did they
25 come about the information that they told you from the witness

1 stand. You can look back in your own common sense, in your
2 own good judgment when you look at all these factors. I told
3 you at the very beginning, judging credibility and
4 believability is something you do every single day of your
5 life. You use your good common sense, use your good judgment,
6 and find that evidence which convinces you of it's truth, and
7 then weigh that evidence against the State's burden to prove
8 the Defendant guilty of the crime of murder beyond a
9 reasonable doubt. You don't have any friends to reward; you
10 don't have any enemies to punish. Your verdict can't be the
11 result of any kind of passion, prejudice or sympathy. It's
12 got to be an examination of the facts and evidence presented
13 to you, finding the evidence which convinces you it's true,
14 and then weighing that evidence against the State's burden.

15 In this particular case there were two types of evidence
16 presented, and -- presented in virtually every single case
17 that's tried. It's called direct and circumstantial evidence.
18 Now, direct evidence, that's the testimony of a person who
19 claims to have actual knowledge of a fact, what they saw, what
20 they heard, what took place in their presence. Circumstantial
21 evidence is a chain of facts indicating the existence of a
22 fact. The law doesn't make any distinction between the two.
23 The greater degree of certainty of one over the other is not
24 required. You weigh all the evidence; you look at all the
25 evidence; find that evidence which convinces you it's true,

1 and then weigh that evidence, again, against the State's
2 burden to prove the Defendant guilty of the crime charged
3 beyond a reasonable doubt.

4 I qualified a witness in this case to give his opinion,
5 sometimes called expert opinions. What we are actually doing
6 is qualifying the person to give their opinion. Normally we
7 don't allow witnesses to give their opinion. They've got to
8 tell you what they actually know, not what their opinion is,
9 but some witnesses, by their expertise, training, education in
10 a particular field will be allowed to state an opinion. Now,
11 just because the Court qualified somebody to give their
12 opinion doesn't give any greater weight or certainty over
13 other witnesses. Again, you weigh all the evidence the same;
14 you judge all the evidence and credibility the same.

15 Our Rules of Evidence that govern trials in the State of
16 South Carolina provide that the testimony of a witness may be
17 discredited or impeached by showing the witness has been
18 convicted of a crime for which that person could have been
19 imprisoned for more than one year, or a crime that involves
20 dishonesty. Now, as to this kind of evidence it's offered
21 only on that issue of credibility or believability, and for no
22 other purpose.

23 Now, a person who has a criminal record can testify in a
24 case. Their past record doesn't affect their ability to
25 testify; the past record is only considered by you, if at all,

1 in determining that witness's believability or credibility.
2 You, again, are the sole judges of the facts, and of the
3 credibility and the believability of all the witnesses in this
4 case.

5 The Defendant in this particular case did not testify.
6 This is not a factor to be considered by you in this case. It
7 is not to be considered by you in your deliberation; you may
8 not talk about it in your jury room; you may not discuss it;
9 you may not mentally use it in making a decision. It is not
10 part of this case. The State -- and I've told you from the
11 very beginning -- has the burden to prove the Defendant guilty
12 beyond a reasonable doubt. The Defendant doesn't have a thing
13 to show to you. Any person charged with a criminal offense
14 has the Constitutional Right to remain silent, and that
15 silence cannot be used or held against them in any way.

16 The Defendant pled not guilty to the indictment or the
17 charge levied against him by the State of South Carolina.
18 This plea of not guilty, again, puts the burden of proof on
19 the State of South Carolina to prove the Defendant guilty
20 beyond a reasonable doubt. The Defendant is presumed innocent
21 of the crime if, and only if you believe, from the proper
22 evidence that's been presented, the evidence you believe to be
23 true, that the State has proven the guilt of the Defendant
24 beyond a reasonable doubt. It's an important rule of law that
25 anyone charged with a criminal offense is always presumed

1 innocent of that crime, and that presumption of innocence
2 didn't end at the start of the trial; it hasn't ended now; it
3 only ends if, at all, you believe the State has proved to you,
4 beyond a reasonable doubt, the guilt of the Defendant of the
5 crime of murder.

6 The presumption of innocence is likened to a robe of
7 righteousness. It's placed on the shoulders of the Defendant,
8 and stays on the shoulders of the Defendant until, and only if
9 the State rips that robe of righteousness from the shoulders
10 of the Defendant by proof that convinces you of the guilt of
11 the Defendant beyond a reasonable doubt.

12 Now, this presumption of innocence is not just some
13 legal theory, not a legal phrase. It's a substantial right to
14 which everyone is entitled, and you must put, and hold the
15 State to it's burden to prove the Defendant guilty beyond a
16 reasonable doubt.

17 Now, what's reasonable doubt? The kind of doubt that
18 would cause an ordinary, reasonable person to hesitate to act.
19 Proof beyond a reasonable doubt is proof that leaves you
20 firmly convinced of the Defendant's guilt. Now, there's very
21 few things we can know with absolute certainty, and the law
22 doesn't require the State of South Carolina to give you that
23 kind of proof. What is required is, based upon your view of
24 the evidence, and your consideration of the evidence, you are
25 firmly convinced the Defendant is guilty of the crime charge,

CHARGE BY THE COURT

387

1 you must find the Defendant guilty. On the other hand, based
2 upon your view of the evidence, you are not firmly convinced
3 the Defendant is guilty of the crime charged you must give the
4 Defendant the benefit of the doubt and find him not guilty.

5 An issue in this case is identification of the Defendant
6 as the person who committed the crime charged. The State, as
7 with everything, has the burden of proving to you the identity
8 beyond a reasonable doubt. You must be satisfied beyond a
9 reasonable doubt of the accuracy of the identification of the
10 Defendant before you may convict the Defendant of the crime
11 charged. Identification testimony is an expression of belief
12 or impression by a witness. You must determine the accuracy
13 of the identification of the Defendant. You must consider the
14 believability of each identification witness in the same way
15 as any other witness. You may consider whether the witness
16 had an adequate opportunity to observe the offender at the
17 time of the offense. This will be affected by things like how
18 long or short a time was available, how far or close the
19 witness was, the lighting condition, whether the witness had
20 the chance to see or know the person in the past. You may
21 also look at the strength of the identification and the
22 circumstances under which the identification was made. The
23 burden of proof extends to the State on every element of a
24 crime charged, and this specifically includes the burden of
25 proving, beyond a reasonable doubt, the identity of the

1 Defendant as the person who committed the crime.

2 The Defendant in this case is charged with the crime of
3 murder. The State has to prove to you, beyond a reasonable
4 doubt, that the Defendant killed another person with malice
5 aforethought. Malice is hatred, ill-will, hostility toward
6 another person. It's the intentional doing of a wrongful act
7 without just cause or excuse, and with an intent to inflict an
8 injury, or under circumstances that the law would infer an
9 evil intent.

10 Now, this malice aforethought does not require that this
11 malice exist for any particular time before the act is
12 committed, but the malice has to exist in the mind of the
13 Defendant just before and at the time the act is committed.
14 There has to be this combination of the evil intent and the
15 act.

16 And malice aforethought, that could be expressed or
17 inferred, that is, it's either by direct evidence or by
18 inference from the facts and circumstances which are proved.
19 Express malice is shown when the person speaks words which
20 express hatred or ill-will toward another, or when the person
21 prepared beforehand to do the act which was later
22 accomplished. Malice may be inferred from conduct showing a
23 total disregard for human life. Inferred malice may also rise
24 when the deed was done with a deadly weapon. A deadly weapon
25 is any article, instrument or substance which is likely to

CHARGE BY THE COURT

389

1 cause death or great bodily harm. Whether an instrument has
2 been used as a deadly weapon depends on the facts and
3 circumstances of each case.

4 Motive is not an element of the offense of murder, and
5 the State does not have to prove motive to you.

6 That, ladies and gentlemen, is the law that you are
7 going to apply to the facts and evidence you find to be true
8 in this case.

9 Now, the Court has had prepared for you a verdict form,
10 very straightforward and simple. It says, State of South
11 Carolina versus Henry Jermaine Dukes. On the charge of murder
12 we, the jury, by unanimous consent, find the Defendant -- and
13 you've got two choices, put one before the other; don't assign
14 anything to that -- not guilty of guilty.

15 Mr. Foreman, when your jury has well and truly
16 deliberated in this case, and reached it's unanimous verdict,
17 you will take this verdict form, you will check the
18 appropriate block, whichever one it is, and then you sign your
19 name and put the date, indicating that that, indeed, is the
20 unanimous verdict of the jury, that each and every member of
21 the jury agrees that's their verdict.

22 Now I've said unanimous I don't know how many times. It
23 means exactly what you thing it means. It means twelve zero.
24 It doesn't mean eleven one, ten two, or any combination
25 thereof. It means every single member of the jury agrees,

JURY OUT/ALTERNATE EXCUSED
ADDITIONS, EXCEPTIONS, OBJECTIONS TO CHARGE

390

1 this is my verdict.

2 What I'm going to ask you to do, Mr. Foreman, is take
3 your twelve members of the regular jury -- and Madam
4 Alternate, I'm going to ask that you stay with us. Mr.
5 Foreman, take your jury to the jury room. Do not begin your
6 deliberation until the bailiff hands to you the verdict form
7 and the exhibits. When the bailiff comes in with the verdict
8 form and the exhibits then, Mr. Foreman, your jury may begin
9 it's deliberation.

10 Please take your jury to the jury room.

11 Madam Alternate, please stay with us.

12 (THE JURY RETIRED TO THE JURY ROOM AT APPROXIMATELY 5
13 P.M.)

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16 (AT THIS TIME THE ALTERNATE WAS EXCUSED FROM FURTHER
17 PARTICIPATION IN THE TRIAL OF THIS CASE.)

18 THE COURT: All right. Exceptions, deletions,
19 additions to the charge, from the State.

20 MR. RICHARDSON: None, Your Honor.

21 THE COURT: Additions, deletions, exceptions to the
22 charge from the defense.

23 MR. FOX: None, Your Honor.

24 THE COURT: All right. Very good.

25 Gentlemen, thank you. Y'all did everything the Court

JURY OUT/DELIBERATING
JURY OUT/ON RECORD

391

1 would expect of you in trying the case for the State and the
2 Defense, and I commend you for that.

3 I would appreciate it if you would please get with the
4 Court Reporter, make sure we've got all the proper exhibits
5 for the jury before they go into the jury room. All right.

6 MR. RICHARDSON: Thank you.

7 THE COURT: Thank you very much.

8 (THE EXHIBITS WERE REVIEWED AMONG COUNSEL FOR THE STATE,
9 COUNSEL FOR THE DEFENDANT, AND THE COURT REPORTER. ALL
10 EXHIBITS WERE APPROVED AND PASSED INTO THE JURY ROOM.)

11 (THE JURY BEGAN DELIBERATION AT 5:15 P.M.)

12 (THE FOLLOWING TAKES PLACE AT 6:25 P.M., OUTSIDE THE
13 PRESENCE OF THE JURY.)

14 THE COURT: I am informed the jury has reached a
15 verdict in this matter. Is the State ready to receive it?

16 MR. RICHARDSON: Yes sir.

17 THE COURT: And is the Defense ready to receive it?

18 MR. FOX: Yes, Your Honor.

19 THE COURT: All right. Very good.

20 All right. Let me talk to everybody in the courtroom.
21 We asked the jury to do a very difficult thing, that is, to
22 arrive at a unanimous verdict in this particular case. I am
23 expecting, and will require that any verdict rendered by the
24 jury will be received with respect, and it will be received by
25 silence. The Court will not tolerate any showing of emotion

JURY IN/VERDICT
MOTIONS/SENTENCING

392

1 or any outburst of any kind. If you do so you will be
2 detained by an Horry County Sheriff, and I will hold a
3 contempt of court hearing regarding that matter once this
4 matter has been resolved. So, if you feel that you cannot
5 abide by this Court's order I'm giving you an opportunity to
6 leave the courtroom now.

7 All right. Ask the jury to come in, please.

8 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
9 JURY.)

10 THE COURT: All right, Mr. Foreman, has your jury
11 reached a verdict in this matter?

12 FOREMAN: Yes, we have.

13 THE COURT: All right, sir, can you hand the verdict
14 form to the Clerk, please sir.

15 You may publish the verdict.

16 DEPUTY CLERK OF COURT: This is indictment number (08-
17 GS-26-02911), the State of South Carolina versus Henry
18 Jermaine Dukes, indictment for murder. On the charge of
19 murder we, the jury, by unanimous consent, find the Defendant
20 guilty.

21 Charles W. Knoble, Foreperson. Dated August 2nd, 2011.

22 Ladies and gentlemen of the jury, if this is your
23 verdict so signify by raising your right hand.

24 (ALL JURORS CONFIRMED THE VERDICT BY THE RAISING OF HIS
25 OR HER RIGHT HAND.)

JURY IN/VERDICT
MOTIONS/SENTENCING

393

1 **THE COURT:** All right. The jury, having affirmed their
2 verdict by raising their hand, does the State wish the jury
3 polled?

4 **MR. RICHARDSON:** No sir.

5 **THE COURT:** Does the Defense wish the jury polled?

6 **MR. FOX:** Yes, Your Honor.

7 **THE COURT:** All right, Madam Clerk, by juror number, if
8 you would please poll the jury.

9 (AT THIS TIME THE JURY WAS POLLED BY NUMBER. ALL JURORS
10 AFFIRMED THE VERDICT AS PUBLISHED.)

11 **THE COURT:** All right, the jury having affirmed their
12 verdict, is there anything as to the jury itself, from the
13 State?

14 **MR. RICHARDSON:** No sir.

15 **THE COURT:** From the Defense?

16 **MR. FOX:** No, Your Honor.

17 **THE COURT:** All right. Thank you.

18 (AT THIS TIME THE JURY WAS EXCUSED FROM FURTHER
19 PARTICIPATION IN THE TRIAL OF THIS CASE.)

20 **THE COURT:** All right, Mr. Fox, any motions by the
21 Defense?

22 **MR. FOX:** Yes, Your Honor. We would ask to direct a
23 verdict of the jury's verdict being against the clear weight
24 of the evidence, and in the alternative -- direct a verdict of
25 not guilty, or in the alternative, grant Mr. Dukes a new

JURY IN/VERDICT
MOTIONS/SENTENCING

394

1 trial, Your Honor.

2 THE COURT: All right. In this particular matter the
3 Court respectfully declines to grant your motions. I find
4 that the evidence in this matter -- again, it was the jury's
5 job to judge credibility and believability. I find that --
6 found at the directed verdict stage that there was more than
7 sufficient evidence to submit the matter to the jury for their
8 decision. I find that there was more than sufficient
9 competent evidence to sustain the jury's verdict of guilty of
10 the crime of murder beyond a reasonable doubt, and therefore
11 respectfully decline to grant your motions at this time.

12 All right. Any further motions from the Defense?

13 MR. FOX: No, Your Honor.

14 THE COURT: Is the State ready to proceed with
15 sentencing?

16 MR. RICHARDSON: Yes sir, Your Honor.

17 THE COURT: And the Defense?

18 MR. FOX: Yes sir.

19 THE COURT: All right. Very good.

20 All right, Solicitor, do you have a sentencing form?

21 MR. RICHARDSON: Yes sir.

22 THE COURT: All right, Solicitor, would you like to say
23 anything to the Court, or is there any representative of the
24 victim that would like to address the Court?

25 MR. RICHARDSON: Your Honor, I've checked with our

JURY IN/VERDICT
MOTIONS/SENTENCING

395

1 Victim Advocate. Andy's mother and father are here. I'll
2 tell you throughout this process I've received dozens of calls
3 and meetings with both of them. They've been very involved.
4 But, of course, I don't believe they -- his mom -- his
5 sister ---

6 You want to address the Court? Come on up.

7 **THE COURT:** All right.

8 **MR. RICHARDSON:** Give Judge John your name, and your
9 father.

10 Your Honor, this is Andy Gowans' sister.

11 **THE COURT:** All right, Ma'am. If you could -- if you
12 could, just state your name, Ma'am, and then address the
13 Court. I'll be glad to hear from you.

14 **MR. PAMELA KELLY:** Okay. My name is Pamela Kelly. I'm
15 Andy Gowans' aunt. I'm ---

16 **THE COURT:** Aunt. All right. Yes Ma'am.

17 **MS. KELLY:** I'm his mother's sister. My sister got sick
18 yesterday and she was unable to attend today, but on her
19 behalf, and on behalf of the family, I would like to thank the
20 South Carolina Solicitor's Office for a great job. I would
21 like the Court -- I appreciate the Court system for justice
22 being served, and we just ask that y'all just keep us in
23 prayer.

24 Thank you.

25 **THE COURT:** Thank you very much.

JURY IN/VERDICT
MOTIONS/SENTENCING

396

1 Anything else, Solicitor?

2 **MR. RICHARDSON:** No sir, Your Honor.

3 **THE COURT:** All right. Mr. Fox.

4 **MR. FOX:** Thank you, Your Honor.

5 Henry -- I call him Henry. He goes by Jermaine. Mr.
6 Dukes is twenty-eight years old. Has lived, as Your Honor has
7 heard, in New York and in Florida, and in South Carolina,
8 although not much connection to Conway.

9 Your Honor, as you heard when we discussed with Mr.
10 Dukes, whether he would testify, he really has no prior
11 record. He has an old conviction for obtaining, I guess it
12 was drugs, by false pretenses, a number of years ago, which he
13 was given a probationary sentence.

14 **(MR. DUKES CONFERS WITH MR. FOX.)**

15 And Mr. Dukes tells me that was a misdemeanor, that was
16 a number of years ago, did not serve a jail sentence on that.

17 He doesn't have a record of arrest for violence, a
18 conviction for violence, things of that nature. I point that
19 out to the Court.

20 Mr. Dukes, I would also point out -- ask the Court,
21 whatever the sentence be, that he get credit for the time that
22 he has spent in jail. It is -- I don't have an exact figure.
23 He was in jail a good long time when he was arrested. He was
24 out on bond for some time, and has been back in detention
25 since about February of this year, but I would ask the Court,

JURY IN/VERDICT
MOTIONS/SENTENCING

397

1 whatever the figure turns out to be, he get credit for the
2 time he's served.

3 It is no comfort -- would be no comfort to Mr. Gowans'
4 family the reason for this. I do think -- despite some
5 testimony I do not believe this was a hit. In fact, I think
6 the Solicitor would agree that Mr. Atkinson, who has been
7 referred to in this trial, was actually interviewed, and was
8 quite adamant that this was not a retaliatory thing. Again, I
9 realize that's no comfort for the victim's family. I don't
10 justify that, but I think it's a particularly gruesome thing
11 to stalk somebody out and, as I say, sort of a contract hit,
12 and I don't think that was the case.

13 Again, I would just like you to keep that in mind. Mr.
14 Dukes -- his mother has been here. She's been here a great
15 deal -- not now, because she, frankly, was not able to be here
16 at this point, couldn't emotionally stand it, but you know,
17 Mr. Dukes has a family that cares about him very much as well,
18 and we simply ask Your Honor to take all those things in
19 consideration, his lack of a violent history, in setting a
20 proper sentence, Your Honor, and credit for the time that he's
21 been incarcerated.

22 **THE COURT:** All right. Did your client wish to address
23 the Court in any fashion?

24 **MR. DUKES:** Yes, Your Honor. I would like to ask that
25 you just look at, like my prior history, with violence and

1 everything, that I'm not a bad person, and sentence me --
2 sentence me just according to law, but be lenient as well.

3 THE COURT: All right, sir. Thank you.

4 Anything else, Solicitor?

5 MR. RICHARDSON: No sir, Your Honor.

6 THE COURT: All right, sir.

7 Based upon the matters presented, and as heard by the
8 jury and the Court in this matter, the jury having found the
9 Defendant guilty of the crime of murder, the sentence of the
10 Court is, (08-GS-26-02911), State of South Carolina, County of
11 Horry, versus Henry Jermaine Dukes, regarding the crime of
12 murder, the Defendant is hereby committed to the State
13 Department of Corrections for a determinat term of forty-
14 seven years.

15 This matter is now ended.

16 Thank you very much.

17 MR. RICHARDSON: Thank you, Your Honor.

18 MR. FOX: Thank you, Your Honor.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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22
23
24
25

CERTIFICATE OF COURT REPORTER

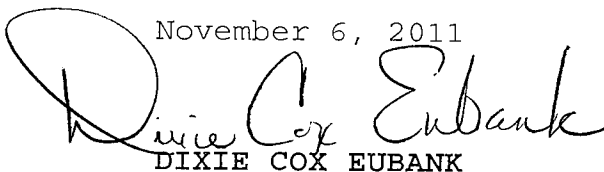
399

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 20th day of July, 2011, and on the 1st and 2nd days of August, 2011.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

November 6, 2011



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

ORIGINAL

RECEIVED

JAN 03 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY JERMAINE DUKES,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	11

TABLE OF AUTHORITIES

Cases

<u>Manson v. Brathwaite</u> , 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)	9, 10
<u>Neil v. Biggers</u> , 409 U.S. 188, 93 S.Ct. 375 (1972).....	5, 7, 8, 9
<u>Simmons v. United States</u> , 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)	10
<u>State v. Liverman</u> , 727 S.E.2d 422 (2012).....	7, 8, 9, 10
<u>State v. McLeod</u> , 260 S.C. 445, 196 S.E.2d 645 (1973)	7
<u>State v. Stewart</u> , 275 S.C. 477, 272 S.E.2d 628 (1980).....	10
<u>Stovall v. Denno</u> 388 U.S. 293, 87 .Ct. 1967, 18 L.Ed.2d 1199 (1967)	10

STATEMENT OF ISSUES ON APPEAL

1. Did the judge err in refusing to find that the pre-trial hearing in regard to identification failed to comport with due process requirements when the detective who conducted the identification procedure was not available to testify?
2. Did the judge err in refusing to suppress the in court identification testimony when the out of court identification procedure used was unduly suggestive and created a substantial likelihood of irreparable misidentification?

STATEMENT OF THE CASE

In August of 2008, the Horry County Grand Jury indicted Dukes for murder, indictment #2008-GS-26-2911. On July 20, 2011, the Honorable Steven H. John heard pretrial motions. On August 1, 2011, Dukes proceeded to jury trial before Judge John. Attorney Jonathan Eric Fox represented Dukes during the pre-trial hearing and at trial. The jury found Dukes guilty and Judge John sentenced Dukes to 47 years. A timely notice of intent to appeal was filed on August 3, 2011. This appeal follows.

ARGUMENT

1. The judge erred in refusing to find that the pre-trial hearing in regard to identification failed to comport with due process requirements when the detective who conducted the identification procedure was not available to testify

The jury convicted Dukes of the murder of Andrico Gowans. The State's case against Dukes was based primarily on the identification testimony of Cornelius Ford. There was no forensic evidence linking Dukes to the murder. Prior to trial during the pre-trial hearing, Dukes argued that the State could not meet its burden in regard to the admission of Gowans' identification testimony when Detective Addison, the detective who conducted the identification procedure, was not available at trial. (R. p. 11, lines 15 – p. 12, lines 1-13). The judge found that he could not make that determination until he heard the testimony of Ford. (R. p. 12, lines 14-16). In a separate motion, Dukes then moved to suppress identification testimony of Ford based on the unduly suggestive identification procedure used that created a substantial likelihood of misidentification. (R. p. 29, lines 3-15).

The judge held a hearing pursuant to Neil v. Biggers¹. The State called Ford as a witness. (R. p. 29, line 21). Ford testified that on the morning of the shooting he was at Gowans' house and there was a knock on the door. (R. p. 32, lines 6-10). According to Ford, Gowans opened the door and Dukes came inside the house. (R. p. 32, lines 9-10). According to Ford, there was a brief conversation and then Dukes pulled out a gun and shot Gowans. (R. p. 32, lines 12- p. 33, lines 1-18). Ford testified that he had seen Dukes on two prior occasions. (R. p. 30, lines 7-13). Ford described the shooter as having a funny accent and a big smile. (R. p. 34, lines 3-8). After the shooting, Ford called his father, Rasheed Muhammad. (R. p. 38, lines 17 – p. 39, p. 40, lines 1-2). Muhammad came to the house

and met the police. Ford did not wait for the police and fled the scene when his dad arrived. (R. p. 40, lines 4-19). Later, at trial, Muhammad admitted that on the morning of the shooting, he did not tell police that his son had been at the house and he admitted that he lied about how he came to be at the house on the morning of the shooting. (R. pp. 85 – 90).

Later that evening the police contacted Muhammad about speaking with his son, Cornelius Ford. (R. p. 44, lines 6-10). Muhammad and Ford went to the police substation and met with a detective. (R. p. 44, lines 9-12). Ford testified, “When I went to get a interview I was giving – telling them what happened, and while I was talking – while I was talking to them they said they was going to get some pictures, like a photo book or whatever, but I seen like some pictures on the table, and when I seen the pictures on the table I pointed him out, because I knew that’s who it was.” (R. p. 34, lines 24 – p. 35, lines 1-5). Ford testified that the detective opened up his file to take notes and Ford saw three or four pictures inside the detective’s file. (R. p. 35, lines 12 – p. 36, 37, line 1).

After the testimony, Dukes again objected to the fact that Detective Addison was not available to testify about the identification procedure used in this particular case. (R. p. 50, lines 13-20; p. 50, lines 25 – p. 51, lines 1 – p. 52 lines 1-10). The judge found, “I do not find it is necessary for the Court to hear the testimony of the detective who is unavailable. I mean, there is no argument, Mr. Fox, that that detective is unavailable. He is in the service of his country in Afghanistan. It’s not possible for him to be at the trial. I mean, that’s clear, correct?” (R. p. 52, lines 12-18). Defense counsel agreed that the detective was unavailable. (R. p. 52 line 19). The judge then found, “All right, so with that circumstance, the Court does not find it obviously, number one, within the court’s power to

¹ 409 U.S. 188, 93 S.Ct. 375 (1972).

have him here. Secondly, I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.” (R. p. 52, lines 20-25). The judge erred. The detective’s testimony was necessary in order for the State to meet its burden in regard to the admissibility of the identification testimony. The pre-trial hearing in regard to identification testimony did not meet due process requirements.

In State v. Liverman, 727 S.E.2d 422 (2012), the South Carolina Supreme Court overruled State v. McLeod, 260 S.C. 445, 196 S.E.2d 645 (1973) creating a bright line rule excusing a Neil v. Biggers hearing where the eye witness knows the accused. In Liverman the defense requested a Neil v. Biggers hearing and the State objected, based on McLeod, because the witnesses knew the accused. The judge required the State to proffer the testimony of the witness. The judge first found the identification testimony admissible pursuant to McLeod. The judge then made a secondary finding that, under the totality of the circumstances, the identification testimony was admissible. The identification in Liverman involved an individual show up identification. In discussing the evidence presented in regard to the identification testimony the Court wrote, While the trial court required the State to submit evidence that has many of the traditional features of a Neil v. Biggers hearing (and the trial court made concomitant Neil v. Biggers findings), we decline to hold that the pretrial hearing fully comported with due process requirements. State v. Liverman, 727 S.E.2d at 427. The Court in Liverman then found that any error in the insufficient Neil v. Biggers hearing was harmless.

The identification hearing in the present case which included the testimony of the eye-witness and his father was the equivalent of the proffered testimony of the eye

witness in Liverman. The police who conducted the identification procedures in both Liverman and the present case failed to testify at the pre-trial hearings. As the South Carolina Supreme Court declined to find that the pre-trial hearing in Liverman comported with due process requirements, this Court should find that the identification hearing in the present case failed to comport with due process requirements. Unlike Liverman, the error was not harmless, as discussed below in issue two.

2. The judge erred in refusing to suppress the in court identification testimony when the out of court identification procedure used was unduly suggestive and created a substantial likelihood of irreparable misidentification.

After erroneously finding that the officer was not necessary for purposes of the Neil v. Biggers hearing, the judge found that the identification process was not suggestive. The judge stated:

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, that there was any act by the police of a suggestive manner. The witness had already identified the Defendant prior to the – looking at the photographs. The seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive in – in any manner, and therefore, based upon all that, the motion to suppress the identification is denied.

Ford, the eye witness, testified, “When I went to get a interview I was giving – telling them what happened, and while I was talking – while I was talking to them they said they was going to get some pictures, like a photo book or whatever, but I seen like some pictures on the table, and when I seen the pictures on the table I pointed him out, because I knew that’s who it was.” (R. p. 34, lines 24 – p. 35, lines 1-5). Ford testified that the

detective opened up his file to take notes and Ford saw three or four pictures inside the detective's file. (R. p. 35, lines 12 – p. 36, 37, line 1). It is unclear what subsequent, if any, identification procedure was used because the officer was not available to testify. Even if inadvertent, allowing the witness to view a photograph of the defendant contained in the case file of the officer investigating the shooting is an unduly suggestive identification procedure. The court erred in finding that the procedure was not unduly suggestive.

In State v. Liverman, 727 S.E.2d 422, 426 (2012) the South Carolina Supreme Court wrote:

In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Biggers, 409 U.S. at 198, 93 S.Ct. 375. Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing Biggers, 409 U.S. at 199–200, 93 S.Ct. 375).

Considering the five Neil v. Biggers factors in the present case, the out-of-court identification, resulting from the unduly suggestive identification procedure, created a substantial likelihood of irreparable misidentification. Ford testified that he was in the hallway when the gun was pulled. (R. p. 32, lines 12 – 21). Ford testified, “Yes. I stood

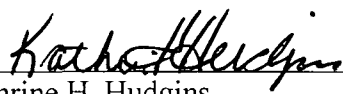
up when I seen him pull the gun out, and then he pointed the gun at me, and the victim - -
 -” (R. p. 33, lines 2-3). While Ford was certain of his identification, the only description given by Ford was that the shooter had a funny accent and a big smile or big mouth. (R. p. 34, lines 3-8). Ford identified Dukes four to five hours after the shooting and after Ford fled the scene. (R. p. 34, lines 13-17). Ford testified that he had seen Dukes briefly on two prior occasions but there is no evidence that he knew Dukes. (R. pp. 30 – 31). In contrast, the witness in Liverman knew the person he identified and provided police with that person’s nickname.

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. Stovall v. Denno 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 14 (1977) (citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980). The unduly suggestive identification in the present case created a very substantial likelihood of irreparable misidentification. Both the out of court identification and the in court identification should have been suppressed.

CONCLUSION

Based on the above arguments, Dukes' conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of January, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 3rd, 2013



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

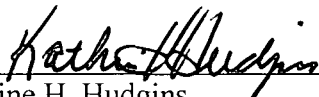
V.

HENRY JERMAINE DUKES,

APPELLANT

CERTIFICATE OF SERVICE

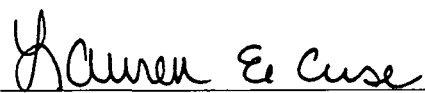
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon William Edgar Salter, III, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of January, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: August 23, 2014 .

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2011-196667**

THE STATE,

RESPONDENT,

v.

HENRY JERMAINE DUKES,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	iv
COUNTER-STATEMENT OF ISSUES ON APPEAL	iv
STATEMENT OF THE CASE	1
ARGUMENTS	2
I. The trial judge properly refused to suppress the pretrial identification of Dukes by State's witness Cornelius Ford, based upon the unavailability of the detective who conducted the identification procedure, because the <i>United States v. Wade</i>, 388 U.S. 218, 235-36 (1967) hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.	2
A. Proceedings in the trial court.	2
B. Discussion	8
II. The trial judge properly denied Dukes' motion to suppress Cornelius Ford's pretrial identification of him because the record supports his findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, despite any possible suggestiveness	16
CONCLUSION	25

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Manson v. Brathwaite</i> , 432 U.S. 98, 114 (1977)	10
<i>Neil v. Biggers</i> , 409 U.S. 188 (1972)	7, 9, 10
<i>Stovall v. Denno</i> , 388 U.S. 293 (1967)	9, 10, 13
<i>United States vs. Ruggiero</i> , 824 F. Supp. 379, 396 (S.D.N.Y. 1993)	9
<i>United States v. Wade</i> , 388 U.S. 218, 235-36 (1967)	2, 13, 14 15
<i>Watkins v. Sowders</i> , 449 U.S. 341, 349 (1981)	9

STATE CASES

<i>Alvarez v. Fischer</i> , 170 F. Supp. 2d 379 (S.D.N.Y. 2001)	14
<i>Duran v. Miller</i> , 322 F.Supp.2d 251, 257 (E.D.N.Y. 2004)	14
<i>Heron vs. People of the State of New York</i> , No. 98 Civ. 7941 (SAS), 1999 WL 1125059 at *10 (S.D.N.Y. Dec. 8, 1999)	14
<i>Mitchell v. Fischer</i> , No. 02-CV-6336 (JBW), 2003 WL 22952851, at *6 (E.D.N.Y. October 20, 2003)	14
<i>Mitchell v. Herbert</i> , 01-CV-681, 2008 WL 342975, 7-8 (W.D.N.Y., Feb. 6, 2008)	14
<i>People v. Chipp</i> , 75 N.Y.2d 327, 553 N.Y.S.2d 72, 552 N.E.2d 608 (N.Y. 1990)	13
<i>People v. Rodriguez</i> , 79 N.Y.2d 445, 453, 583 N.Y.S.2d 814, 593 N.E.2d 268 (N.Y.1992) ...	14
<i>Perry v. New Hampshire</i> , 132 S.Ct. 716, 723-30 (2012)	9, 15, 18, 19
<i>Rivalta v. Artuz</i> , No. 96 Civ. 8043 (SAS), 1997 WL 401819, at *3 (S.D.N.Y. July 16, 1997) ..	14
<i>Smith v. Smith</i> , 2003 WL 22290984, 6-9 (S.D.N.Y., Sept. 29, 2003)	14
<i>Sorenson v. Superintendent</i> , No. 97 Civ. 3498 (NG), 1998 WL 474149 at *4 (E.D.N.Y. Aug. 7, 1998)	14
<i>State v. Caldwell</i> , 378 S.C. 268, 280-81, 662 S.E.2d 474, 481 (Ct.App. 2008)	9

<i>State vs. Chapman</i> , 289, S.C. 42, 45, 344 S.E. 2d 611, 613 (1986)	12
<i>State v. Cooper</i> , 386 S.C. 210, 218-22, 687 S.E.2d, 62, 67-69 (Ct.App. 2009)	11
<i>State v. Liverman</i> , 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) ..	9, 10, 11, 15, 17, 18, 19, 25
<i>State vs. McLeod</i> , 260 S.C. 445, 196 S.E.2d 645 (1973)	10, 11, 18
<i>State vs. Smith</i> , 307 S.C. 376, 381, 415 S.E.2d 409, 412 (Ct. App. 1992)	12
<i>State vs. Steadman</i> , 216 S.C. 579, 59 S.E.2d 168 (1950), <i>cert denied</i> , 340 U.S. 850, <i>reh'g denied</i> , 340 U.S. 894 (1950)	12
<i>State v. Traylor</i> , 360 S.C. 74, 81, 600 S.E.2d, 523, 526 (2004)	9
<i>United States vs. Ruggiero</i> , 824 F. Supp. 379, 396 (S.D.N.Y. 1993)	9

RULES

Rule 804(a), SCORE	11
Rule 804(a)(5), SCORE	11

STATEMENT OF ISSUES ON APPEAL

1. Did the judge err in refusing to find that the pre-trial hearing in regard to identification failed to comport with due process requirements when the detective who conducted the identification procedure was not available to testify?
2. Did the judge err in refusing to suppress the in court identification testimony when the out of court identification procedure used was unduly suggestive and created a substantial likelihood of irreparable misidentification?

COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial judge properly refused to suppress the pretrial identification of Dukes by State's witness Cornelius Ford, based upon the unavailability of the detective who conducted the identification procedure, because the *United States v. Wade*, 388 U.S. 218, 235-36 (1967) hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence?
- II. Whether the trial judge properly denied Dukes' motion to suppress Cornelius Ford's pretrial identification of him because the record supports his findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, despite any possible suggestiveness?

STATEMENT OF CASE

The Horry County Grand Jury indicted Appellant, Henry Jermaine Dukes (Dukes) at the August 2008 term of court for murder (2008-GS-26-2911), for the shooting death of Andrico Gowans. **R. pp. 387-89.** The Honorable Steven H. John held a motions hearing on July 20, 2011, at which Dukes was present and represented by counsel. Dukes then received a jury trial before Judge John on August 1-2, 2011. Horry County Assistant Public Defender Jonathan Eric Fox represented Dukes in the trial court. Assistant Solicitors Jimmy A. Richardson and Robert Paul Taylor, of the Fifteenth Circuit Solicitor's Office, prosecuted him.

Dukes did not testify at trial. The jury found him guilty of murder, and Judge John sentenced him to forty-seven years imprisonment. **R. p. 386.** A timely notice of appeal was served and filed.

ARGUMENTS

- I. The trial judge properly refused to suppress the pretrial identification of Dukes by State's witness Cornelius Ford, based upon the unavailability of the detective who conducted the identification procedure, because the *Wade* hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.**

Dukes maintains that the trial judge erred in finding that the hearing on the pretrial identification of him by State's witness Cornelius Ford failed to comport with due process requirements, in light of the unavailability of the detective who conducted the identification procedure, Det. Sean Addison, who was serving in the military in Afghanistan. Respondent submits that his argument is without merit, and that the trial judge properly refused to suppress the pretrial identification because the *Wade* hearing¹ held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.

A. Proceedings in the trial court.

At the pretrial motions hearing, Dukes noted that the chief investigating officer, Det. Sean Addison, who was formerly employed by the Conway Police Department, was not expected back for trial because he was in Afghanistan. He then observed that Cornelius Ford had given a statement and then made an out-of-court identification of Dukes, after Det. Addison had shown photographs to Ford at the Conway Police Department. "There's an issue about how exactly that was done." Dukes claimed that, without Detective Addison, he could not properly conduct cross-examination and that the trial judge could not determine whether or not the procedure was unduly suggestive. **R. p. 10, line 25 - p. 12, line 24.**

¹ See *United States v. Wade*, 388 U.S. 218, 235-36 (1967).

Dukes conceded that Ford was present to testify, but he argued that there were discrepancies between what Ford would say and what was in Det. Addison's report. Also, without Det. Addison, the State could not meet its burden of showing that the identification procedure was not unduly suggestive. **R. p. 12, line 25 - p. 13, line 13.** In response to the trial judge's request for testimony on the matter, the State indicated that it was prepared to present Ford's testimony. **R. p. 13, lines 14-17.**

After the trial judge and the parties had addressed all other issues, Dukes noted that the motion to suppress Ford's identification was the only remaining matter. He again asserted that Ford had come into the police Department and had given a statement. "During the statement, they . . . offered to show [Ford] pictures and there's some discrepancy as to exactly what happened," which required testimony. However, Dukes asserted that this was "an unduly suggestive procedure" and that it "created a very substantial likelihood of misidentification." **R. p. 29, lines 4 - 15.**

The State then presented its witnesses on the issue of identification. Cornelius Alford Lavon Lafayette Ford testified that he had seen Dukes twice before the murder. The first time he saw Dukes, Dukes passed him as Ford was leaving and Dukes was entering "Deals," a store on Highway 701. The men were approximately a foot away from each other at that point. Ford did not know Dukes at that time. **R. p. 30, line 2 - p. 31, line 1.**

Ford then saw Dukes when Dukes accompanied another man to the victim's residence. Dukes and the other man were in the back yard of the residence for twenty or thirty minutes on that occasion. Ford was roughly five feet away from Dukes. Also, he could hear the two men talking to the victim but he did not have a conversation with the men. **R. p. 31, lines 2 - 25.**

The third time Ford saw Dukes was on the morning of the shooting. Sometime around 8:00

or 9:00 a.m., Ford and Andrico “Andy” Gowans, the victim, heard a knock at the door of the residence. Andy looked out of the window, opened the door, and Dukes entered the residence. Dukes pulled out a gun, following a brief conversation with the victim. Immediately, Ford stood up and walked to the hallway. As soon as Dukes aimed the weapon at Ford, the victim “jumped back.” Dukes then aimed the gun at the victim and fired twice. **R. p. 32, line 1 - p. 33, line 10.**

Although Ford remained still, Dukes “came around to the kitchen and pointed the gun at me, and it like clicked. I don't know if it jammed or whatever. It clicked like twice. And then he took off out the door.” Ford never took his eyes off of Dukes during the incident, and Ford was “a hundred percent [certain] that was him.” **R. p. 33, line 19 - 21; p. 34, lines 9 - 12.**

After the shooting, Ford called 911 and he called his father, who came to the scene. He drove home once his father arrived. **R. p. 37, line 22 - p. 40, line 4.**

Ford later gave a statement to police around 4:30 or 5:00 pm., on the day of the murder. During the course of giving this statement, Det. Addison said that he wanted Ford to look at some pictures, “like a photobook.” As Det. Addison got up to get these photographs, between three and five photographs that had been in Det. Addison’s file fell out onto the table. Ford saw these photos and he pointed out Dukes as the shooter. No one told him to select Dukes’ photograph or promised him anything to do so. Also, he denied that Det. Addison had presented or shown the photos to him. **R. p. 34, line 13 - p. 37, line 21; p. 41, lines 3-7; p. 42, line 13 - p. 43, line 2.**

Ford further testified that he had given police a description of the shooter before he gave his statement. *In camera*, he testified that the shooter had a funny accent and “a big smile, like a big mouth.” **R. p. 33, line 22 - p. 34, line 8.** In Ford’s subsequent testimony before the jury, however, it became clear that he had given police an accurate and detailed description: the shooter not only

had a big smile and big mouth, the shooter was slightly taller than Ford; stocky; and dark skinned. Also, Ford told police that “if you show me a picture I’ll tell you exactly who he is.” **R. p. 175, line 20 - p. 176, line 7.**

Mr. Rasheed Salmat Karlin Muhammad testified that he is Ford’s father, and that he was present when Ford made the identification at the Conway Police Department.² The police had called earlier because they wanted to speak to Ford. Mr. Muhammad then got in contact with Ford and both men went to the police substation in Conway, where they met with a detective. **R. p. 43, line 18 - p. 44, line 10; p. 49, lines 6 - 7.**

The three men went into a room with a long table. Mr. Muhammad sat at one end of the table, while Ford and the detective sat at the other end of it.³ Mr. Muhammad was not questioned. At one point, the detective was going to show a book of photographs to Ford. However, the detective put some pictures put on the table and Ford identified Dukes’ photograph as the shooter. The detective did not insinuate or suggest which photograph Ford should select. **R. p. 44, line 11 - p. 45, line 14; p. 48, line 15 - p. 49, line 5.**

The detective repeatedly asked Ford if he was sure and he repeatedly said yes. Because the detective was repeatedly questioning Ford’s identification, Mr. Muhammad asked to see the picture. The detective slid it to him. After Mr. Muhammad saw the photograph, he repeatedly asked Ford if Ford was positive and Ford said, “yes, Daddy, I am.” Mr. Muhammad stopped questioning his son when Ford said that he was positive and there was no question in Ford’s mind about it. **R. p. 45,**

² Although Mr. Muhammad had called 911 and reported the incident, he did not remember whether he told authorities that Ford had been present. **R. p. 46, line 13 - p. 47, line 10.**

³ Mr. Muhammad was unaware that the interview was recorded. **R. p. 47, line 21 - p. 48, line 14.**

lines 14 - 21; p. 46, lines 2 - 8.

The detective then asked Mr. Muhammad if he recognized the person in the photograph, and he replied that he did. He explained that Dukes had visited the mosque and made prayer and studied with Mr. Muhammad. Dukes also told Mr. Muhammad that he was from out of town. **R. p. 45, line 22 - p. 46, line 2.**

In response to the trial judge's inquiry, Mr. Muhammad explained that he had not questioned his son immediately after Ford made an identification. Rather, the detective had repeatedly asked Ford if Ford was positive and Ford said that he was. "[J]ust by coincidence I . . . asked the detective if I could see the picture, and he slid the picture all the way down to the end of the table and I saw the picture." Because Mr. Muhammad recognized Dukes from the mosque, he repeatedly asked Ford if Ford was positive. Ford said that he was. **R. p. 49, line 12 - p. 50, line 2.**

When Dukes was asked if he had any witnesses, he replied that "the one witness that I would want to hear from is the one witness who is unavailable, being Detective Addison, who was the third person in the room." The trial judge rejected the suggestion that Addison would be the most neutral witness because he was a police officer, but the trial judge noted that Dukes would want to question Det. Addison about whether Addison had done anything improper. Dukes agreed, stating, "I would want to explore what the procedure was." **R. p. 50, line 11 - p. 51, line 1.**

Dukes observed that there was a discrepancy between the live testimony and Det. Addison's investigative report:

Based on this information, several photos were obtained. They included Ronnie Atkinson, Jeremy Rush, Steve Wilson, and Henry Dukes. The photos were presented to Cornelius Ford one at a time, and then he, without hesitation, took the photograph of Mr. Dukes, but it describes a definite procedure.

R. p. 51, lines 1 - 17.

Dukes then argued that he would want to further question Det. Addison about how the photographs were presented to Ford, and whether or not Ford was told that the suspect might not be in these photographs. Dukes further asserted that there was reason to question Ford's credibility on this issue, "one, because he's uncertain about some things; two, because he lied to the police, or at least hid his identity; three, because they are in direct contradiction to what we believe Detective . . . Addison observed." He claimed that the State could not "meet its burden of showing this was a proper procedure without having testimony from Detective Addison." **R. p. 51, line 17 - p. 52, line**

10.

However, the trial judge denied Dukes' motion to suppress, as follows:

THE COURT: All right.

I do not find that it is necessary for the Court to hear the testimony of the detective who is unavailable. I mean, there is no argument, Mr. Fox, that that detective is unavailable. He is in the service of his country in Afghanistan. It's not possible for the Court to have him here to question him, nor will it be possible for him to be at the trial. I mean, that's clear, correct?

MR. FOX: Yes, Your Honor, no question.

THE COURT: All right, so with that circumstance, the Court does not find it to be obviously, number one, within the court's power to have him here. Secondly, I find it is not necessary for the Court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.

The process or the previous rulings of our Supreme Court, Court of Appeals, and the U.S. Supreme Court indicate, and just in general first, the defendant may be deprived of due process of law by an identification process that is unnecessarily suggestive and conducive to irreparable mistaken identification. The U.S. Supreme Court developed a two-prong test or inquiry to determine the admissibility of out-of-court identification.

First, I think that was in Neil v. Biggers in 1972, and I think they've had subsequent

decisions about it since then, but first the Court must ascertain whether the identification process was unduly suggestive, and the Court must next decide whether the out-of-court identification was nevertheless so allowable that no substantial likelihood of misidentification exists.

In . . . determining whether an identification is reliable, the following factors have been set forth by the appellate courts, that is the opportunity of the witness to view the defendant at the time of the crime.

It's clear that this particular witness says he was present at the time the crime was committed, that he had seen the Defendant prior -- on prior occasions before the crime was committed, that he was certain of who the person was, that he subsequently identified them and gave a description to the police of the Defendant.

The witness's degree of attention, he says what occurred, that he was paying close attention. I think the Court can take into consideration that when a gun is present being pointed at certain individuals and then yourself, and then it is fired in your presence, that you will have your attention to those particular details.

The accuracy of the witness's prior description of the Defendant, the level of certainty demonstrated by the witness, he says it's a hundred percent. The amount of time between the crime and the confrontation, obviously his initial description is the same day. The communication with the police is shortly thereafter, and then the corrupting effect of any suggestive identification is to be weighed against these factors:

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner. The witness had already identified the Defendant prior to . . . looking at the photographs.

The seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive . . . in any manner, and therefore, based upon all that, the motion to suppress the identification is denied.

R. p. 52, line 11 - p. 55, line 1.

B. Discussion.

The State submits that Dukes' argument is without merit, and that the trial judge properly denied Dukes' motion because neither due process nor state law required Det. Addison's presence. An identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken

identification may deprive a criminal defendant of due process of law. *Stovall v. Denno*, 388 U.S. 293 (1967). *See also*; *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004); *State v. Caldwell*, 378 S.C. 268, 280-81, 662 S.E.2d 474, 481 (Ct.App. 2008). Although due process does not require a state court “to conduct a hearing outside the presence of the jury whenever a defendant contends that a witness' identification of him was arrived at improperly,” *Watkins v. Sowders*, 449 U.S. 341, 349 (1981); *Perry v. New Hampshire*, 132 S.Ct. 716, 723-30 (2012) (Due Process Clause does not require preliminary judicial inquiry into reliability of eyewitness identification that was not procured under unnecessarily suggestive circumstances arranged by law enforcement); *United States v. Ruggiero*, 824 F.Supp. 379, 396 (S.D.N.Y.1993) (quoting *Watkins*, 449 U.S. at 349), an *in camera* hearing should be held as a matter of state law, whenever the State offers eyewitness testimony identifying the defendant as the person who committed the crime and the defendant challenges the in-court identification as being tainted by a previous, improper identification or confrontation. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012).

In *Neil v. Biggers*, 409 U.S. 188 (1972), the United States Supreme Court established a two-pronged test to determine the admissibility of an out-of-court identification. The trial judge must first determine whether the identification process was unduly suggestive. *Id* at 198. Even assuming an identification procedure was suggestive, suppression is not automatically required. *Id*. Rather, the court must then determine whether the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed. *Id*; *State v. Traylor*, 360 S.C. 74, 600 S.E.2d 523 (2004).

The relevant factors to be considered under the totality of circumstances include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy

of the witness' prior description; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Biggers*, 409 U.S. at 199-200. See also *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426. However, "reliability is the linchpin in determining the admissibility of identification testimony for both pre- and post-*Stovall*["⁴] confrontations." *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) (footnote added). Thus, an in-court identification of an accused is inadmissible only if, under the totality of the circumstances, a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Id.* "Short of that point, such evidence is for the jury to weigh." *Brathwaite*, 432 U.S. at 116.

In support of his argument, Dukes relies upon the following portion of the Supreme Court's opinion in *Liverman*:

Here, the trial court went beyond the scope of a *McLeod* hearing["⁵] and required testimony related to Tyrone's ability to identify petitioner as the shooter, as well as the circumstances surrounding the show-up procedure arranged by the police petitioner maintains that he was denied a "full" *Neil v. Biggers* hearing. The State, having adamantly objected to a *Neil v. Biggers* hearing at trial, now suggest we treat the trial court's handling of the matter is the functional equivalent of a *Neil v. Biggers* hearing. While the trial court required the State to submit evidence that has many of the traditional features of a *Neil v. Biggers* hearing (and the trial court made behind commitment *Neil v. Biggers* findings), we decline to hold that the pretrial hearing fully comported with due process requirements.

Liverman, 398 S.C. at 141, 727 S.E.2d at 427. (Footnote added). The State submits that Dukes' reliance upon this portion of the *Liverman* decision is misplaced for several reasons.

First, Dukes clearly takes the language in *Liverman* out of context. In *Liverman*, the trial

⁴ See *Stovall v. Denno*, 388 U.S. 293 (1967).

⁵ *State v. McLeod*, 260 S.C. 445, 196 S.E.2d 645 (1973), overruled, *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012).

judge only permitted limited inquiry with respect to the identification procedure employed in that case. Rather, the primary focal point of the examination by both parties was whether or not the eyewitness “knew the defendant,” and the State repeatedly asserted that any inquiry into the identification procedure, itself, was not required in light of *McLeod*. On the other hand, the questioning by the parties in this case centered upon the identification procedure itself, and Dukes’ efforts in that regard were unopposed by the State.

Second, the officer who conducted the show-up procedure in *Liverman* was available to testify but the State did not present him as a witness. Here, however, Det. Addison was an unavailable witness and his attendance could not be obtained. *See* Rule 804(a), SCRE.⁶ In spite of

⁶ Rule 804(a), SCRE, provides as follows:

(a) Definition of Unavailability. “Unavailability as a witness” includes situations in which the declarant--

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) *is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance* (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(Italics added). *See also State v. Cooper*, 386 S.C. 210, 218-22, 687 S.E.2d 62, 67-69 (Ct. App. 2009) (trial judge did not abuse his discretion by finding that witness was unavailable under R rule 804(A)(5), SCRE, where state was unable to secure the presence of a witness incarcerated in a Texas penitentiary

Det. Addison's unavailability, Dukes had his report and he was able to argue that the report reflected that Det. Addison had shown individual photographs to Ford and that Ford had selected Dukes photograph from among those shown, whereas Ford testified that he had selected the photograph from a series of photographs that inadvertently fell out of a file onto the table. Dukes thus pointed out the discrepancy between the report and the testimony of the eyewitness, Ford.

Although Dukes did not introduce Det. Addison's report as an exhibit, the trial judge clearly considered this relevant discrepancy between the report and Ford's testimony before he ruled on the admissibility of the eyewitness identification under *Biggers*. Additionally, Dukes did not demonstrate what additional information he could have elicited on cross-examination of Det. Addison that was not already before the trial judge in the form of Det. Addison's report, other than to speculate what he might conceivably hope to prove as to how the photographs were presented to Ford, and whether or not Ford was told that the suspect might not be in these photographs. The State submits that his speculation does not show any abuse of discretion by the trial judge in rejecting Dukes' motion. *State v. Smith*, 307 S.C. 376, 381, 415 S.E.2d 409, 412 (Ct.App. 1992) ("At any rate, we are unable to determine whether Smith was actually prejudiced by the witness' unavailability because Smith made no proffer as to what this witness would have testified"); *State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) (the bare assertion of a witness' unavailability is insufficient to warrant the conclusion that the defendant suffered actual prejudice thereby).

Moreover, due process does not require that every possible witness testify at a suppression hearing where the accused contests a identification procedure under *Biggers*. To the contrary, the

through a normal out of state witness subpoena although it had unsuccessfully attempted to do so); *State v. Steadman*, 216 S.C. 579, 59 S.E.2d 168 (1950), *cert. denied*, 340 U.S. 850, *reh'g denied*, 340 U.S. 894 (1950).

appellate courts in the State of New York and the federal courts in the Second Circuit have consistently and quite correctly recognized that a victim need not testify at a *Wade* hearing, and that the defendant is not entitled to compulsory process at a *Wade* hearing.

In *People v. Chipp*, 75 N.Y.2d 327, 553 N.Y.S.2d 72, 552 N.E.2d 608 (N.Y. 1990), the New York Court of Appeals limited a defendant's Sixth Amendment right to compulsory process at his *Wade* hearing. Specifically, the Court limited the right of the defendant to call the complaining witness. The Court reasoned that while a *Wade* hearing is “properly characterized as a criminal proceeding,” it does not involve a determination of the accused’s guilt or innocence. Instead, it is functions to determine whether a police-arranged pretrial identification procedure was unduly suggestive. *Id.* at 337, 553 N.Y.S.2d 72, 552 N.E.2d 608 (citing *Stovall v. Denno*, 388 U.S. 293 (1967)). Because Chip had not offered any persuasive authority in support of his argument that an absolute right to compulsory process attaches to a *Wade* hearing, the Court found that “any right of compulsory process at a *Wade* hearing may be outweighed by countervailing policy concerns, properly within the discretion and control of the hearing Judge.” *Id.*

As a result, the Court rejected Chip’s claim that he had an absolute right to call the complainant to testify at the *Wade* hearing and it held that, because there was no *indicia* of suggestiveness in the identification procedure, the trial judge did not abuse its discretion in declining to permit the defendant to call the complaining witness at the *Wade* hearing. *Id.* at 339, 553 N.Y.S.2d 72, 552 N.E.2d 608.

In light of the New York Court of Appeals’ holding in *Chipp*, the federal habeas courts in the Second Circuit

have held that a state court's denial of a petitioner's request to call witnesses at a *Wade* hearing does not deprive a petitioner of a federal constitutional right or address

a matter of clearly established federal law as required for habeas review. *See Duran v. Miller*, 322 F.Supp.2d 251, 257 (E.D.N.Y.2004) (noting that petitioner did not have absolute right, under New York or federal law, to compulsory process at pretrial suppression hearing; holding that state trial court's discretionary exclusion of identifying witness at pre-trial hearing, under New York law, did not rise to level of constitutional error cognizable on petition for federal habeas relief) (citing *Mitchell v. Fischer*, No. 02-CV-6336 (JBW), 2003 WL 22952851, at *6 (E.D.N.Y. Oct.20, 2003) (holding that a defendant does not have an absolute right to have a complainant produced at a *Wade* hearing); *Heron v. People of the State of New York*, No. 98 Civ. 7941(SAS), 1999 WL 1125059, at *10 (S.D.N.Y. Dec.8, 1999) (rejecting habeas claim that petitioner was denied right to call witness at *Wade* hearing; under New York law, there exists no absolute rule requiring the identifying witness to appear at a *Wade* hearing when the suggestiveness of the identification procedure is called into question)); *Rivalta v. Artuz*, No. 96 CIV. 8043(SAS), 1997 WL 401819, at *3 (S.D.N.Y. July 16, 1997) (rejecting claim of habeas petitioner contends that because the trial judge prevented him from calling the complainants at the *Wade* hearing, he was denied his constitutional right to a fair trial where petitioner's objection was "predicated on the purely speculative assertion that the complainants' testimony at the *Wade* hearing might have revealed that something improper was said to them at the pretrial identification procedure"). Whether or not to exclude an identifying witness is generally a discretionary matter for the judge at a pre-trial hearing and therefore does not rise to the level of constitutional error. *Duran v. Miller*, 322 F.Supp.2d 251, 257 (E.D.N.Y.2004) (citing *Sorenson v. Superintendent*, No. 97 Civ. 3498(NG), 1998 WL 474149, at *4 (E.D.N.Y. Aug.7, 1998) ("Generally, the discretionary exclusion of an identifying witness by a trial judge at a pre-trial hearing does not rise to the level of constitutional error.")).

FN7/ Under New York state law, a defendant challenging the admissibility of a witness' identification is presumptively entitled to a *Wade* hearing even if, on a motion to suppress the allegedly impermissibly suggestive procedures, the defendant fails to assert specific facts establishing the deficiency. *See People v. Rodriguez*, 79 N.Y.2d 445, 453, 583 N.Y.S.2d 814, 593 N.E.2d 268 (N.Y.1992); *accord Alvarez v. Fischer*, 170 F.Supp.2d 379 (S.D.N.Y.2001).

Mitchell v. Herbert, 01-CV-681, 2008 WL 342975, 7-8 (W.D.N.Y., Feb. 6, 2008). *See also Smith v. Smith*, 2003 WL 22290984, 6 -9 (S.D.N.Y., Sept. 29, 2003) (rejecting argument that the trial court deprived defendant of his right to present a defense, as guaranteed by the Sixth and Fourteenth Amendments, by refusing to allow defendant to call witnesses to testify at the *Wade* hearing). To the extent that there is no right to compulsory process at a *Wade* hearing, Dukes cannot show an abuse

of discretion by the trial's denial of his motion.

Finally, and as the trial judge found, neither Ford's recollection of the identification procedure nor that reflected in Detective Addison's report showed any suggestiveness in the procedure employed, regardless of which account is accepted.⁷ Again, *Biggers* explained that the primary evil to be avoided is a very substantial likelihood of irreparable misidentification and that it is this likelihood which violates due process. *Biggers*, 409 U.S. at 198. The hearing held in this case was sufficient, both as a matter of due process and state law, for the trial judge to determine whether the identification process was unduly suggestive and whether the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed. *Id. Accord Liverman*, 398 S.C. at 138-41, 727 S.E.2d at 426-27. Moreover, at worst, the identification procedure employed was harmless beyond a reasonable doubt under *Liverman* for the reasons set forth in **Argument II**. Therefore, the trial judge's ruling must be affirmed.

⁷ Mr. Ford's version of the identification procedure showed no police action, whatsoever, that would even require a hearing under *Biggers* and *Wade*. See *Perry, supra*.

- II. The trial judge properly denied Dukes' motion to suppress Cornelius Ford's pretrial identification of him because the record supports his findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, despite any possible suggestiveness.**

The State submits that the trial judge properly denied Dukes's motion to suppress Cornelius Ford's pretrial identification of him because the record supports his findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances - despite any possible suggestiveness - that no substantial likelihood of misidentification existed.

As discussed, the trial judge must first determine whether the identification process was unduly suggestive. *Biggers* 409 U.S. at 198. Even assuming an identification procedure was suggestive, suppression is not automatically required. *Id.* Rather, the court must then determine whether the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed. *Id.*

Here, the trial judge found that there was no unduly suggestive identification process. In making this determination, he blended the two-pronged test in *Biggers*. He found that Ford was present at the time the crime was committed; that Ford had seen Dukes on prior occasions before the crime was committed; that Ford was certain of who the shooter was; and that he subsequently identified Dukes and gave a description of Dukes to the police. The trial judge further found that Ford testified that he was paying close attention at the time of the offense, and the trial judge took into consideration the fact that Ford would be paying close attention since a gun was pointed at him during the commission of the offense. **R. pp. 53-54.**

The trial judge also considered other factors to be weighed against the corrupting effect of any suggestive identification procedure: the accuracy of Ford's prior description of the defendant; Ford's level of certainty demonstrated by at the time of the confrontation; and the amount of time between the crime and the confrontation. The trial judge found that Ford had testified that he was 100% certain about who the shooter was; and that for a given an initial description the same day. **R. p. 54.**

Applying these factors, the trial judge found that "[i]t does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, if there was any deliberate act, there was any act by the police of the suggestive nature. The witness had already identified the defendant prior to the -- looking at the photographs." The trial judge further found that Ford's viewing of "the photographs was either done quote accidentally through the looking at a file or in a process that the Court finds was not suggestive... in any manner, and therefore, based on all of that, the motion to suppress is denied." **R. pp. 54 – 55.**

On direct appeal, this Court may only review errors of law. "Whether an eyewitness to the identification is sufficiently reliable is a mixed question of law and fact... generally, the decision to admit an eyewitness of the notification is that the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion." *Liverman*, 298 S.C. at 137-38, 727 S.E.2d at 425 (citations omitted).

Applying this standard to the present case, it is clear that the trial judge's ruling must be affirmed because the record, and in particular Ford's testimony, supports his findings and conclusions of law. In particular, the out-of-court identification was so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, even assuming

suggestiveness in the identification procedure.⁸ *Biggers*, 409 U.S. at 198. Again, the relevant factors to be considered under the totality of circumstances include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Id* at 199-200. *See also Liverman*, 398 S.C. at 138, 727 S.E.2d at 426.

Ford clearly testified that he had previously seen Dukes on two separate occasions prior to the morning of the shooting. On the first occasion, the men had passed within close proximity to each other. On the second occasion, at the residence where the shooting occurred, Ford had the opportunity to observe Dukes for a longer period of time.

While the Court in *Liverman* overruled *McLeod*, it is clear that the trial judge properly relied upon Ford's opportunity to view Dukes on the occasions before the shooting because this was a "significant factor in determining the reliability." *State v. Liverman*, 398 S.C. at 142, 727 S.E. 2d at 427-28. Additionally, Ford had an ample opportunity to view Dukes at the time of the shooting within the relatively small confines of his residence, and he had a heightened sense of awareness since Dukes also attempted to shoot him as well. Additionally, Ford gave a police description of Dukes later that day; he accurately described Dukes, as his subsequent testimony before the jury makes clear; he then selected Dukes's photograph from those he viewed – whether the photographs

⁸ The State does not concede this point because Ford's testimony supports the conclusion that there was no suggestiveness involved in the indemnification procedure, whatsoever, that would require a hearing, even as a matter of state law. *See Perry*, 132 S.Ct. at 736-38. Likewise, there is nothing in Det. Addison's report to support the conclusion that the photographs were displayed to Ford in a manner suggesting the identification of Dukes as the shooter, or that Ford was otherwise prompted to select Dukes as the person whom he had seen murder his friend and roommate.

fell out of the folder onto the desk inadvertently or they were shown to him, individually, by Det. Addison; he did not hesitate in making the identification; and he was 100% certain in his identification of Dukes as the shooter. Furthermore, Ford's father, Mr. Muhammad, corroborated Ford's testimony concerning the identification of Dukes as the shooter. Likewise, Mr. Muhammad had previously met with Dukes several times at the mosque, where Mr. Muhammad was Iman.

Also and as in *Liverman*, many of the procedural safeguards discussed by the Supreme Court and present in *Perry* were at work in Dukes' trial. The reliability of the Ford's testimony was fully "vetted. . . at the pretrial hearing," as well as before the jury. *Liverman*, 398 S.C. at 142-43, 727 S.E.2d at 428.

Although counsel's attack on the credibility of Ford's identification in this case was not as direct as that in *Liverman*, *id*, it was every bit as thorough and scathing. In his opening statement, Dukes' counsel cautioned the jury about the importance of Ford's testimony to the State's case; Ford's lack of credibility; and that Ford had, himself, fled the scene after the shooting. **R. pp. 65-66.**

On cross-examination of Ford **R. pp. 149-74**), defense counsel repeatedly pointed out perceived weaknesses of Ford's identification and his credibility, generally, including: his fleeing the scene and failure to discuss the shooting with police until six or eight hours after the shooting; that he did not check the victim's pulse before leaving the scene and that the victim's cousin informed him of the victim's death; that Dukes fired two gunshots; that he had gone home once his father arrived on the scene; that he only went to see the police because his father told him that his father was taking him there; that he told police he had been at the residence for fifteen minutes, whereas he testified that he had awakened, in the residence, fifteen minutes before the murder; that he failed to tell police that he had previously seen Dukes on two occasions because the second time

that he saw Dukes was during a drug deal; he had a prior drug conviction and he did not want to face enhanced penalties for another drug conviction; that he failed to tell Det. Addison about this other encounter with Dukes, even though Det. Addison told him that police were not interested in “what was going on in the house;” and that Ford supposedly did not know where the victim’s money and drugs were kept, despite the fact both men were dealing drugs out of the residence. Defense counsel also established that Ford did not tell police, in his statement, that he had lifted the mattress after the shooting, to make Dukes think that he had a gun; and that he told police he had retreated to a closet when the shooting began. Finally, counsel fully reviewed Ford’s version of how he supposedly identified Dukes from the photographs that fell out onto the table.

Additionally, defense counsel devoted over one half of his closing argument to pointing out every perceived deficiency in the testimony of Cornelius Ford and Ford’s supposed lack of credibility. Specifically, counsel argued that:

The Judge will tell you [that] you can believe everything a witness tells you from the witness stand; you can reject every single thing they tell you, or you can believe some and not others. This case is all about the witnesses, because there is not one shred of physical evidence that connects the death of Andy Gowans to Henry Jermaine Dukes, not the first thing. The only piece of physical evidence ... that you've heard talked about ... is a shell casing that was found ... where Andy Gowans was. Officer Mishoe testified yesterday. He said he was one of the first ones on the scene, he walked in, saw the body, and he found a shell casing, and he seemed to be able to identify it here yesterday; this looks like the same one. So, one shell casing, that is it.

Now, might as well stay with that. One shell casing. Just any physical evidence in this case support the eyewitnesses were the witnesses in this case? Now, the judge will tell you, if you believe everything a witness,... and we are talking about Cornelius Ford, right, this whole case is Cornelius Ford. If you choose to believe Cornelius Ford, his version of events, that is your providence. You’re the jury. You are the finders of fact. You can do that. I [will] go through with you many, many, many reasons why C-4 should not be believed, other than maybe saying that this was Conway, South Carolina. Other than that I am not sure I would trust him to tell me the sum was coming up in the morning. But, is there anything, independent of C-4, the admitted drug dealer, that can verify what he’s been telling you? Well, you sure

haven't been given anything. The only thing you have been given is one shell casing, and that itself contradicts what C-4 told to do. C-4 was adamant, said it over and over again, two gunshots. He told the police, and he testified here yesterday, two gunshots. The officer testified he found one shell casing. Nobody else told to any different. Dr. Proctor, just a little while ago, told you I found one wound on Mr. Gowan's and in checking that wound I found one bullet, right off the bat. And that's the only physical evidence you got. No weapon was ever recovered....

We've heard this guy talk a little bit about the jacket, the white jacket. No one brought shall white jacket. There is not one piece of physical evidence to Henry Jermaine Dukes to the death of [the victim].

Now, Cornelius Ford. In deciding whether someone is telling you the truth, I think the place to start first is, how consistent -- now, perfect consistency -- if you are trying to recall in that three and a half years before, and him come and explain it, I would agree, perfect consistency over every little thing is not to be expected, but you also don't expect fact after fact after fact to be different, to be wrong, to be contradicted directly by other people or other evidence.

We talked about the shell casing. As to Ford wants you to believe that one reason he can identify the shooter is that he had seen Mr. Dukes to times before, once briefly coming out of the Food Lion, but that got his attention because he was with this Ronnie Atkinson, this Stank, that had been involved in this whole viewed that doesn't seem to have anything to do with Henry Dukes or Cornelius Ford, but having you Stank and when he saw Jermaine Dukes with Stank that got his attention.

Now, when he talked to the police eventually, on November 2nd, 2007, he did not mention that he saw Henry Dukes with Stank. He simply said, one time before I saw Henry Dukes at the Food Lion, just while I was going in he was coming out, or may be vice-versa, but just in passing. He was asked three different times by that the Detective, so you've only seen him once before; you saw him one time before; have you ever seen him before, three different opportunities, and seven different times is to ford answered, when he talked to the police, I've only seen him once; only saw him once; I only seen him once before; I never saw him but the wants. Seven times he said that.

He wasn't afraid of the officers. They gave him [every] chance. The Officer told him, you are not in trouble; you've got nothing to worry about. I'm sure he didn't enjoy being in their talking to the police, but it's not like he was being interrogated, it's not like he was a suspect. Thought about that also. It's not like he was threatened, coerced, pressured in any way; he was given a free opportunity to tell what he knew. Once he decided to drag his sorry butt down there, and after he talked to the police, after he left his friend, supposedly his best friend, lying dead on the ground, that he had different chances -- he had the whole time he was talking to the police, but

specifically three times, have you ever seen Henry Dukes before; one time, and he said that seven different times, and not once did he mention that [other] time he had seen Henry Dukes he saw him with Stank, that yesterday seemed to be so important and got [him] on his "P's" and "Q's." He never mentioned that.

Yesterday he testified, I actually saw Henry Dukes two times. I saw him at Food Lion with Stank - - that's New - - and I saw him over at [the victim's residence] before; he came with some other guy; I didn't know him, and they stayed around for awhile. He made no mention of that when he talked to the Detective at Conway Police Department back on November 2nd, 2007. [Not] one word about that, and the explanation, apparently, is, well, he was protective of every body. He didn't want to implicate them, so he said that himself, I don't want to implicate myself. There was stuff going on at bracket [the victim's residence]; and I didn't [want] to connect that with the police.

Now, self-preservation is a mighty strong instinct in every body, and I certainly understand if you've been busted for selling drugs before and been to prison for selling drugs before, that you did not want to go back for an even longer period of time for selling drugs; however, when the police looking at you and say, we know what is going on at [your residence], and frankly we don't care cause now there's a dead body, and they tell you that face to face, and they don't ask you thing one about your drug dealing activities; they don't bring it up; they don't mention it; they don't say a thing, and you still don't tell them everything you know, I think that justification, that rationale goes right out the window. I don't think it is at all plausible that he's withholding information from the police -- well, it is plausible, he probably is afraid to deal with the police; however, he's been basically told, we ain't worried about your drug activity there.

There's been testimony ... about Mr. Dukes leaving Conway, and leaving South Carolina, about his flight, so to speak. Well, there's another person that absolutely took flight, and that's Cornelius Ford. He hung up on 911, he called his daddy, and he left. He didn't check on Andy Gowans, his best friend, he didn't talk to the police, he didn't talk to EMS and let them know how this happened; he took off in his car and went home, and he didn't call the police at any time and let them know what was going on. His best friend has been shot, for all he knows, is dead, and he can't be bothered to take the time to pick up the phone and call the police and say, I saw who did it. He took off. And amazingly, no one ever bothered to check his car or to check his residence to see if maybe there's a reason he took off, but we've got no testimony about that, but ... no question that by ten o'clock in the morning the police and EMS are on the scene, and that by Mr. Ford's own testimony it is -- and he can't tell you if it's three, four or five o'clock before he talked to the police. His daddy said it was 7:30. At the minimum it was five hours, and it might have been as much as - what is that, eight, nine and a half hours, depending on who you want to believe, between Cornelius Ford and his daddy. That's not much of a choice right there.

Now, so for many, many hours he is gone. It's lots of these little things that don't add up. All right. Mr. Ford - how did Mr. Ford tell you he learned that Andy was actually dead, no question he's dead? Now he could have found out if he had stuck around, talked to the police, but he didn't. How did he find out? He testified that his former girlfriend, Andy's cousin, told him. He's calling everybody cause he's so concerned. He's talking to family. Not talking to the police, but he's talking to family. And he tells you, I heard it from my ex-girlfriend, all right, from Andy's cousin. What does Rasheed Muhammad tell you? Rasheed Muhammad said, I told him. All right. He testified and said, I didn't want to; he didn't seem to know yet; he had asked me about him and finally I had to tell him. Remember that. Both those things ain't true Both those things, I think, should make you say, I wonder what else they are not giving me completely right, may be inaccurate, maybe they are outright lies, but at least inaccurate. C-4's credibility, his ability to remember and be truthful about some of these little things directly impacts if he's telling you the truth about the big things, how many times he saw Henry Dukes, where he saw Henry Dukes, who he saw Henry Dukes with, where he went, why he went, who told him what happened to Andy Gowans. All these things by themselves may not be significant, but together they are very significant.

What else from Mr. Ford? He says the person came in, and Mr. Ford says, I'm sitting back a little ways from the it up, two shots, right, two shots, one bullet, and the person couldn't quite hear what was said, at one point he heard give front door, actually he said he couldn't see Andy at this point; he saw the fellow that fired the gun, but actually Andy and this fellow, but anyway, in court Cornelius Ford didn't see Andy, so he doesn't know what was going on between said, I went in this other room and I grabbed the mattress and pulled it up like I had a gun or something, like I was hiding that, and he was very specific, and he went through his a gun, but I got a mattress and I pulled it up on me. All right. Well, when he talked to the Detective six, seven, eight, nine hours after the shooting he made no mention of statement on the stand. He was very specific with the Detective, I went in, I got in the closet; if you check the room you will see the closet door; I was in the closet. He said that over and over and over again. It's important because the closet ain't the mattress, right; it's another little thing. Well, did you go in the closet or did you get the mattress. Was the mattress In the closet? No, the mattress was in the middle of the room. Well, which was it? It ain't both of those things. Another little detail. C-4 is misleading, or doesn't remember, or is lying to you about.

There's a photograph that he claims to have identified Mr. Dukes with when he finally did go see the police, right. Mr. Ford said, I spontaneously saw this person right here. The Detective stood up as he went to into the other -- going to go in the other room to look at, I guess mug [shots] folks, whatever; we got up the leave, the photograph fell out, there it was. Well, okay, you all can choose whether or not that was critical; however, the police officer that interviewed him said, I showed him four photographs, one at a time, and that's in the stipulation. That little small snippet, little

video we showed yesterday afternoon, clearly that was the end of the interview. In fact, they do stand up and everyone leaves, and you can watch them leave. You can see the Detective, his arm, step out of the door, and you can see very well Mr. Ford and his father get up and walk right out the door, and nobody stops to pick anything up, no one says anything; that's the end of the tape. There wasn't anything dropped; he didn't see anything.

Six and a half hours, at least, is a long time to think about what you are going to tell the police when you are gone. That is a long time to think about what you want to tell the police or not to tell the police, and that's how long, at least by his own admission, Mr. Ford stayed gone.

R. pp. 330-39. Defense counsel then launched a brief but scathing attack on Mr. Muhammad's credibility. **R. pp. 339-41.** Counsel's attack on Ford concluded as follows:

Cornelius Ford, I submit to you, is not to be believed because of all those things that he either lied, or wanted to add to his testimony or change about his testimony, and there were many, and again, there is no physical evidence, not one iota of physical evidence that corroborates support what Cornelius Ford told you happened.

R. p. 341.

The trial judge not only gave a standard jury instruction on the credibility of witnesses, **R. pp. 370-71**, he also charged jurors on eyewitness identification, as follows:

An issue in this case is identification of the Defendant as the person who committed the crime charged. The State, as with everything, has the burden of proving to you the identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant of the crime charged. Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting condition, whether the witness had the chance to see or know the person in the past. You may also look at the strength of the identification and the circumstances under which the identification was made. The burden of proof extends to the State on every element of a crime charged, and this specifically includes the burden of proving, beyond a reasonable doubt, the identity of the Defendant as the person who committed the crime.

R. pp. 375-76. *Accord Liverman*, 398 S.C. at 144 & n. 7, 727 S.E.2d at 429 & n. 7.

Based upon this record, any error in admitting Ford's identification testimony must be viewed as harmless beyond a reasonable doubt because it "did not contribute to the verdict obtained." *Id* at 144, 727 S.E.2d at 429. Therefore, the trial judge's ruling must be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment of the lower court and Dukes' murder conviction should be affirmed.

Respectfully submitted,

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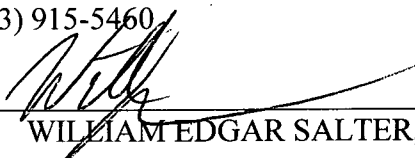
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January 2, 2013.

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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2011-196667**

THE STATE,

RESPONDENT,

v.

HENRY JERMAINE DUKES,

APPELLANT.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, Katherine H. Hudgins, Esq., SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 2nd day of January, 2013.



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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2011-196667**

THE STATE,

RESPONDENT,

v.

HENRY JERMAINE DUKES,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 2nd day of January, 2013.



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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Henry Jermaine Dukes, Appellant.

Appellate Case No. 2011-196667

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 5148
Heard April 3, 2013 – Filed June 26, 2013

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Senior
Assistant Attorney General W. Edgar Salter III, all of
Columbia; and Solicitor Jimmy A. Richardson II, of
Conway, for Respondent.

FEW, C.J.: A jury found Henry Dukes guilty of murder for the shooting death of Andrico Gowans. Dukes argues the trial court erred in refusing to suppress an eyewitness's identification of Dukes for two reasons: (1) the pretrial hearing did not comport with due process because the detective who conducted the identification procedure was unavailable to testify; and (2) the identification

procedure was impermissibly suggestive and created a substantial likelihood of misidentification. We affirm.

I. Facts and Procedural History

On the morning of November 2, 2007, Cornelius Ford witnessed Gowans' murder. That afternoon, Ford met with Detective Sean Addison at the Conway Police Department and identified Dukes as the shooter.

Before trial, Dukes asked the court to suppress Ford's out-of-court identification because the identification procedure used was impermissibly suggestive. The trial court conducted a hearing, where the State called Ford to testify to what happened when he made the identification. Ford told the court he went to the police station with his father after the shooting to give a statement. After Ford gave a description of the shooter, Addison suggested Ford look at photographs, "like a photo book," to see if he could identify the person who shot Gowans. When Addison got up from the table to get the photo book, Ford saw other photographs in a file Addison had on the table. Ford identified Dukes from one of the photographs he saw in Addison's file. Ford testified Addison did not present the photos to him or instruct him to choose one.

The State then called Ford's father, Rasheed Muhammad, who was present when Ford made the identification. Muhammad told the court Addison offered to show a book of photographs to Ford, but before that occurred, "[photographs] were put on the table." From those photographs, Ford identified Dukes. Muhammad testified Addison did not suggest which photograph Ford should select.

Dukes presented no witnesses but read an excerpt of Addison's investigative report, in which Addison wrote "the photos were presented to . . . Ford one at a time."¹ Dukes asserted that because Addison's report contradicted Ford's recollection of what happened, "the State [could] not meet its burden" of showing the identification procedure was not impermissibly suggestive without Addison's testimony.²

¹ Addison's investigative report was not entered into evidence.

² Addison was unavailable because he was serving on active military duty in Afghanistan at the time of trial.

The trial court ruled it was not "necessary for the court to hear [Addison's] testimony," and denied Dukes' motion, stating:

It does not appear, even taking into consideration the report of [Addison], that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner. . . . The seeing of the photographs was either done accidentally through the looking at a file or in the process that the Court finds was not suggestive in any manner

At trial, Ford and Muhammad testified to Ford's out-of-court identification of Dukes. Ford also gave an in-court identification. The jury found Dukes guilty of murder, and the court sentenced him to forty-seven years in prison.

II. Identification Evidence

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). A witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification." *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added); *see also Neil v. Biggers*, 409 U.S. 188, 198, 93 S. Ct. 375, 381, 34 L. Ed. 2d 401, 410 (1972) ("While the phrase ['a very substantial likelihood of irreparable misidentification'] was coined as a standard for determining whether an in-court identification would be admissible . . . , with the deletion of 'irreparable' it serves equally well as a standard for the admissibility of testimony concerning the out-of-court identification itself.").

Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from "unnecessarily suggestive" police procedures. *Biggers*, 409 U.S. at 198-99, 93 S. Ct. at 381-82, 34 L. Ed. 2d at 410-11; *see also Perry v. New Hampshire*, 132 S. Ct. 716, 721 n.1, 181 L. Ed. 2d 694, 703 n.1 (2012) (stating "what triggers due process concerns is police use of an unnecessarily suggestive identification procedure"); *Liverman*, 398 S.C. at 138, 727 S.E.2d at

426 (stating the standard for impermissible suggestiveness as whether the police procedures were "unnecessary and unduly suggestive"); *Traylor*, 360 S.C. at 81, 600 S.E.2d at 526 (stating the standard as whether the police procedures were "unduly suggestive"). If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. *See United States v. Sanders*, 708 F.3d 976, 984 (7th Cir. 2013) (citing *Perry* for the proposition that "courts will only consider the second prong if a challenged procedure does not pass muster under the first"). If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless "so reliable that no substantial likelihood of misidentification existed." *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426 (citing *Biggers*, 409 U.S. at 199, 93 S. Ct. at 382, 34 L. Ed. 2d at 411).

A. The Sufficiency of the Hearing

Dukes argues the suppression hearing conducted by the trial court did not comport with due process because "the State could not meet its burden" of showing the identification procedure was not impermissibly suggestive without Detective Addison's testimony. We hold Addison's absence from the hearing did not violate Dukes' due process rights.

Procedural due process requires "adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." *Dangerfield v. State*, 376 S.C. 176, 179, 656 S.E.2d 352, 354 (2008). It does not, however, require any particular form of procedure. *See S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (stating "due process is flexible and calls for such procedural protections as the particular situation demands" (citation and quotation marks omitted)). Due process also does not require all witnesses to testify. *See United States v. Morsley*, 454 F. App'x 191, 193 (4th Cir. 2011) (stating the constitution "does not by its terms grant to a criminal defendant the right to secure the attendance and testimony of any and all witnesses" (citation omitted)). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Wilson*, 352 S.C. at 452, 574 S.E.2d at 734.

Dukes argues he was denied due process because the key witness, the investigating officer, was unavailable to testify. We disagree and hold the trial court afforded Dukes all that due process required in this particular situation. The trial court gave

Dukes notice of the hearing and the opportunity to be present. The court also gave him the opportunity to cross-examine the State's witnesses, offer his own evidence, and argue his position. Dukes argued the specific reasons Addison's testimony was essential, but the trial court determined otherwise, specifically stating, "I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case." Thus, the trial court was able to determine from the testimony of the State's witnesses that nothing the police did was suggestive. Finally, this appeal is Dukes' opportunity for judicial review. We find the hearing did not violate Dukes' due process rights.

In *Liverman*, our supreme court addressed the sufficiency of a suppression hearing for identification evidence. The specific issue the court addressed was whether a trial court must conduct a "full" inquiry into the reliability of the evidence when the police procedure is impermissibly suggestive, but the eyewitness knew the accused before the identification procedure was conducted. *See* 398 S.C. at 134, 727 S.E.2d at 423 ("The case before us involves the intersection of a suggestive police show-up identification procedure and an eyewitness who knows the accused."). Relying on *Perry*, the court held that "pretrial judicial review [is necessary] when an identification is infected by improper police influence." 398 S.C. at 140, 727 S.E.2d at 427. Thus, the court held a suppression hearing is required to determine the reliability of the suggestive identification even though the eyewitness previously knew the defendant. *Id.* On the facts before it, the *Liverman* court "decline[d] to hold that the pretrial hearing fully comported with due process requirements" but found that any error was harmless. 398 S.C. at 141, 727 S.E.2d at 427.

To explain our holding that the hearing in this case did comport with due process, it is important to note how this case is different from *Liverman*. The police procedure in *Liverman* was the classic show-up lineup, 398 S.C. at 133-35, 727 S.E.2d at 423-24, which our courts have held are impermissibly suggestive in most circumstances. *See State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 448 (2000) (stating "[s]ingle person show-ups are particularly disfavored in the law," and holding on facts very similar to *Liverman* that "it is patent the show-up procedure used was unduly suggestive"). *Liverman* arose, therefore, under the second prong of *Biggers*—reliability. We decide this appeal under the first prong—suggestiveness. Under *Perry* and *Liverman*, judicial inquiry into reliability is required *every* time the police orchestrate a suggestive identification procedure. Under *Perry* and cases like *Sanders*, however, judicial inquiry into reliability is never required unless (1) the police (2) orchestrated an identification procedure (3)

that was impermissibly suggestive. *Perry* and *Sanders* remove this case from the ambit of *Liverman* because the trial court here found there was no impermissibly suggestive police conduct.

This does not mean, however, that Dukes was not entitled to a hearing that provided all the elements of due process. It does mean that the sufficiency of the hearing is governed by traditional concepts of procedural due process, not by the due-process-based duty of the court to inquire into the reliability of evidence upon which *Liverman* was decided. *Liverman*, 398 S.C. at 140, 727 S.E.2d at 427 (noting *Perry* "reemphasized the [due-process-based] necessity of pretrial judicial review when an identification is infected by improper police influence"). In this case, the trial court was not able to determine exactly what Addison did. However, the court was able to determine that either Ford saw the photographs accidentally or Addison showed them to him one at a time. The court then determined that neither of those alternatives involved suggestive police conduct. Our holding that Addison's absence from the hearing did not deprive Dukes of due process, especially given the alternative nature of the trial court's ruling, is dependent on the fact that the issue here is suggestiveness—not reliability. We do not address whether a key witness's presence would have been necessary for the court to fulfill its duty to inquire into reliability if the court had determined the police conduct was unnecessarily suggestive. *See* 398 S.C. at 140, 727 S.E.2d at 427 ("The fallibility of eyewitness evidence does not, *without the taint of improper state conduct*, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness." (quoting *Perry*, 132 S. Ct. at 728, 181 L. Ed. 2d at 711)).

B. The Suggestiveness of the Identification Procedure

Dukes also argues the trial court erred in finding the out-of-court identification procedure used by the police was not unnecessarily suggestive. He initially frames his argument in terms of the burden of proof, contending that because Addison was unavailable to testify, the State could not meet its burden.

We decline to resolve this issue in terms of whether the trial court properly applied the burden of proof. First, our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions

regarding federal constitutional law are binding on us,³ has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive. *See United States v. Saunders*, 501 F.3d 384, 389 (4th Cir. 2007) ("[T]he defendant must show that the photo identification procedure was impermissibly suggestive.").⁴ Second, it appears the trial court did place the

³ *State v. Ford Motor Co.*, 208 S.C. 379, 390, 38 S.E.2d 242, 247 (1946) (stating "federal [cases] . . . are controlling of the meaning and effect of the Federal Constitution").

⁴ *Accord Perry*, 132 S. Ct. at 733, 181 L. Ed. 2d at 176 (Sotomayor, J., dissenting) ("[T]he defendant has the burden of showing that the eyewitness identification was derived through impermissibly suggestive means." (citation and internal quotation marks omitted)); *United States v. Martin*, 391 F.3d 949, 952 (8th Cir. 2004) ("[The defendant] must first establish that the photographic spreads shown to [the witnesses] were impermissibly suggestive." (quotations omitted)); *United States v. Lawrence*, 349 F.3d 109, 115 (3d Cir. 2003) ("[T]he defendant has the burden of proving that the identification procedure was impermissibly suggestive."); *English v. Cody*, 241 F.3d 1279, 1282 (10th Cir. 2001) ("[A] defendant has the initial burden of proving that the identification procedure was impermissibly suggestive."); *United States v. Hill*, 967 F.2d 226, 230 (6th Cir. 1992) ("[A] defendant bears the burden of proving the identification procedure was impermissibly suggestive."); *Bernal v. People*, 44 P.3d 184, 191 (Colo. 2002) ("[A] court must determine whether the photo array was impermissibly suggestive, which the defendant has the burden of proving."); *State v. Fullwood*, 476 A.2d 550, 554 (Conn. 1984) ("A defendant . . . bears the initial burden of proving that the identification resulted from an unconstitutional procedure."); *State v. Araki*, 923 P.2d 891, 901 (Haw. 1996) (stating the defendant has the burden to prove the pretrial identification procedure was "impermissibly suggestive" (citation omitted)); *State v. Kelly*, 752 A.2d 188, 192 (Me. 2000) ("Initially the defendant must prove . . . the identification procedure was suggestive."); *Commonwealth v. Correia*, 407 N.E.2d 1216, 1225 (Mass. 1980) (stating the defendant has the burden of proving the procedures were "unnecessarily suggestive"); *State v. LaRose*, 497 A.2d 1224, 1229 (N.H. 1985) (stating the defendant has the initial burden of proving "the identification procedure was impermissibly or unnecessarily suggestive"); *State v. Norrid*, 611 N.W.2d 866, 871 (N.D. 2000) ("The defendant has the burden of proving the identification procedure is impermissibly suggestive"); *State v. Mosley*, 307 N.W.2d 200, 210 (Wis. 1981) ("The first inquiry is whether the out-of-court photographic identification was impermissibly suggestive, as to which the defendant has the burden."); 22A

burden of proof on the State. At the beginning of the hearing, Dukes' counsel stated, "The State can't prove its burden and it's suggestive." The State then put up its evidence. Under these circumstances, the question of whether the burden of proof was properly applied makes no difference because the trial court applied it in the manner most beneficial to Dukes.

Therefore, we review the trial court's ruling—that the procedure used was not suggestive—to determine whether it is supported by the evidence. Ford and Muhammad testified to how Ford identified Dukes and particularly to Addison's conduct during the procedure. Dukes presented no witnesses but described the contents of Addison's investigative report, which contradicted Ford and Muhammad's testimony. Dukes argues this evidentiary discrepancy demonstrates there is insufficient evidence for the court to determine whether the procedure was impermissibly suggestive. We disagree. While Addison's testimony would have been helpful, the court found the testimony of Ford and Muhammad sufficient for it to determine the procedure was not suggestive. In doing so, the court considered the discrepancy in the evidence:

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner.

Notwithstanding the existence of contradictory evidence, the trial court had the responsibility to determine whether the identification procedure was suggestive. We find evidence to support the trial court's decision, and thus the court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. *See Liverman*, 398 S.C. at 138, 727 S.E.2d at 425 (stating "the decision to admit an

C.J.S. *Criminal Law* § 1104 (2006) ("[T]he defendant has the initial burden to show an improper or unreliable procedure or identification . . ."). *Cf. People v. Jackson*, 780 N.E.2d 162, 165 (N.Y. 2002) ("Although the [State] ha[s] the initial burden of establishing the reasonableness of the police conduct in a pretrial identification procedure, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive."). *But see Commonwealth v. Moore*, 633 A.2d 1119, 1125 (Pa. 1993) (placing on the State "the burden of establishing that any identification testimony to be offered at trial is free from taint of initial illegality," though not clearly on constitutional grounds).

eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion").

Because we affirm the court's ruling that the identification procedure was not impermissibly suggestive, we need not consider the trial court's determination of the second prong of *Biggers*. See *Sanders*, 708 F.3d at 984.

III. Conclusion

The trial court's ruling is **AFFIRMED**.

GEATHERS and LOCKEMY, JJ., concur.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HENRY JERMAINE DUKES,

APPELLANT

APPELLATE CASE NO 2011-196667

Appeal from Horry County

Steven H. John, Circuit Court Judge

Opinion No. 5148

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Henry Jermaine Dukes petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that due process requires the State, as the proponent of the identification testimony, to initially establish what identification procedure was used by law enforcement. Due to the unavailability of the officer in the present case, the State was unable to establish what identification procedure was used. The testimony that was presented at the Neil v. Biggers¹ hearing was contradictory and failed to establish if the eye-witness identified Dukes by accidentally viewing photos inside the officer's case file or if the officer

showed the eye-witness several photographs one at a time and the eye-witness selected the photograph of Dukes. Importantly, the photographs viewed by the eye-witness were not introduced in evidence. Dukes did not have the opportunity to cross examine the officer. The unavailability of the officer and the photographs make this case analogous to a case where a photo line-up has been lost prior to trial. See United States v. Honer, 225 F.3d 549 (5th Cir. 2000) (When government fails to preserve photographic array used in pre-trial line-up, there shall exist presumption that array is impermissibly suggestive, even if record discloses no evidence of bad faith on part of government); Grady v. Commonwealth, 325 S.W.3d 333 (Kentucky, 2010) (Pre-trial lineup materials lost before defendant had an opportunity to scrutinize their content would be presumed to be unduly suggestive.). Based on the State's inability to establish details in regard to how the identification was made and Dukes' inability to cross examine the officer, the identification procedure should be presumed impermissibly suggestive.

The eye-witness, Cornelius Ford, testified, "When I went to get a interview I was giving – telling them what happened, and while I was talking – while I was talking to them they said they was going to get some pictures, like a photo book or whatever, but I seen like some pictures on the table, and when I seen the pictures on the table I pointed him out, because I knew that's who it was." (R. p. 34, lines 24 – p. 35, lines 1-5). Ford testified that the detective opened up his file to take notes and Ford saw three or four pictures inside the detective's file. (R. p. 35, lines 12 – p. 36, 37, line 1). Ford's father, Rasheed Muhammad, testified that the officer placed some photos on the table and Ford identified Dukes. (R. p. 44, line 17 – p. 45, lines 1-13). Counsel for Dukes noted that the officer's report indicates, "Based on this information, several photos were obtained. They included Ronnie Atkinson, Jeremy Rush, Steve Wilson and Henry Dukes. The photos were

¹ 409 U.S. 188, 93 S.Ct. 375 (1972).

presented to Cornelius Ford one at a time, and then he, without hesitation, took the photograph of Mr. Dukes . . .” (R. p. 51, lines 12-16). Counsel argued that he needed to be able to question the officer about how the photographs were presented. (R. p. 51, lines 17 – 25).

The judge refused to suppress the identification based on the absence of the officer stating, “All right, so with that circumstance, the Court does not find it obviously, number one, within the court’s power to have him here. Secondly, I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.” (R. p. 52, lines 20-25). The judge erred. The officer’s absence from the identification hearing violated Dukes’ due process rights.

In State v. Liverman, 727 S.E.2d 422 (2012), the South Carolina Supreme Court overruled State v. McLeod, 260 S.C. 445, 196 S.E.2d 645 (1973) creating a bright line rule excusing a Neil v. Biggers hearing where the eye witness knows the accused. In Liverman the defense requested a Neil v. Biggers hearing and the State objected, based on McLeod, because the witnesses knew the accused. The judge required the State to proffer the testimony of the witness. The judge first found the identification testimony admissible pursuant to McLeod. The judge then made a secondary finding that, under the totality of the circumstances, the identification testimony was admissible. The identification in Liverman involved an individual show up identification. In discussing the evidence presented in regard to the identification testimony the Court wrote, “While the trial court required the State to submit evidence that has many of the traditional features of a Neil v. Biggers hearing (and the trial court made concomitant Neil v. Biggers findings), we decline to hold that the pretrial hearing fully comported with due process requirements.” State v. Liverman, 727 S.E.2d at 427. The Court in Liverman then found that any error in the insufficient Neil v. Biggers hearing was harmless.

The identification hearing in the present case which included the testimony of the eye-witness and his father was the equivalent of the proffered testimony of the eye witness in Liverman. The police who conducted the identification procedures in both Liverman and the present case failed to testify at the pre-trial hearings. As the South Carolina Supreme Court declined to find that the pre-trial hearing in Liverman comported with due process requirements, this Court should find that the identification hearing in the present case failed to comport with due process requirements. Unlike Liverman, the error was not harmless.

This Court found that the “trial court afforded Dukes all that due process required in this particular situation.” This Court wrote:

The trial court gave Dukes notice of the hearing and the opportunity to be present. The court also gave him the opportunity to cross-examine the State's witnesses, offer his own evidence, and argue his position. Dukes argued the specific reasons Addison's testimony was essential, but the trial court determined otherwise, specifically stating, “I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.” Thus, the trial court was able to determine from the testimony of the State's witnesses that nothing the police did was suggestive. Finally, this appeal is Dukes' opportunity for judicial review. We find the hearing did not violate Dukes' due process rights.

State v. Dukes, 2013 WL 3199992, 3 (S.C.App.,2013).

The opinion fails to address the fact that Dukes was unable to cross examine the law enforcement officer who conducted the identification procedure about the manner in which the photographs were presented to the eye witness. The State's failure to establish the procedure used to obtain the identification precluded Dukes from demonstrating that the identification procedure was impermissibly suggestive and deprived Dukes of due process of law. Requiring Dukes to prove that the identification procedure was impermissibly suggestive without the presence of the officer or the photographs to determine what procedure was used is the equivalent of requiring a defendant to prove prejudice from a photo line-up without requiring the State to produce the photo line up.

This Court distinguished the present case from Liverman based on the fact that the identification procedure in Liverman involved an unduly suggestive show up identification. This Court wrote:

Liverman arose, therefore, under the second prong of Biggers—reliability. We decide this appeal under the first prong—suggestiveness. Under Perry and Liverman, judicial inquiry into reliability is required *every* time the police orchestrate a suggestive identification procedure. Under Perry and cases like Sanders, however, judicial inquiry into reliability is never required unless (1) the police (2) orchestrated an identification procedure (3) that was impermissibly suggestive. Perry and Sanders remove this case from the ambit of Liverman because the trial court here found there was no impermissibly suggestive police conduct.

State v. Dukes, 2013 WL 3199992, 4 (S.C.App.,2013).

In Perry v. New Hampshire, 132 S.Ct. 716, 181 L.Ed.2d 694 (2012), the United States Supreme Court held that the Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. There is no question that the identification procedure in the present case was arranged by law enforcement. The problem in the present case is the State's failure to initially establish the procedure used by law enforcement to obtain the identification. It is this precise failure on the part of the State that deprived Dukes of due process of law and precluded Dukes from meeting his burden to show that the identification procedure was unduly suggestive. The identification procedure should be presumed suggestive under the unique circumstances of this case. See United States v. Honer; Grady v. Commonwealth.

This Court's decision in regard to the sufficiency of the hearing hinges on the trial court's finding that the identification procedure was not suggestive. The trial judge stated:

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, that there was any

act by the police of a suggestive manner. The witness had already identified the Defendant prior to the – looking at the photographs. The seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive in – in any manner, and therefore, based upon all that, the motion to suppress the identification is denied.

(R. p. 54, line 16 – p. 55, line 1).

The State, however, failed to establish what procedure was used to obtain the identification. As this Court noted, “In this case, the trial court was not able to determine exactly what [the officer] Addison did. However, the court was able to determine that either Ford saw the photographs accidentally or Addison showed them to him one at a time. The court then determined that neither of those alternatives involved suggestive police conduct.” State v. Dukes, 2013 WL 3199992, 4 (S.C.App.,2013). Finding that the eye witness either accidentally saw the photos or the officer showed the eye witness the photos, without more information about the manner in which either alternative was accomplished, fails to support the finding that the identification procedure was not unduly suggestive. First, even if inadvertent, allowing the witness to view a photograph of the defendant contained in the case file of the officer investigating the shooting is an unduly suggestive identification procedure. Second, the evidence is insufficient to find that the procedure was not unduly suggestive when the State failed to present testimony from the officer or even copies of the photos shown.

In regard to the suggestiveness of the identification procedure, this Court declined to resolve whether the trial court properly applied the burden of proof but wrote, “First, our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held that the defendant bears the burden of proving the identification procedure was impermissibly suggestive.” State v. Dukes, 2013 WL 3199992, 5 (S.C.App.,2013) (footnotes and citations

omitted). In a footnote this Court cites State v. Ford Motor Co., 208 S.C. 379, 390, 38 S.E.2d 242,247 (1946) for the proposition that decisions by the United States Court of Appeals regarding federal constitutional law are binding on the South Carolina appellate courts. The full sentence from that decision reads, “Painstaking study of the authorities, state and federal, which latter are controlling of the meaning and effect of the Federal Constitution, has convinced us that appellant is doing business in South Carolina, under the facts of this case, sufficient to subject it to the jurisdiction of our courts, obtainable by service of process through the Secretary of State pursuant to the pertinent statute; but the business shown is interstate commerce and appellant, as long as it so confines its activities, cannot be forced to domesticate or pay the penalty for failure, without unconstitutional burden upon that commerce.” State v. Ford Motor Co. 208 S.C. 379, 390-391, 38 S.E.2d 242, 247 (1946). Counsel respectfully submits that this Court’s reliance on State v. Ford Motor Co. is misplaced.

Addressing the substantive issue of the suggestive nature of the identification procedure, this Court wrote:

Notwithstanding the existence of contradictory evidence, the trial court had the responsibility to determine whether the identification procedure was suggestive. We find evidence to support the trial court's decision, and thus the court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. See Liverman, 398 S.C. at 138, 727 S.E.2d at 425 (stating “the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion”).

State v. Dukes, 2013 WL 3199992, 5 (S.C.App.,2013).

Counsel respectfully submits that the contradictory evidence from the identification hearing was insufficient to allow the trial court to make a finding as to suggestiveness. “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265

(2006). The trial court's finding that the identification procedure was not suggestive constitutes an abuse of discretion as the finding lacks evidentiary support.

Counsel respectfully submits that the identification procedure should have been presumed suggestive and this Court should have considered the second prong of Neil v. Biggers and found that the identification was not so reliable that no substantial likelihood of misidentification existed. In State v. Liverman, 727 S.E.2d 422, 426 (2012) the South Carolina Supreme Court wrote:

In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Biggers, 409 U.S. at 198, 93 S.Ct. 375. Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing Biggers, 409 U.S. at 199–200, 93 S.Ct. 375).

Considering the five Neil v. Biggers factors in the present case, the out-of-court identification, resulting from the presumptive unduly suggestive identification procedure, created a substantial likelihood of irreparable misidentification. Ford testified that he was in the hallway when the gun was pulled. (R. p. 32, lines 12 – 21). Ford testified, “Yes. I stood up when I seen him pull the gun out, and then he pointed the gun at me, and the victim - - -” (R. p. 33, lines 2-3). While Ford was certain of his identification, the only description given by Ford was that the

shooter had a funny accent and a big smile or big mouth. (R. p. 34, lines 3-8). Ford identified Dukes four to five hours after the shooting and after Ford fled the scene. (R. p. 34, lines 13-17). Ford testified that he had seen Dukes briefly on two prior occasions but there is no evidence that he knew Dukes. (R. pp. 30 – 31). In contrast, the witness in Liverman knew the person he identified and provided police with that person's nickname.

Based on the totality of the circumstances, the out of court identification procedure was not so reliable that no substantial likelihood of misidentification existed. Both the out of court identification and the in court identification should have been suppressed. Petitioner respectfully seeks rehearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

This 11th day of July, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Horry County

 Steven H. John, Circuit Court Judge

 RECEIVED
 JUL 11 2013
 SC Court of Appeals

THE STATE,

RESPONDENT,

V.

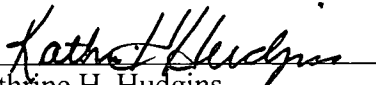
HENRY JERMAINE DUKES,

APPELLANT

APPELLATE CASE NO 2011-196667

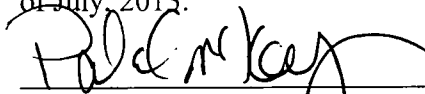
 CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William Edgar Salter, III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and also upon Mr. Henry Jermaine Dukes Lieber Correctional Institution PO Box 205 Ridgeville, SC 29472 this 11th day of July, 2013.


 Kathrine H. Hudgins
 Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 11th day
 of July, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022 .

The South Carolina Court of Appeals

The State, Respondent,

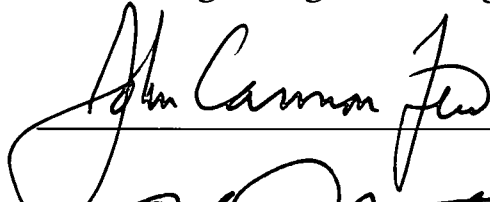
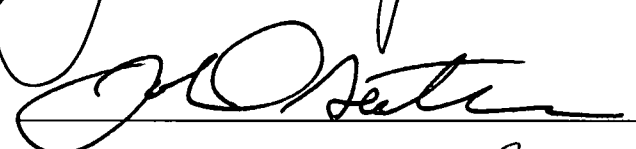
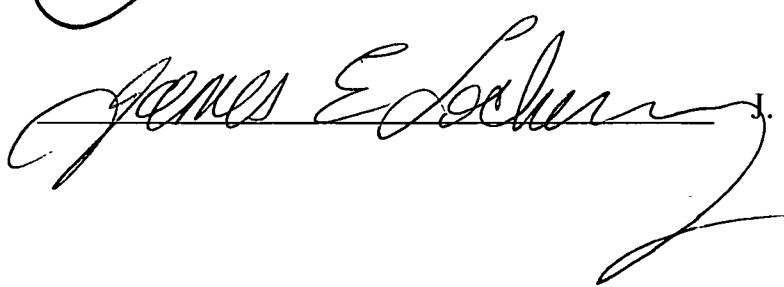
v.

Henry Jermaine Dukes, Appellant.

Appellate Case No. 2011-196667

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc:

Donald J. Zelenka

Kathrine Haggard Hudgins

W. Edgar Salter, III

John W. McIntosh

Alan McCrory Wilson

Jimmy A. Richardson, II

Steven H. John

FILED

24 July 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

RECEIVED

OCT 23 2013

SC Court of Appeals

Opinion No. 5148 (S.C. Ct. App. filed 6/26/2013)

08-GS-26-2911

THE STATE,

RESPONDENT,

V.,

HENRY JERMAINE DUKES,

APPELLANT

APPELLATE CASE NO. 2013-001798

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

KATHRINE H. HUDGINS
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ATTORNEY FOR PETITIONER.

INDEX

INDEX.....	1
CERTIFICATE OF COUNSEL.....	2
QUESTIONS PRESENTED.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT	5
CONCLUSION	15

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 7/24/2013.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in refusing to find that the trial judge erred in finding that the pre-trial hearing in regard to identification met the requirements of due process when the detective who conducted the identification procedure was not available to testify at trial?
2. Did the Court of Appeals err in failing to address the issue in regard to the reliability of the in court identification testimony when the out of court identification procedure used created a substantial likelihood of irreparable misidentification?

STATEMENT OF THE CASE

In August of 2008, the Horry County Grand Jury indicted Dukes for murder, indictment #2008-GS-26-2911. On July 20, 2011, the Honorable Steven H. John heard pretrial motions. On August 1, 2011, Dukes proceeded to jury trial before Judge John. Attorney Jonathan Eric Fox represented Dukes during the pre-trial hearing and at trial. The jury found Dukes guilty and Judge John sentenced Dukes to 47 years. A timely notice of intent to appeal was filed on August 3, 2011 and the direct appeal perfected.

On April 3, 2013, a three judge panel of the South Carolina Court of Appeals heard arguments in the case. On June 26, 2013, the Court of Appeals issued a written opinion affirming the conviction. State v. Dukes, 404 S.C. 553, 745 S.E.2d 137 (Ct.App. 2013). (App. pp. 1-9). A timely petition for rehearing was filed and denied on July 24, 2013. (App. pp. 10-20). This petition for writ of certiorari follows.

ARGUMENT

1. The Court of Appeals erred in refusing to find that the trial judge erred in finding that the pre-trial hearing in regard to identification met the requirements of due process when the detective who conducted the identification procedure was not available to testify at trial.

The jury convicted Petitioner of the murder of Andrico Gowans. The State's case against Dukes was based primarily on the identification testimony of Cornelius Ford. There was no forensic evidence linking Dukes to the murder. Prior to trial during the pre-trial hearing, Dukes argued that the State could not meet its burden in regard to the admission of Ford's identification testimony when Detective Addison, the detective who conducted the identification procedure, was not available at trial. (R. p. 11, lines 15 – p. 12, lines 1-13). The judge found that he could not make that determination until he heard the testimony of Ford. (R. p. 12, lines 14-16). In a separate motion, Dukes then moved to suppress identification testimony of Ford based on the unduly suggestive identification procedure used that created a substantial likelihood of misidentification. (R. p. 29, lines 3-15).

The judge held a hearing pursuant to Neil v. Biggers¹. The State called Ford as a witness. (R. p. 29, line 21). Ford testified that on the morning of the shooting he was at Gowans' house and there was a knock on the door. (R. p. 32, lines 6-10). According to Ford, Gowans opened the door and Dukes came inside the house. (R. p. 32, lines 9-10). According to Ford, there was a brief conversation and then Dukes pulled out a gun and shot Gowans. (R. p. 32, lines 12- p. 33, lines 1-18). Ford testified that he had seen Dukes on two prior occasions. (R. p. 30, lines 7-13). Ford described the shooter as having a funny accent and a big smile. (R. p. 34, lines 3-8). After the shooting, Ford called his father, Rasheed Muhammad. (R. p. 38, lines 17 – p. 39, p. 40, lines 1-2).

¹ 409 U.S. 188, 93 S.Ct. 375 (1972).

Muhammad came to the house and met the police. Ford did not wait for the police and fled the scene when his dad arrived. (R. p. 40, lines 4-19). Later, at trial, Muhammad admitted that on the morning of the shooting, he did not tell police that his son had been at the house and he admitted that he lied about how he came to be at the house on the morning of the shooting. (R. pp. 85 – 90).

Later that evening the police contacted Muhammad about speaking with his son, Cornelius Ford. (R. p. 44, lines 6-10). Muhammad and Ford went to the police substation and met with a detective. (R. p. 44, lines 9-12). Ford testified, “When I went to get a interview I was giving – telling them what happened, and while I was talking – while I was talking to them they said they was going to get some pictures, like a photo book or whatever, but I seen like some pictures on the table, and when I seen the pictures on the table I pointed him out, because I knew that’s who it was.” (R. p. 34, lines 24 – p. 35, lines 1-5). Ford testified that the detective opened up his file to take notes and Ford saw three or four pictures inside the detective’s file. (R. p. 35, lines 12 – p. 36, 37, line 1).

After the testimony, Dukes again objected to the fact that Detective Addison was not available to testify about the identification procedure used in this particular case. (R. p. 50, lines 13-20; p. 50, lines 25 – p. 51, lines 1 – p. 52 lines 1-10). The judge found, “I do not find it is necessary for the Court to hear the testimony of the detective who is unavailable. I mean, there is no argument, Mr. Fox, that that detective is unavailable. He is in the service of his country in Afghanistan. It’s not possible for him to be at the trial. I mean, that’s clear, correct?” (R. p. 52, lines 12-18). Defense counsel agreed that the detective was unavailable. (R. p. 52 line 19). The judge then found, “All right, so with that circumstance, the Court does not find it obviously, number one, within the court’s power to have him here. Secondly, I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the

officer in this particular case.” (R. p. 52, lines 20-25). The judge erred. The detective’s testimony was necessary in order for the State, as the proponent of the identification testimony to establish the procedure used by the police in obtaining an identification of Petitioner. The pre-trial hearing in regard to identification testimony did not meet the requirements of due process.

In State v. Liverman, 727 S.E.2d 422 (2012), the South Carolina Supreme Court overruled State v. McLeod, 260 S.C. 445, 196 S.E.2d 645 (1973) creating a bright line rule excusing a Neil v. Biggers hearing where the eye witness knows the accused. In Liverman the defense requested a Neil v. Biggers hearing and the State objected, based on McLeod, because the witnesses knew the accused. The judge required the State to proffer the testimony of the witness. The judge first found the identification testimony admissible pursuant to McLeod. The judge then made a secondary finding that, under the totality of the circumstances, the identification testimony was admissible. The identification in Liverman involved an individual show up identification. In discussing the evidence presented in regard to the identification testimony the Court wrote, “While the trial court required the State to submit evidence that has many of the traditional features of a Neil v. Biggers hearing (and the trial court made concomitant Neil v. Biggers findings), we decline to hold that the pretrial hearing fully comported with due process requirements.” State v. Liverman, 727 S.E.2d at 427. The Court in Liverman then found that any error in the insufficient Neil v. Biggers hearing was harmless.

The identification hearing in the present case which included the testimony of the eye-witness and his father was the equivalent of the proffered testimony of the eye witness in Liverman. The police who conducted the identification procedures in both Liverman and the present case failed to testify at the pre-trial hearings. As the South Carolina Supreme Court declined to find that the pre-trial hearing in Liverman comported with due process requirements,

this Court should find that the identification hearing in the present case failed to comport with due process requirements. Unlike Liverman, the error was not harmless, as discussed below in issue two.

Due process requires the State, as the proponent of the identification testimony, to initially establish what identification procedure was used by law enforcement. Due to the unavailability of the officer in the present case, the State was unable to establish what identification procedure was used. The testimony that was presented at the Neil v. Biggers² hearing was contradictory and failed to establish if the eye-witness identified Dukes by accidentally viewing photos inside the officer's case file or if the officer showed the eye-witness several photographs one at a time and the eye-witness selected the photograph of Dukes. Importantly, the photographs viewed by the eye-witness were not introduced in evidence. Dukes did not have the opportunity to cross examine the officer. The unavailability of the officer and the photographs make this case analogous to a case where a photo line-up has been lost prior to trial. See United States v. Honer, 225 F.3d 549 (5th Cir. 2000) (When government fails to preserve photographic array used in pre-trial line-up, there shall exist presumption that array is impermissibly suggestive, even if record discloses no evidence of bad faith on part of government); Grady v. Commonwealth, 325 S.W.3d 333 (Kentucky, 2010) (Pre-trial lineup materials lost before defendant had an opportunity to scrutinize their content would be presumed to be unduly suggestive.). Based on the State's inability to establish details in regard to how the identification was made and Dukes' inability to cross examine the officer, the identification procedure should be presumed impermissibly suggestive.

² 409 U.S. 188, 93 S.Ct. 375 (1972).

The Court of Appeals found that the “trial court afforded Dukes all that due process required in this particular situation.” The Court of Appeals wrote:

The trial court gave Dukes notice of the hearing and the opportunity to be present. The court also gave him the opportunity to cross-examine the State's witnesses, offer his own evidence, and argue his position. Dukes argued the specific reasons Addison's testimony was essential, but the trial court determined otherwise, specifically stating, “I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.” Thus, the trial court was able to determine from the testimony of the State's witnesses that nothing the police did was suggestive. Finally, this appeal is Dukes' opportunity for judicial review. We find the hearing did not violate Dukes' due process rights.

State v. Dukes, 404 S.C. 553, 559, 745 S.E.2d 137, 140 (Ct.App. 2013).

The opinion fails to address the fact that Dukes was unable to cross examine the law enforcement officer who conducted the identification procedure about the manner in which the photographs were presented to the eye witness. The State's failure to establish the procedure used to obtain the identification precluded Dukes from demonstrating that the identification procedure was impermissibly suggestive and deprived Dukes of due process of law. Requiring Dukes to prove that the identification procedure was impermissibly suggestive without the presence of the officer or the photographs to determine what procedure was used is the equivalent of requiring a defendant to prove prejudice from a photo line-up without requiring the State to produce the photo line up.

The Court of Appeals distinguished the present case from Liverman based on the fact that the identification procedure in Liverman involved an unduly suggestive show up identification.

This Court of Appeals wrote:

Liverman arose, therefore, under the second prong of Biggers—reliability. We decide this appeal under the first prong—suggestiveness. Under Perry and Liverman, judicial inquiry into reliability is required *every* time the police orchestrate a suggestive identification procedure. Under Perry and

cases like Sanders, however, judicial inquiry into reliability is never required unless (1) the police (2) orchestrated an identification procedure (3) that was impermissibly suggestive. Perry and Sanders remove this case from the ambit of Liverman because the trial court here found there was no impermissibly suggestive police conduct.

State v. Dukes, 404 S.C. 553, 560, 745 S.E.2d 137, 140 - 141 (Ct.App. 2013).

In Perry v. New Hampshire, 132 S.Ct. 716, 181 L.Ed.2d 694 (2012), the United States Supreme Court held that the Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. There is no question that the identification procedure in the present case was arranged by law enforcement. The problem in the present case is the State's failure to initially establish the procedure used by law enforcement to obtain the identification. It is this precise failure on the part of the State that deprived Dukes of due process of law and precluded Dukes from meeting his burden to show that the identification procedure was unduly suggestive. The identification procedure should be presumed suggestive under the unique circumstances of this case. See United States v. Honer; Grady v. Commonwealth.

The Court of Appeals' decision in regard to the sufficiency of the hearing hinges on the trial court's finding that the identification procedure was not suggestive. The trial judge stated:

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, that there was any act by the police of a suggestive manner. The witness had already identified the Defendant prior to the – looking at the photographs. The seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive in – in any manner, and therefore, based upon all that, the motion to suppress the identification is denied.

(R. p. 54, line 16 – p. 55, line 1).

The State, however, failed to establish what procedure was used to obtain the identification. As this Court noted, "In this case, the trial court was not able to determine exactly what [the officer] Addison did. However, the court was able to determine that either Ford saw the photographs accidentally or Addison showed them to him one at a time. The court then determined that neither of those alternatives involved suggestive police conduct." State v. Dukes, 404 S.C. 553, 560, 745 S.E.2d 137, 141 (Ct.App. 2013).

Finding that the eye witness either accidentally saw the photos or the officer showed the eye witness the photos, without more information about the manner in which either alternative was accomplished, fails to support the finding that the identification procedure was not unduly suggestive. First, even if inadvertent, allowing the witness to view a photograph of the defendant contained in the case file of the officer investigating the shooting is an unduly suggestive identification procedure. Second, the evidence is insufficient to find that the procedure was not unduly suggestive when the State failed to present testimony from the officer or even copies of the photos shown.

The line-up procedure should be presumed unduly suggestive where, as here, the identification hearing failed to meet the requirements of due process because the State failed to establish the procedure used in obtaining the identification of Petitioner. Addressing the substantive issue³ of the suggestive nature of the identification procedure, the Court of Appeals wrote:

³ The Court of Appeals cites to various federal and state cases holding the burden of proving that the identification procedure used was impermissibly suggestive rests with the defendant. Petitioner does not suggest that the burden of disproving suggestiveness rests with the State. The State, however, must establish an evidentiary predicate before the evidence can be challenged as suggestive. The State failed to establish the evidentiary predicate in this case and the procedure must be presumed to be impermissibly suggestive. The Court of Appeals' reliance on State v. Ford Motor Co. 208 S.C. 379, 390-391, 38 S.E.2d 242, 247 (1946) is misplaced.

Notwithstanding the existence of contradictory evidence, the trial court had the responsibility to determine whether the identification procedure was suggestive. We find evidence to support the trial court's decision, and thus the court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. See Liverman, 398 S.C. at 138, 727 S.E.2d at 425 (stating "the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion").

State v. Dukes, 404 S.C. 553, 563, 745 S.E.2d 137, 142 (Ct.App. 2013).

The contradictory evidence from the identification hearing and the State's failure to establish how the identification was made through the police officer or through the photographs used was insufficient to allow the trial court to make a finding as to suggestiveness. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). The trial court's finding that the identification procedure was not suggestive constitutes an abuse of discretion as the finding lacks evidentiary support. The identification hearing did not comport with the requirements of due process and should be presumed impermissibly suggestive. The trial court should have considered the second prong of Neil v. Biggers and found that the identification was not so reliable that no substantial likelihood of misidentification existed, as discussed below in issue two.

2. The Court of Appeals erred in failing to address the issue in regard to the reliability of the in court identification testimony when the out of court identification procedure used created a substantial likelihood of irreparable misidentification.

The Court of Appeals did not address the reliability prong of Neil v. Biggers writing, "Because we affirm the court's ruling that the identification procedure was not impermissibly suggestive, we need not consider the trial court's determination of the second prong of Biggers.

See Sanders, 708 F.3d at 984.” State v. Dukes, 404 S.C. 553, 563, 745 S.E.2d 137, 142 (Ct.App. 2013). As discussed in issue one, the identification procedure used in the present case should have been presumed impermissibly suggestive. Once the identification procedure was deemed impermissibly suggestive, the trial court should have considered the reliability prong of Neil v. Biggers and found the identification was not so reliable that no substantial likelihood of misidentification existed.

In State v. Liverman, 727 S.E.2d 422, 426 (2012) the South Carolina Supreme Court wrote:

In Neil v. Biggers, the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Biggers, 409 U.S. at 198, 93 S.Ct. 375. Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing Biggers, 409 U.S. at 199–200, 93 S.Ct. 375).

Considering the five Neil v. Biggers factors in the present case, the out-of-court identification, resulting from the presumed unduly suggestive identification procedure, created a substantial likelihood of irreparable misidentification. Ford testified that he was in the hallway when the gun was pulled. (R. p. 32, lines 12 – 21). Ford testified, “Yes. I stood up when I seen him pull the gun out, and then he pointed the gun at me, and the victim - - -” (R. p. 33, lines 2-3). While Ford was certain of his identification, the only description given by Ford was that the shooter had a funny accent and a big smile or big mouth. (R. p. 34, lines 3-8). Ford identified Dukes four to five hours after the shooting and after Ford fled the scene. (R. p. 34, lines 13-17).

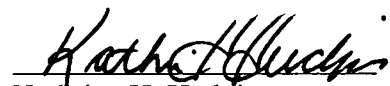
Ford testified that he had seen Dukes briefly on two prior occasions but there is no evidence that he knew Dukes. (R. pp. 30 – 31).

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. Stovall v. Denno 388 U.S. 293, 87 Ct. 1967, 18 L.Ed.2d 1199 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 14 (1977) (citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980). Based on the totality of the circumstances, the out of court identification procedure was not so reliable that no substantial likelihood of misidentification existed. Both the out of court identification and the in court identification should have been suppressed.

CONCLUSION

Based on the above arguments, this court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully submitted,



Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER.

This 23rd day of October, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

Opinion No. 5148 (S.C. Ct. App. filed 6/26/2013)
08-GS-26-2911

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

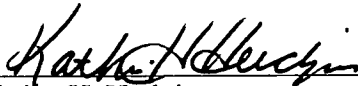
HENRY JERMAINE DUKES,

APPELLANT

APPELLATE CASE NO. 2013 -001798

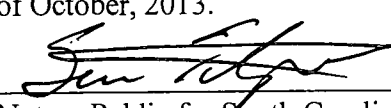
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on William Edgar Salter, III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Mr. Henry Jermaine Dukes 347234 Lieber Correctional Institution PO Box 205 Ridgeville, SC 29472 and the S.C. Court of Appeals this 23rd day of October, 2013.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of October, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2013-001798

THE STATE,

Respondent,

vs.

HENRY JERMAINE DUKES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS**QUESTION PRESENTED****COUNTERSTATEMENT OF QUESTIONS PRESENTED****STATEMENT OF THE CASE.....1****ARGUMENTS.....2**

1. The Court of Appeals correctly found that the trial judge did not violate due process by refusing to suppress State witness Cornelius Ford's pretrial identification of Dukes, based upon the unavailability of the detective who conducted the identification procedure, because the *Biggers* hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.....1

A. Proceedings in the trial court.....2

B. The decision by the Court of Appeals.....8

C. Discussion.....10

II. The Court of Appeals correctly found that the trial judge did not err by denying Dukes' motion to suppress Cornelius Ford's pretrial identification of him because the record supports the findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, despite any possible suggestiveness.....17

CONCLUSION.....25

QUESTIONS PRESENTED

1. Did the Court of Appeals err in refusing to find that the trial judge erred in finding that the pre-trial hearing in regard to identification met the requirements of due process when the detective who conducted the identification procedure was not available to testify at trial?
2. Did the Court of Appeals err in failing to address the issue in regard to the reliability of the in court identification testimony when the out of court identification procedure used created a substantial likelihood of irreparable misidentification?

COUNTERSTATEMENT OF QUESTIONS PRESENTED

- I. Did the Court of Appeals correctly find that the trial judge did not violate due process by refusing to suppress State witness Cornelius Ford's pretrial identification of Dukes, based upon the unavailability of the detective who conducted the identification procedure, because the *Biggers* hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence?
- II. Did the Court of Appeals correctly find that the trial judge did not err by denying Dukes' motion to suppress Cornelius Ford's pretrial identification of him because the record supports the findings that identification process was not unduly suggestive, and that the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed, despite any possible suggestiveness?

STATEMENT OF CASE

The Horry County Grand Jury indicted Petitioner, Henry Jermaine Dukes (Dukes) at the August 2008 term of court for murder (2008-GS-26-2911), in connection with the shooting death of Andrico Gowans. **R. pp. 387-89.** The Honorable Steven H. John held a motions hearing on July 20, 2011, at which Dukes was present and represented by counsel. Dukes then received a jury trial before Judge John on August 1-2, 2011. Horry County Assistant Public Defender Jonathan Eric Fox represented Dukes in the trial court. The Assistant Solicitors Jimmy A. Richardson and Robert Paul Taylor, of the Fifteenth Circuit Solicitor's Office, prosecuted him.

Dukes did not testify at trial. The jury convicted him of murder, and Judge John sentenced him to forty-seven years imprisonment. **R. p. 386.** A timely notice of appeal was served and filed.

Following briefing by the parties and oral argument, on April 3, 2013, the South Carolina Court of Appeals filed a written Opinion affirming Dukes' conviction and sentence on June 26, 2013. *State v. Dukes*, 404 S.C. 553, 745 S.E.2d 137 (Ct.App. 2013). **App. pp. 1-9.** Dukes filed a Petition for Rehearing on July 11, 2013. **App. pp. 10-19.** The Court of Appeals denied rehearing on July 24, 2013. **App. p. 20.**

Dukes filed a Petition for Writ of Certiorari on and this Return follows.

ARGUMENTS

I. The Court of Appeals correctly found that the trial judge did not violate due process by refusing to suppress State witness Cornelius Ford's pretrial identification of Dukes, based upon the unavailability of the detective who conducted the identification procedure, because the *Biggers* hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.

Dukes first asserts that the Court of Appeals erred in finding that the hearing on the pretrial identification of him by State's witness Cornelius Ford did not violate his due process

rights, because the detective who conducted the identification procedure, Det. Sean Addison, was serving in the military in Afghanistan and was unavailable. Respondent submits that Dukes' argument is without merit, and that the trial judge properly refused to suppress the pretrial identification because the *Neil v. Biggers*¹ hearing held in this case comported with both due process and the state law requirements for hearings where pretrial identification is at issue, despite the witness' absence.

A. Proceedings in the trial court.

At the pretrial motions hearing, Dukes noted that the chief investigating officer, Det. Sean Addison, who was formerly employed by the Conway Police Department, was not expected back for trial because he was in Afghanistan. He then observed that Cornelius Ford had given a statement and then made an out-of-court identification of Dukes, after Det. Addison had shown photographs to Ford at the Conway Police Department. "There's an issue about how exactly that was done." Dukes claimed that, without Detective Addison, he could not properly conduct cross-examination and that the trial judge could not determine whether or not the procedure was unduly suggestive. **R. p. 10, line 25 - p. 12, line 24.**

Dukes conceded that Ford was present to testify, but he argued that there were discrepancies between what Ford would say and what was in Det. Addison's report. Also, without Det. Addison, the State could not meet its burden of showing that the identification procedure was not unduly suggestive. **R. p. 12, line 25 - p. 13, line 13.** In response to the trial judge's request for testimony on the matter, the State indicated that it was prepared to present Ford's testimony. **R.p.13, lines 14-17.**

¹ See *Neil v. Biggers*, 409 U.S. 188 (1972). See also *United States v. Wade*, 388 U.S. 218, 235-36 (1967).

After the trial judge and the parties had addressed all other issues, Dukes noted that the motion to suppress Ford's identification was the only remaining matter. He again asserted that Ford had come into the police Department and had given a statement. "During the statement, they ... offered to show [Ford] pictures and there's some discrepancy as to exactly what happened." This required testimony. However, Dukes asserted that this was "an unduly suggestive procedure" and that it "created a very substantial likelihood of misidentification." **R. p. 29, lines 4 - 15.**

The State then presented its witnesses on the issue of identification. Cornelius Alford Lavon Lafayette Ford testified that he had seen Dukes twice before the murder. The first time he saw Dukes, Dukes passed him as Ford was leaving and Dukes was entering "Deals," a store on Highway 701. The men were approximately a foot away from each other at that point. Ford did not know Dukes at that time. **R. p. 30, line 2 - p. 31, line 1.**

Ford then saw Dukes when Dukes accompanied another man to the victim's residence. Dukes and the other man were in the back yard of the residence for twenty or thirty minutes on that occasion. Ford was roughly five feet away from Dukes. Also, he could hear the two men talking to the victim but he did not have a conversation with the men. **R. p. 31, lines 2 - 25.**

The third time Ford saw Dukes was on the morning of the shooting. Sometime around 8:00 or 9:00 a.m., Ford and Andrico "Andy" Gowans, the victim, heard a knock at the door of the residence. Andy looked out of the window, opened the door, and Dukes entered the residence. Dukes pulled out a gun, following a brief conversation with the victim. Immediately, Ford stood up and walked to the hallway. As soon as Dukes aimed the weapon at Ford, the victim "jumped back." Dukes then aimed the gun at the victim and fired twice. **R. p. 32, line 1 - p. 33, line 10.**

Although Ford remained still, Dukes "came around to the kitchen and pointed the gun at me, and it like clicked. I don't know if it jammed or whatever. It clicked like twice. And then he took off out the door." Ford never took his eyes off of Dukes during the incident, and Ford was "a hundred percent [certain] that was him." **R. p. 33, line 19 - 21; p. 34, lines 9 - 12.** After the shooting, Ford called 911 and he called his father. Once his father arrived at the scene, he drove home. **R. p. 37, line 22 - p. 40, line 4.**

Ford later gave a statement to police around 4:30 or 5:00 pm., on the day of the murder. While Ford was giving this statement, Det. Addison said that he wanted Ford to look at some pictures, "like a photobook." As Det. Addison got up to get these photographs, between three and five photographs that had been in Det. Addison's file fell out onto the table. Ford saw these photos and he pointed out Dukes as the shooter. No one told him to select Dukes' photograph or promised him anything to do so. Also, he denied that Det. Addison had presented or shown the photos to him. **R. p. 34, line 13 - p. 37, line 21; p. 41, lines 3-7; p. 42, line 13 - p. 43, line 2.**

Ford further testified that he had given police a description of the shooter before he gave his statement. *In camera*, he testified that the shooter had a funny accent and "a big smile, like a big mouth." **R. p. 33, line 22 - p. 34, line 8.** In his subsequent testimony before the jury, however, it became clear that he had given police an accurate and detailed description: the shooter not only had a big smile and big mouth, the shooter was slightly taller than Ford; stocky; and dark skinned. Also, Ford told police that "if you show me a picture I'll tell you exactly who he is." **R. p. 175, line 20 - p. 176, line 7.**

Mr. Rasheed Salmet Karlin Muhammad testified that he is Ford's father, and that he was present when Ford made the identification at the Conway Police Department.² The police had

² Although Mr. Muhammad had called 911 and reported the incident, he did not remember whether he told authorities that Ford had been present. **R. p. 46, line 13 - p. 47, line 10.**

called earlier because they wanted to speak to Ford. Mr. Muhammad then got in contact with Ford and both men went to the police substation in Conway, where they met with a detective. **R. p. 43, line 18 - p. 44, line 10; p. 49, lines 6 - 7.**

The three men went into a room with a long table. Mr. Muhammad sat at one end of the table, while Ford and the detective sat at the other end of it.³ Mr. Muhammad was not questioned. At one point, the detective was going to show a book of photographs to Ford. However, the detective put some pictures put on the table and Ford identified Dukes' photograph as the shooter. The detective did not insinuate or suggest which photograph Ford should select. **R. p. 44, line 11 - p. 45, line 14; p. 48, line 15 - p. 49, line 5.**

The detective repeatedly asked Ford if he was sure and he repeatedly said yes. Because the detective was repeatedly questioning Ford's identification, Mr. Muhammad asked to see the picture. The detective slid it to him. After Mr. Muhammad saw the photograph, **he** repeatedly asked Ford if Ford was positive and Ford said, "Yes, Daddy, I am." Mr. Muhammad stopped questioning his son when Ford said that he was positive and there was no question in Ford's mind about it. **R. p. 45, lines 14 - 21; p. 46, lines 2 - 8.**

The detective then asked Mr. Muhammad if he recognized the person in the photograph, and he replied that he did. He explained that Dukes had visited the mosque and made prayer and studied with Mr. Muhammad. Dukes also told Mr. Muhammad that he was from out of town. **R. p. 45, line 22 - p. 46, line 2.**

In response to the trial judge's inquiry, Mr. Muhammad explained that he had not questioned his son immediately after Ford identified Dukes. Rather, the detective had repeatedly asked Ford if Ford was positive and Ford said that he was. "[J]ust by coincidence I ... asked the

³ Mr. Muhammad was unaware that the interview was recorded. **R. p. 47, line 21 - p. 48, line 14.**

detective if I could see the picture, and he slid the picture all the way down to the end of the table and I saw the picture." Because Mr. Muhammad recognized Dukes from the mosque, he repeatedly asked Ford if Ford was positive. Ford said that he was. **R. p. 49, line 12 - p. 50, line 2.**

When Dukes was asked if he had any witnesses, he replied that "the one witness that I would want to hear from is the one witness who is unavailable, being Detective Addison, who was the third person in the room." The trial judge rejected the suggestion that Addison would be the most neutral witness because he was a police officer, but the trial judge noted that Dukes would want to question Det. Addison about whether Addison had done anything improper. Dukes agreed, stating, "I would want to explore what the procedure was." **R. p. 50, line 11 - p. 51, line 1.**

Dukes observed that there was a discrepancy between the live testimony and Det. Addison's investigative report:

Based on this information, several photos were obtained. They included Ronnie Atkinson, Jeremy Rush, Steve Wilson, and Henry Dukes. The photos were presented to Cornelius Ford one at a time, and then he, without hesitation, took the photograph of Mr. Dukes, but it describes a definite procedure.

R. p. 51, lines 1 - 17.

Dukes then argued that he would want to further question Det. Addison about how the photographs were presented to Ford, and whether or not Ford was told that the suspect might not be in these photographs. Dukes further asserted that there was reason to question Ford's credibility on this issue, "one, because he's uncertain about some things; two, because he lied to the police, or at least hid his identity; three, because they are in direct contradiction to what we believe Detective ... Addison observed." He claimed that the State could not "meet its burden of

showing this was a proper procedure without having testimony from Detective Addison." R. p.

51, line 17 - p. 52, line 10.

However, the trial judge denied Dukes' motion to suppress, as follows:

THE COURT: All right.

I do not find that it is necessary for the Court to hear the testimony of the detective who is unavailable. I mean, there is no argument, Mr. Fox, that that detective is unavailable. He is in the service of his country in Afghanistan. It's not possible for the Court to have him here to question him, nor will it be possible for him to be at the trial. I mean, that's clear, correct?

MR. FOX: Yes, Your Honor, no question.

THE COURT: All right, so with that circumstance, the Court does not find it to be obviously, number one, within the court's power to have him here. Secondly, I find it is not necessary for the Court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case.

The process or the previous rulings of our Supreme Court, Court of Appeals, and the U.S. Supreme Court indicate, and just in general first, the defendant may be deprived of due process of law by an identification process that is unnecessarily suggestive and conducive to irreparable mistaken identification. The U.S. Supreme Court developed a two-prong test or inquiry to determine the admissibility of out-of-court identification.

First, I think that was in Neil v. Biggers in 1972, and I think they've had subsequent decisions about it since then, but first the Court must ascertain whether the identification process was unduly suggestive, and the Court must next decide whether the out-of-court identification was nevertheless so allowable that no substantial likelihood of misidentification exists.

In ... determining whether an identification is reliable, the following factors have been set forth by the appellate courts, that is the opportunity of the witness to view the defendant at the time of the crime.

It's clear that this particular witness says he was present at the time the crime was committed, that he had seen the Defendant prior -- on prior occasions before the crime was committed, that he was certain of who the person was, that he subsequently identified them and gave a description to the police of the Defendant.

The witness's degree of attention, he says what occurred, that he was paying close attention. I think the Court can take into consideration that when a gun is present being pointed at certain individuals and then yourself, and then it is fired in your presence, that you will have your attention to those particular details.

The accuracy of the witness's prior description of the Defendant, the level of certainty demonstrated by the witness, he says it's a hundred percent. The amount of time between the crime and the confrontation, obviously his initial description is the same day. The communication with the police is shortly thereafter, and then the corrupting effect of any suggestive identification is to be weighed against these factors.

It does not appear, even taking into consideration the report of the investigator, that there was any corrupting effect, that there was any intentional act, that there was any deliberate act, there was any act by the police of a suggestive manner. The witness had already identified the Defendant prior to . . . looking at the photographs.

The seeing of the photographs was either done accidentally through the looking at a file or in a process that the Court finds was not suggestive . . . in any manner, and therefore, based upon all that, the motion to suppress the identification is denied.

R. p. 52, line 11 - p. 55, line 1.

B. The decision by the Court of Appeals.

The Court of Appeals affirmed the trial judge's ruling, concluding that Detective "Addison's absence from the hearing did not violate Dukes' due process rights because procedural due process did not require his testimony or that of all relevant witnesses. *Dukes*, 404 S.C. at 558, 745 S.E.2d at 140. Also, the trial judge

afforded Dukes all that due process required in this particular situation. The trial court gave Dukes notice of the hearing and the opportunity to be present. The court also gave him the opportunity to cross-examine the State's witnesses, offer his own evidence, and argue his position. Dukes argued the specific reasons Addison's testimony was essential, but the trial court determined otherwise, specifically stating, "I find it is not necessary for the court to make the determination on your motion to suppress the identification to have the testimony of the officer in this particular case." Thus, the trial court was able to determine from the testimony of the State's witnesses that nothing the police did was suggestive. Finally, this appeal is Dukes' opportunity for judicial review. We find the hearing did not violate Dukes' due process rights.

Id. at 559, 745 S.E.2d at 140.

The Court of Appeals distinguished this Court's decision in *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012), as follows:

In *Liverman*, our supreme court addressed the sufficiency of a suppression hearing for identification evidence. The specific issue the court addressed was whether a trial court must conduct a "full" inquiry into the reliability of the evidence when the police procedure is impermissibly suggestive, but the eyewitness knew the accused before the identification procedure was conducted. See 398 S.C. at 134, 727 S.E.2d at 423 ("The case before us involves the intersection of a suggestive police show-up identification procedure and an eyewitness who knows the accused."). Relying on [*Perry v. New Hampshire*, 132 S.Ct. 716 (2012)], the court held that "pretrial judicial review [is necessary] when an identification is infected by improper police influence." 398 S.C. at 140, 727 S.E.2d at 427. Thus, the court held a suppression hearing is required to determine the reliability of the suggestive identification even though the eyewitness previously knew the defendant. *Id.* On the facts before it, the *Liverman* court "decline[d] to hold that the pretrial hearing fully comported with due process requirements" but found that any error was harmless. 398 S.C. at 141, 727 S.E.2d at 427.

To explain our holding that the hearing in this case did comport with due process, it is important to note how this case is different from *Liverman*. The police procedure in *Liverman* was the classic show-up lineup, 398 S.C. at 133–35, 727 S.E.2d at 423–24, which our courts have held are impermissibly suggestive in most circumstances. See *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 448 (2000) (stating "[s]ingle person show-ups are particularly disfavored in the law," and holding on facts very similar to *Liverman* that "it is patent the show-up procedure used was unduly suggestive"). *Liverman* arose, therefore, under the second prong of *Biggers*—reliability. We decide this appeal under the first prong—suggestiveness. Under *Perry* and *Liverman*, judicial inquiry into reliability is required every time the police orchestrate a suggestive identification procedure. Under *Perry* and cases like [*United States v. Sanders*, 708 F.3d 976, 984 (7th Cir.2013)], however, judicial inquiry into reliability is never required unless (1) the police (2) orchestrated an identification procedure (3) that was impermissibly suggestive. *Perry* and *Sanders* remove this case from the ambit of *Liverman* because the trial court here found there was no impermissibly suggestive police conduct.

This does not mean, however, that *Dukes* was not entitled to a hearing that provided all the elements of due process. It does mean that the sufficiency of the hearing is governed by traditional concepts of procedural due process, not by the

due-process-based duty of the court to inquire into the reliability of evidence upon which *Liverman* was decided. *Liverman*, 398 S.C. at 140, 727 S.E.2d at 427 (noting *Perry* “reemphasized the [due-process-based] necessity of pretrial judicial review when an identification is infected by improper police influence”). In this case, the trial court was not able to determine exactly what Addison did. However, the court was able to determine that either Ford saw the photographs accidentally or Addison showed them to him one at a time. The court then determined that neither of those alternatives involved suggestive police conduct. Our holding that Addison's absence from the hearing did not deprive Dukes of due process, especially given the alternative nature of the trial court's ruling, is dependent on the fact that the issue here is suggestiveness—not reliability. We do not address whether a key witness's presence would have been necessary for the court to fulfill its duty to inquire into reliability if the court had determined the police conduct was unnecessarily suggestive. *See* 398 S.C. at 140, 727 S.E.2d at 427 (“ ‘The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness.’ ” (quoting *Perry*, — U.S. at —, 132 S.Ct. at 728, 181 L.Ed.2d at 711)).

Dukes, 404 S.C. at 559-61, 745 S.E.2d at 140-41.

C. Discussion.

The State submits that Dukes' argument is without merit, and that the trial judge properly denied Dukes' motion because neither due process nor state law required Det. Addison's presence. In addition to the reasons stated by the Court of Appeals set forth above, Respondent notes that an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification may deprive a criminal defendant of due process of law. *Stovall v. Denno*, 388 U.S. 293 (1967). *See also*; *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004); *State v. Caldwell*, 378 S.C. 268, 280-81, 662 S.E.2d 474, 481 (Ct.App. 2008). Although due process does not require a state court "to conduct a hearing outside the presence of the jury whenever a defendant contends that a witness' identification of him was arrived at improperly," *Watkins v. Sowders*, 449 U.S. 341, 349 (1981); *Perry v. New Hampshire*, 132 S.Ct. 716, 723-30 (2012) (Due Process Clause does not require preliminary judicial inquiry into

reliability of eyewitness identification that was not procured under unnecessarily suggestive circumstances arranged by law enforcement),² an *in camera* hearing should be held as a matter of state law, whenever the State offers eyewitness testimony identifying the defendant as the person who committed the crime and the defendant challenges the in-court identification as being tainted by a previous, improper identification or confrontation. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012).

In *Neil v. Biggers*, 409 U.S. 188 (1972), the United States Supreme Court established a two-pronged test to determine the admissibility of an out-of-court identification. The trial judge must first determine whether the identification process was unduly suggestive. *Id* at 198. Even assuming an identification procedure was suggestive, suppression is not automatically required. *Id*. Rather, the court must then determine whether the out-of-court identification was nevertheless so reliable under the totality of the circumstances that no substantial likelihood of misidentification existed. *Id*; *State v. Traylor*, 360 S.C. 74, 600 S.E.2d 523 (2004).

The relevant factors to be considered under the totality of circumstances include: (1) the opportunity of the witness to view the accused; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Biggers*, 409 U.S. at 199-200. *See also Liverman*, 398 S.C. at 138, 727 S.E.2d at 426. However, "reliability is the linchpin in determining the admissibility of identification testimony for both pre- and post-*Stovall* [⁴] confrontations." *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) (footnote added). Thus, an in-court identification of an accused is inadmissible only if, under the totality of the circumstances, a suggestive out-of-court identification procedure created a very

² *See also United States v. Ruggiero*, 824 F.Supp. 379, 396 (S.D.N.Y.1993).

⁴ *See Stovall v. Denno*, 388 U.S. 293 (1967).

substantial likelihood of irreparable misidentification. *Id.* "Short of that point, such evidence is for the jury to weigh." *Brathwaite*, 432 U.S. at 116.

In support of his argument, Dukes relies upon the following portion of the Supreme Court's opinion in *Liverman*:

Here, the trial court went beyond the scope of a *McLeod* hearing⁵ and required testimony related to Tyrone's ability to identify petitioner as the shooter, as well as the circumstances surrounding the show-up procedure arranged by the police. Petitioner maintains that he was denied a "full" *Neil v. Biggers* hearing. The State, having adamantly objected to a *Neil v. Biggers* hearing at trial, now suggest we treat the trial court's handling of the matter as the functional equivalent of a *Neil v. Biggers* hearing. While the trial court required the State to submit evidence that has many of the traditional features of a *Neil v. Biggers* hearing (and the trial court made behind commitment *Neil v. Biggers* findings), we decline to hold that the pretrial hearing fully comported with due process requirements.

Liverman, 398 S.C. at 141, 727 S.E.2d at 427. (Footnote added).

The State submits that Dukes' reliance upon this portion of the *Liverman* decision is misplaced for several reasons. As the Court of Appeals reasoned, "*Liverman* was the classic show-up lineup, 398 S.C. at 133–35, 727 S.E.2d at 423–24, which our courts have held are impermissibly suggestive in most circumstances. ... *Liverman* arose, therefore, under the second prong of *Biggers*—reliability. We decide this appeal under the first prong—suggestiveness. ... Under *Perry* and cases like *Sanders*, however, judicial inquiry into reliability is never required unless (1) the police (2) orchestrated an identification procedure (3) that was impermissibly suggestive. *Perry* and *Sanders* remove this case from the ambit of *Liverman* because the trial court here found there was no impermissibly suggestive police conduct." *Dukes*, 404 S.C. at 559–60, 745 S.E.2d at 140–41. (Citation omitted).

Moreover, Dukes clearly takes the language in *Liverman* out of context. In *Liverman*, the trial judge only permitted limited inquiry with respect to the identification procedure employed

⁵ *State v. McLeod*, 260 S.C. 445, 196 S.E.2d 645 (1973), overruled, *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012).

in that case. The primary focal point of the examination by both parties in *Liverman* was whether or not the eyewitness "knew the defendant," and the State repeatedly asserted that any inquiry into the identification procedure, itself, was not required in light of *McLeod*. On the other hand, the questioning by the parties in this case centered upon the identification procedure itself, and Dukes' efforts in that regard were unopposed by the State.

Also, the officer who conducted the show-up procedure in *Liverman* was available to testify but the State did not present him as a witness. Here, however, Det. Addison was an unavailable witness and his attendance could not be obtained. *See* Rule 804(a), SCRE.⁶ In spite of Det. Addison's unavailability, Dukes had his report and he was able to argue that the report reflected that Det. Addison had shown individual photographs to Ford and that Ford had selected Dukes photograph from among those shown, whereas Ford testified that he had selected the

⁶ Rule 804(a), SCRE, provides as follows:

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant--

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) *is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance* (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(Italics added). *See also State v. Cooper*, 386 S.C. 210, 218-22, 687 S.E.2d 62, 67-69 (Ct. App. 2009) (trial judge did not abuse his discretion by finding that witness was unavailable under Rule 804(A)(5), SCRE, where state was unable to secure the presence of a witness incarcerated in a Texas penitentiary through a normal out of state witness subpoena although it had unsuccessfully attempted to do so); *State v. Steadman*, 216 S.C. 579, 59 S.E.2d 168 (1950), *cert. denied*, 340 U.S. 850, *reh'g denied*, 340 U.S. 894 (1950).