

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

TYRONE M. BENN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001329

APPENDIX

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
 2 COUNTY OF CHARLESTON) CASE NO. 2015-GS-10-05844
 2015-GS-10-05846

3
 4 STATE OF SOUTH)
 4 CAROLINA,)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 TYRONE MALCOLM BENN,) Date: April 11, 2016-
 8 Defendant.) April 13, 2016

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11 B E F O R E:

12 The Honorable DEADRA JEFFERSON

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18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

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1 (The following proceedings were held
2 April 11, 2016 in re State v. Benn, Charleston
3 County Circuit Court, at 12:47 p.m.)

4 THE COURT: Does your client want a
5 formal arraignment?

6 MR. SMITH: No, Your Honor.

7 (Jury panel in 12:47 p.m.)

8 THE COURT: Ladies and gentlemen, I am
9 Deadra Jefferson. I'm one of the resident circuit
10 judges for the Ninth Judicial Circuit which is made
11 up of Charleston and Berkeley Counties.

12 I want to start off by apologizing to
13 you for you having to wait today. It's just been
14 one of those Mondays where everything that could
15 happen has happened, and we have tried the best
16 that we can to evaluate those circumstances and
17 dispose of them as efficiently as we could, keeping
18 in mind your time.

19 And while you've had to wait for jury
20 selection, I figure that's better than the
21 alternative of having you all to come back after
22 lunch or even having you come back tomorrow. So in
23 the grand scheme, we are trying to minimize the
24 amount of time that you have to spend here with us
25 at the courthouse.

1 So, again, please know that we do not
2 take your time for granted and we greatly
3 appreciate your patience.

4 We're going to select a jury for the
5 State of South Carolina v. Tyrone Malcolm Benn, and
6 those are Indictments 2014-GS-10-5844, which is an
7 Indictment for murder. And that Indictment alleges
8 as follows: That in Charleston County, on or about
9 July 12 of 2014, with malice aforethought, Tyrone
10 Malcolm Benn did kill and murder Samuel Cords by
11 means of shooting, and that Samuel Cords did die in
12 Charleston County as a proximate result thereof on
13 July 12 of 2014, alleging a violation of Code
14 Section 16-310 of the Code of Laws as Amended.

15 And Indictment 2014-GS-10-5846, an
16 Indictment for possession of a firearm during the
17 commission of a violent crime. And that Indictment
18 alleges that in Charleston County, South Carolina
19 on or about July 12, 2014, the defendant, Tyrone
20 Malcolm Benn, did posses a handgun during the
21 commission of or attempted commission of murder, a
22 violent crime, alleging this to be in violation of
23 Code Section 16-23-490 of the Code of Laws, and
24 alleging all of these actions to be against the
25 peace and dignity of the State of South Carolina.

1 We're going to go through a process
2 that is called voir dire, which is simply a legal
3 term meaning that I'm going to ask you some
4 questions so that the attorneys can more
5 effectively exercise their peremptory challenges in
6 jury selection.

7 If a questions applies to you, please
8 stand, in a loud and clear voice give us your name,
9 your juror number, an answer to the question if
10 applicable, and remain standing until I have
11 completed questioning you.

12 In advance of that process, if you
13 could take the time to look at your juror number so
14 that in the event a question applies to you, you
15 will know what your juror number is and be able to
16 ascertain that number quickly so that you don't
17 have to look around for that number.

18 While we are doing that, Im going to
19 ask counsel for the State to introduce themselves
20 and anyone assisting them in the trial of this
21 case, and also provide us with the names of the
22 lawyers assisting them from their office. I will
23 ask counsel for the defense to do the same thing,
24 and have your client stand and face the panel, and
25 also provide us with the names of the members of

1 his office.

2 Mr. Wetburn, you may proceed.

3 MR. WETBURN: Thank you. I'm Burns
4 Wetmore. I work for the Solicitor, Scarlett
5 Wilson, with me today is Chris Lietzow. The other
6 members in our office, reading the attorneys' names
7 are Scarlett Wilson, Bruce Durant, Marian Askins,
8 Jessica Baldwin, Mark Bourdon, Daniel Cooper,
9 Charles Condon, Ted Corvey, Shannon Elliott, Andrew
10 Evans, Lauren Frierson, Alex Ginsburg, Amy Harrell,
11 Debbie Herring-Lash, Alex Ziegler, Culver Kidd,
12 Nick Lewis, Stephanie Linder, Kelly LaPlante,
13 Denton Matthews, Scott Maynor, Jenna Newman, David
14 Osborne, Charlie Patrick, Anna Richter, Nina Savas,
15 Jennifer Shealy, Chad Simpson, Truc Trann, Richard
16 Waring, Tyler Whitaker, and Tod Williams. These
17 are all members of the Solicitor's Office.

18 THE COURT: Mr. Smith.

19 And Mr. Lietzow will be assisting you,
20 correct?

21 MR. WETMORE: Yes, ma'am.

22 MR. SMITH: Good morning, ladies and
23 gentlemen. My name is Ted Smith, I'm an Assistant
24 Public Defender. Assisting me will be Shirene
25 Hansotia. This is my client, Tyrone Malcolm Benn.

1 Other members of our office are Annie Andrews,
2 Karen Barker, Charles Cochran, Tammy Coppinger,
3 Brett Dunaway, Meghan Ehrlic, Mary Ford,
4 Christopher Geel, Patricia Kennedy, Jason King,
5 John Kozelski, Ben Lewis, Mike Loignon, Benjamin
6 Mack, Luke Malloy, Christina Parnell, Ashley
7 Pennington, Laurie Proctor, Mary Ellen Rankin,
8 Martha Kent Runey, Peter Shahid, Kelly Solar, Tim
9 Taylor, Tamara Van Pala, and Cassandra Woodson.

10 THE COURT: Thank you. You may take
11 your seat.

12 Ladies and gentlemen, if a question
13 applies to you, please stand, and in a loud and
14 clear voice give us your name and juror number and
15 an answer to the question if applicable, and remain
16 standing until I have completed questioning you.

17 And before we proceed, I need to ask
18 the State, what does the acronym S-A-C-D-C stand
19 for?

20 MR. WETMORE: Sheriff Al Cannon
21 Detention Center, the jail.

22 THE COURT: The detention center.

23 MR. WETBURN: Yes, ma'am.

24 THE COURT: Is there any member of the
25 panel related by blood or marriage to Tyrone

1 Malcolm Benn or Samuel Cords? If so, please stand
2 at this time.

3 THE JURY PANEL: (None)

4 THE COURT: Does any member of the
5 panel have a close personal, social or business
6 relationship with Tyrone Malcolm Benn, Samuel
7 Cords, or anyone who is related to Samuel Cords?
8 If so, please stand at this time.

9 Yes, sir; name and juror number?

10 PROSPECTIVE JUROR: My name is Kenneth
11 Matheny.

12 THE COURT: Do you know your juror
13 number?

14 PROSPECTIVE JUROR: 232 or 332.

15 THE CLERK: 232, Your Honor.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR: I know Samuel
18 Cords' family. I seen them outside.

19 THE COURT: How would you characterize
20 your relationship with them? Are you acquaintances,
21 close friends? How often do you see them?

22 PROSPECTIVE JUROR: Close friends.

23 THE COURT: So are you related?

24 PROSPECTIVE JUROR: My niece is related
25 to them.

1 THE COURT: Do you see them often?

2 PROSPECTIVE JUROR: Yes, I do.

3 THE COURT: Sir, do you feel that you
4 can be fair and impartial?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Sir, you will be excused
7 from the trial of this case only. That's number
8 232. You may take your seat.

9 The following are a list of potential
10 witnesses. I would ask that you listen very
11 carefully, Raed, R-A-E-D, Alabbadi,
12 A-L-A-B-B-A-D-I, Alex Abdeltif, A-B-D-E-L-T-I-F,
13 Jessica West Tumbleston, Allison Pryor, Ada Todd,
14 Zaquan Watson, Vesha Pusha, P-U-S-H-A, Alex Rosen,
15 Josh Cheney, Tom Walters, Andrew McGauvran, Lisa
16 Kubiscsko, Joseph Niemiec, Charles Chip Martin,
17 Rebecca Bailey, Michael Cook, Mark Evans, Travis
18 Repman, either currently employed or formerly
19 employed with the North Charleston Police
20 Department, Dr. Cynthia Schandl, Medical University
21 of South Carolina, Kathryn Farmer, Kevin Sherbine
22 and Mark Lipsey of the Charleston County Detention
23 Center, James Green, South Carolina Law Enforcement
24 Division, Investigator Matthew Davis of the Public
25 Defender's Office, and Kevin Sherbine, Charleston

1 County Sheriff's Office.

2 Is there any member of the panel
3 related by blood or marriage to any of the people
4 that I have listed, or does anyone have a close
5 personal or social relationship with any of these
6 individuals? If so, please stand at this time.

7 THE JURY PANEL: (None)

8 THE COURT: Has any member of the panel
9 ever been represented by any of the attorneys
10 involved in this case or any of the lawyers in
11 their offices? If so, please stand at this time.

12 THE JURY PANEL: (None)

13 THE COURT: Is there any member related
14 by blood or marriage to, or have a close personal
15 or social relationship with any of the attorneys
16 involved in this case, any of the lawyers in their
17 offices, or any person employed in any capacity in
18 their offices? If so, please stand at this time.

19 THE JURY PANEL: (None)

20 THE COURT: Has any member of the panel
21 formed or expressed an opinion about any of the
22 issues or matters involved in this case? If so
23 please stand at this time.

24 THE JURY PANEL: (None)

25 THE COURT: Is there any member of the

1 panel aware of any bias or prejudice towards the
2 State or defense in this case? If so, please stand
3 at this time.

4 THE JURY PANEL: (None)

5 THE COURT: Is there any member of the
6 panel a member of the grand jury which issued the
7 Indictments in this case? If so, please stand at
8 this time.

9 THE JURY PANEL: (None)

10 THE COURT: Is there any member of the
11 panel a member of, or contributor to any group
12 which has as its primary concern the promotion of
13 law enforcement or victims' rights? These groups
14 would include, but are not limited to, Mother's
15 Against Drunk Driving, Students Against Drunk
16 Driving, Citizens Against Violent Crimes, People
17 Against Rape, Citizens Advocating a Return to
18 Decency and Ethics, Parents Empowered to Save
19 Teens, or any other type of community watch group?
20 If so, please stand at this time.

21 THE JURY PANEL: (None)

22 THE COURT: Is there any member of the
23 panel who has a moral, philosophical, or religious
24 opposition to sitting in judgment of a fellow human
25 being? If so, please stand at this time.

1 THE JURY PANEL: (None)

2 THE COURT: This action is alleged to
3 have taken place on July 12th of 2014. Is there
4 any member of the panel who has any personal
5 knowledge of the alleged facts and circumstances of
6 this case? If so, please stand at this time.

7 THE JURY PANEL: (None)

8 THE COURT: Has any member of the panel
9 watched, read, or listened to any media accounts
10 about this case, that includes any newspaper
11 reports, any reports on the television, radio,
12 Internet, or otherwise? If so, please stand at
13 this time.

14 THE JURY PANEL: (None)

15 THE COURT: Is there any member of the
16 panel who has had what they would characterize as
17 an unpleasant experience with law enforcement such
18 that it would affect your ability to be fair and
19 impartial? If so, please stand at this time.

20 THE JURY PANEL: (None)

21 THE COURT: It there -- and I need you
22 to listen carefully to the way this question is
23 phrased because it is not related to current
24 employment, it is former employment. Is there any
25 member of the panel who was formerly employed in

1 law enforcement? If so, please stand at this time.

2 THE JURY PANEL: (None)

3 THE COURT: Is there any member of the
4 panel who has any relatives who are employed
5 currently in law enforcement? If so, please stand
6 at this time.

7 THE JURY PANEL: (None)

8 THE COURT: Is there any member of the
9 panel who has been the victim of a violent crime?
10 If so, please stand at this time.

11 THE JURY PANEL: (None)

12 THE COURT: Is there any member who
13 has had a close family member affected by -- who
14 has been the victim of a crime of violence such
15 that it would affect your ability to be fair and
16 impartial? If so, please stand at this time.

17 THE JURY PANEL: (None)

18 THE COURT: Is there any member of the
19 panel who has a moral, philosophical, or religious
20 opposition to the alleged crime of murder, such
21 that it would affect your ability to be fair and
22 impartial? If so, please stand at this time.

23 THE JURY PANEL: (None)

24 THE COURT: Is there any member of the
25 panel a member of the Fully Informed Jury

JURY SELECTION

1 organization? If so, please stand at this time.

2 THE JURY PANEL: (None)

3 THE COURT: Does any member know of any
4 reason whatsoever why he or she should not serve as
5 a juror in this case with particular emphasis being
6 placed on the ability to be fair and impartial to
7 both the State and the defense? If so, please
8 stand at this time.

9 THE JURY PANEL: (None)

10 THE COURT: Are there any additional
11 questions? From the State?

12 MR. WETBURN: No, Your Honor.

13 THE COURT: From the defense?

14 MR. SMITH: No, Your Honor.

15 THE COURT: Strikes are five and ten.
16 Who is going to demonstrate for me?

17 Ladies and gentlemen, if your name is
18 called, please come forward with all of your
19 personal belongings and stand where the bailiff is
20 standing and turn facing the panel until we either
21 excuse you or seat you as a juror.

22 Again, we appreciate your patience, and
23 this process we hope will go as quickly as
24 possible. We just have to create the list. We
25 create a list of your names totally by random.

JURY SELECTION

1 Just as a point of historical
2 reference, the Statute used to require a blind
3 person to do it. We had this huge barrel and we'd
4 put everybody's names in it. It used to take a
5 whole lot more time. We had to fold everybody's
6 names on a little sheet of paper and put them in
7 these little capsules, and they had this huge thing
8 and somebody would turn it, and somebody from the
9 Commission for the Blind would come and pick each
10 name.

11 We now do it by computer, but the crazy
12 part about it is it does the same almost
13 statistically as when we had a blind person. I'm
14 not math inclined. If I were, I would be able to
15 figure it out, but it's far beyond my ability so --
16 I'm sure somebody will figure it out.

17 So we have to give the computer time to
18 do what we used to do manually. So if you would
19 just bear with us one moment while we complete that
20 task.

21 Ladies and gentlemen, if you would give
22 the Clerk your attention and follow the original
23 instructions I gave you regarding coming forward
24 until we either seat or excuse you as a juror.

25 Sam, you may proceed.

JURY SELECTION

1 THE CLERK: Juror No. 327, Ms.

2 Schneider. What say you for the State?

3 MR. WETMORE: Please present Ms.

4 Schneider.

5 THE CLERK: What say you for the

6 defense?

7 MR. SMITH: Please seat the juror.

8 THE CLERK: If you would please have a

9 seat in the jury box. You have been selected as a
10 juror in the trial of this case.

11 Juror No. 379, Mr. West. What say you
12 for the State?

13 MR. WETBURN: Please present Mr. West.

14 THE CLERK: What say you for the
15 defendant?

16 MR. SMITH: Please seat this juror.

17 THE COURT: Please have a seat in the
18 jury box. You have been selected as a juror in the
19 trial of this case.

20 Juror No. 277, Mr. Noren. What say you
21 for the State?

22 MR. WETBURN: Please present Mr. Noren.

23 THE CLERK: What say you for the
24 defense?

25 MR. SMITH: Please seat this juror.

JURY SELECTION

1 THE CLERK: Please have a seat in the
2 jury box. You have been selected as a juror in the
3 trial of this case.

4 Juror No. 358, Mr. Thorsell. What say
5 you for the State?

6 MR. WETBURN: Please present Mr.
7 Thorsell.

8 THE CLERK: What say you for the
9 defense?

10 MR. SMITH: Please excuse the juror.

11 THE CLERK: Please return to your seat.
12 You have been excused as a juror in the trial of
13 this case.

14 Juror 200, Ms. Kempka. What say you
15 for the State?

16 MR. WETBURN: Please present Ms.
17 Kempka.

18 THE CLERK: What say you for the
19 defense?

20 MR. SMITH: Please seat this juror.

21 THE CLERK: Please have a seat in the
22 jury box. You have been selected as a juror in the
23 trial of this case.

24 Juror 344, Ms. Smith. What say you for
25 the State?

JURY SELECTION

1 MR. WETMORE: Please present Ms. Smith.

2 THE CLERK: What say you for the
3 defense?

4 MR. SMITH: Please excuse the juror.

5 THE CLERK: Please return to your seat.
6 You have been excused as a juror in the trial of
7 this case.

8 Juror number 314, Ms. Roberts. What
9 say you for the State?

10 MR. WETBURN: Please present Ms.
11 Roberts.

12 THE CLERK: What say you for the
13 defense?

14 MR. SMITH: Please excuse the juror.

15 THE CLERK: Please return to your seat.
16 You have been excused as a juror in the trial of
17 this case.

18 Juror No. 136, Ms. Gathers. What say
19 you for the State?

20 MR. WETBURN: Please present Ms.
21 Gathers.

22 THE CLERK: What say you for the
23 defense?

24 MR. SMITH: Please seat this juror.

25 THE CLERK: Please have a seat in the

JURY SELECTION

1 jury box. You have been selected as a juror in the
2 trial of this case.

3 Juror No. 70, Mr. Colvin. What say you
4 for the State?

5 MR. WETBURN: Please present Mr.
6 Colvin.

7 THE CLERK: What say you for the
8 defense?

9 MR. SMITH: Please excuse the juror.

10 THE CLERK: Please return to your seat.
11 You have been excused as a juror in the trial of
12 this case.

13 Juror No. 217, Ms. Lindner. What say
14 you for the State?

15 MR. WETBURN: Please present Ms.
16 Lindner.

17 THE CLERK: What say you for the
18 defense?

19 MR. SMITH: Please seat this juror.

20 THE CLERK: Please have a seat in the
21 jury box. You have been selected as a juror in the
22 trial of this case.

23 Juror No. 36, Ms. Brock. What say you
24 for the State?

25 MR. WETMORE: Please present Ms. Brock.

JURY SELECTION

1 THE CLERK: What say you for the
2 defense?

3 MR. SMITH: Please seat this juror.

4 THE CLERK: Please have a seat in the
5 jury box. You have been selected as a juror in the
6 trial of this case.

7 Juror No. 203, Ms. King. What say you
8 for the State?

9 MR. WETBURN: Please present Ms. King.

10 THE CLERK: What say you for the
11 defense?

12 MR. SMITH: Please excuse the juror.

13 THE CLERK: Please return to your seat.
14 You have been excused as a juror in the trial of
15 this case.

16 Defendant has exhausted five of its ten
17 strikes.

18 Juror No. 375, Mr. Ward. What say you
19 for the State?

20 MR. WETBURN: Please present Mr. Ward.

21 THE CLERK: What say you for the
22 defense?

23 MR. SMITH: Please seat this juror.

24 THE CLERK: Please have a seat in the
25 jury box. You have been selected as a juror in the

JURY SELECTION

1 trial of this case.

2 Juror No. 341, Mr. Skipper. What say
3 you for the State?

4 MR. WETMORE: Judge, may we approach
5 real quick?

6 THE COURT: Uh-huh.

7 (Bench conference)

8 MR. WETMORE: Just to let the Court
9 know, Mr. Skipper lives in my neighborhood, casual
10 acquaintances. He didn't stand or anything, so...

11 THE COURT: He may not know you.

12 MR. WETMORE: I think he does. I think
13 he does. He waved to me this morning.

14 THE COURT: Oh, okay. Thank you.

15 (End of bench conference.)

16 THE COURT: You may proceed.

17 MR. WETMORE: Please present Mr.
18 Skipper.

19 THE CLERK: What say you for the
20 defense?

21 MR. SMITH: Please excuse the juror.

22 THE CLERK: Please return to your seat.
23 You have been excused as a juror in the trial of
24 this case.

25 Juror No. 160, Ms. Hall. What say you

JURY SELECTION

1 for the State?

2 MR. WETBURN: Please present Ms. Hall.

3 THE CLERK: What say you for the
4 defense?

5 MR. SMITH: Please seat this juror.

6 THE CLERK: Please have a seat in the
7 jury box. You have been selected as a juror in the
8 trial of this case.

9 Juror No. 351, Ms. Tanner. What say
10 you for the State?

11 MR. WETBURN: Please present Ms.
12 Tanner.

13 THE CLERK: What say you for the
14 defense?

15 MR. SMITH: Please excuse the juror.

16 THE CLERK: Please return to your seat.
17 You have been excused as a juror in the trial of
18 this case.

19 Juror No. 140, Ms. Gingerich. What say
20 you for the State?

21 MR. WETBURN: Please present Ms.
22 Gingerich.

23 THE CLERK: What say you for the
24 defense?

25 MR. SMITH: Please seat this juror.

JURY SELECTION

1 THE CLERK: Please have a seat in the
2 jury box. You have been selected as a juror in the
3 trial of this case.

4 Juror No. 246, Mr. McQueary. What say
5 you for the State?

6 MR. WETBURN: Please present Mr.
7 McQueary.

8 THE CLERK: What say you for the
9 defense?

10 MR. SMITH: Please excuse the juror.

11 THE CLERK: Please return to your seat.
12 You have been excused as a juror in the trial of
13 this case.

14 Defendant has two strikes remaining.

15 Juror No. 27, Ms. Blue. What say you
16 for the State?

17 MR. WETBURN: Please present Ms. Blue.

18 THE CLERK: What say you for the
19 defense?

20 MR. SMITH: Please seat this juror.

21 THE CLERK: Please have a seat in the
22 jury box. You have been selected as a juror in the
23 trial of this case.

24 Juror No. 28, Ms. Bocklet. What say
25 you for the State?

JURY SELECTION

1 MR. WETBURN: Please present Ms.

2 Bocklet.

3 THE CLERK: What say you for the

4 defense.

5 MR. SMITH: Please excuse the juror.

6 THE CLERK: Please return to your seat.

7 You have been excused as a juror in the trial of

8 this case.

9 And the defendant has one strike

10 remaining.

11 Juror No. 77, Ms. Cox. What say you

12 for the State?

13 MR. WETBURN: Please present Ms. Cox.

14 THE CLERK: What say you for the

15 defense?

16 MR. SMITH: Please seat this juror.

17 THE CLERK: Please have a seat in the

18 jury box. You have been selected as a juror in the

19 trial of this case.

20 THE COURT: Two alternates, two and

21 one.

22 THE CLERK: Now selecting for the first

23 of our two alternates; strikes are one and two.

24 Juror No. 81, Mr. White. What say you

25 for the State?

JURY SELECTION

1 MR. WETBURN: Please excuse Mr. White.

2 THE CLERK: Please return to your seat.

3 You have been excused as a juror in the trial of
4 this case.

5 The State has exhausted its one strike.

6 Juror No 188, Mr. Jackson. Any
7 challenge from the State?

8 MR. WETMORE: No challenge.

9 THE CLERK: What say you for the
10 defense?

11 MR. SMITH: Beg the Court's indulgence.
12 Please seat this juror.

13 THE CLERK: Please have a seat in the
14 jury box. You have been selected as an alternate
15 in the trial of this case.

16 Now, selecting for the second
17 alternate; strikes are one and two.

18 Juror No. 51, Ms. Bullock. What say
19 you for the State?

20 MR. WETBURN: Please present this
21 juror.

22 THE CLERK: What say you for the
23 defense?

24 MR. SMITH: Please excuse the juror.

25 THE CLERK: Please return to your seat.

JURY SELECTION

1 You have been excused as a juror in the trial of
2 this case.

3 Defendant has one strike remaining for
4 the second alternate.

5 Juror No. 296, Ms. Quintero. What say
6 you for the State?

7 MR. WETBURN: Please present Ms.
8 Quintero.

9 THE CLERK: What say you for the
10 defense?

11 MR. SMITH: Please excuse the juror.

12 THE CLERK: Please return to your seat.

13 You have been excused as a juror in the trial of
14 this case.

15 Defendant has exhausted all of its
16 strikes for this alternate.

17 Juror No. 171, Mr. Hasson. What say
18 you for the State?

19 MR. WETBURN: Please present Mr.
20 Hasson.

21 THE CLERK: Any challenge from the
22 defense?

23 MR. SMITH: No challenge.

24 THE CLERK: Please have a seat in the
25 jury box. You have been selected as an alternate

JURY SELECTION

1 in the trial of this case.

2 THE COURT: Thank you, sir.

3 Any motions regarding the selection of
4 the jury? From the State?

5 MR. WETMORE: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Ladies and gentlemen,
9 you're excused until 2:30, at which time you are to
10 return to the jury assembly room. Again, we know
11 this is a long day for you, but we try to get as
12 much done today as possible so that we don't have
13 to bring you up to the courthouse every day for the
14 purpose of jury selection.

15 If you're not selected today, we will
16 just need you to come -- call the jury information
17 line after 6:00 each evening. Both of the cases --
18 and actually this is a particularly good week for
19 jury service for both civil and criminal court
20 because we only have two criminal cases to try and
21 maybe one or two very short civil cases.

22 So, again, we appreciate your patience.
23 Have a great lunch and please return to the jury
24 assembly room at 2:30.

25 (Jury panel out.)

1 THE COURT: Ladies and gentlemen,
2 you've been selected for the case of the State of
3 South Carolina v. Benn. If you can give us a few
4 moments to discuss some scheduling matters, I will
5 let you know how we will be proceeding.

6 I have to finish a probation violation
7 docket, which I still have about ten people I need
8 to dispose of before we can actually go to lunch,
9 and then I anticipate that there are some pretrial
10 matters in this case. So we may not begin this
11 trial until tomorrow, in which case I will be able
12 to let you all go for the remainder of the day, but
13 I need to discuss that with the lawyers to make
14 sure that my time frame is accurate.

15 During this break, please do not
16 discuss the case among yourselves. Please do not
17 speculate about what you think it may or could be
18 about. And if you would stand for me please and
19 raise your right hand so that the clerk can
20 administer the oath to you.

21 THE JURY,

22 Was sworn:

23 THE CLERK: You may be seated. If
24 there is any juror that cannot adhere to this oath,
25 please stand.

1 Please let the record reflect that all
2 jurors are sworn.

3 THE COURT: Ladies and gentlemen, I'm
4 going to turn you over to the bailiff who will get
5 your cell phone numbers, and by the time they have
6 completed that process and shown you how you will
7 return to your jury room and come back into the
8 courthouse, we should be done talking about our
9 scheduling matters.

10 I'm appointing 327 as the foreperson
11 and I will give you some instructions about that
12 before we begin the trial. If you will go with the
13 bailiff, please.

14 (Jury out, 1:22 p.m.)

15 THE COURT: You can let the other
16 probation folk back in the courtroom.

17 I have a Jackson v. Denno. How many
18 witnesses do we have on that?

19 MR. WETBURN: Judge, there is only one
20 witness, but the detective for that hearing is
21 coming down to us from Gastonia, and he'll be here
22 this evening. I told him to be here first thing in
23 the morning. It's tough to get everybody here with
24 their travel accommodations.

25 THE COURT: Well, he's driving from

1 Gastonia. That's right above Spartanburg.

2 MR. WETBURN: Yes, ma'am. He's driving
3 down and we've made reservations for him in a hotel
4 tonight and tomorrow.

5 THE COURT: The admissibility of his
6 prior record I wouldn't take up until it became an
7 issue as to whether he's going to testify at the
8 time I advise him of his rights. That then leaves
9 us with a motion to exclude prior bad acts, which I
10 also would not hear until such time that the State
11 seeks to introduce it, which means we would take
12 that up in camera outside of the jury's presence,
13 as well as any jail calls. We would handle that
14 prior to the State seeking to introduce those phone
15 calls.

16 Now, I assume there is no objection to
17 sequestering the witnesses?

18 MR. WETMORE: None, Your Honor.

19 THE COURT: Except of course those who
20 cannot be sequestered by statute.

21 MR. WETMORE: That's correct.

22 THE COURT: What other witnesses do you
23 have ready to go forward, Mr. Wetmore?

24 MR. WETBURN: Judge, my very first
25 witness has some car trouble and she's in Columbia

1 stuck. I sent my investigator to go get her. It
2 would probably be the first thing in the morning
3 for her as well.

4 I would request, and I've talked to Mr.
5 Smith and he has no objection to --

6 THE COURT: Yeah, you all have no
7 objection, but --

8 MR. WETMORE: -- starting testimony in
9 the morning.

10 THE COURT: We have a lot of witnesses
11 and you all should have thought about this ahead of
12 time. So what witnesses on this list do you not
13 plan to call, or do you still plan to call all of
14 these witnesses?

15 MR. WETBURN: Judge, I'm going to call
16 about ten witnesses. It's going to be a much
17 shorter case. There were some developments with
18 the DNA that made it dramatically shorter. It will
19 be about a two- to three-day case. Given that and
20 trying to, you know, spend the best tax dollars on
21 accommodations and all, I hope we can start
22 testimony tomorrow.

23 THE COURT: How many are you not
24 calling? I have a list of 23 for you and two for
25 the defense.

1 MR. WETMORE: Judge, I anticipate
2 calling about 12.

3 THE COURT: I need to know who from
4 this list you are not calling. I have a list of
5 23.

6 MR. WETMORE: Judge, if everything goes
7 as planned, I intend to call Tumbleston --

8 THE COURT: Tell me who you're not
9 calling. I have Raed Alabbadi --

10 MR. WETBURN: Let me do it that way
11 then.

12 THE COURT: Pardon me?

13 MR. WETBURN: Let me get out the
14 witness list and do it that way then. I'm hoping
15 not to call Alabbadi --

16 THE COURT: That's Maher?

17 MR. WETMORE: -- Abdeltif, Pryor, Todd
18 --

19 THE COURT: I'm sorry, I couldn't hear
20 you.

21 MR. WETMORE: These are the ones I'm
22 planning on not calling.

23 THE COURT: Okay. I got you.

24 MR. WETMORE: I'm trying to kind of
25 streamline this, so I'll tell you the ones I'm

1 tentatively striking.

2 THE COURT: Okay.

3 MR. WETMORE: Pryor, Todd, then going
4 down to Rebecca Bailey, tentatively striking her,
5 tentatively striking Mark Evans, tentatively
6 striking Michael Cook of North Charleston. We will
7 only use one of Sherbine or Lipsey, those two are
8 of the same role. So one of those two we will
9 strike depending on when they're reached. Probably
10 don't need to call Josh Cheney, James Green, or Tom
11 Walters. Tom Walters is my investigator.

12 I think we've streamlined it a good
13 bit, Judge. If you could see your way to us
14 starting in the morning I would appreciate it.

15 THE COURT: And do you plan to call
16 these witnesses, Mr. Smith, Mr. Davis and
17 Mr. Sherbine -- Mr. Sherbine's already on the list.

18 MR. SMITH: He's on the list.

19 THE COURT: So that's a duplicate.

20 MR. SMITH: That's a duplicate.

21 MR. WETBURN: Mr. Sherbine is available
22 starting on Wednesday, but his sergeant, who is
23 Lipsey, is available Monday or Tuesday. So that's
24 why I said only one of those two will we call.

25 MR. SMITH: We could -- certainly if

1 the State intended to call either one of those, we
2 would get what we needed then. Mr. Davis is my
3 investigator. I would only anticipate needing him
4 if there is some testimony from a couple of
5 witnesses that is different in any substantial way
6 from the statements they gave.

7 THE COURT: I had another question,
8 because I had a note that we continued this
9 previously to deal with potential issues of your
10 client's competency. Has that been resolved, or
11 was that a wrong note from another case?

12 MR. SMITH: It must be from another
13 case.

14 THE COURT: I think it might have been
15 an inaccurate notation that my secretary left on
16 here without realizing it.

17 You don't have any question about his
18 competency?

19 MR. SMITH: No, Your Honor.

20 THE COURT: What we will do is adjourn
21 until 9:30 on tomorrow; however, if you have any
22 exhibits that need to be premarked, you need to do
23 that today, before you leave. We are going to
24 finish up probations, we're going to take lunch,
25 and then we'll let you know what time we're

1 returning from lunch. And I expect you to meet
2 with my court reporter at that time and have her
3 premark everything so we don't have to do that in
4 the morning.

5 MR. WETBURN: Judge, I'll be glad to
6 mark everything. Also, if you wanted to do opening
7 statements, I'm fine to do that.

8 THE COURT: I think that's a waste.
9 I'm not going to have a jury go to lunch and have
10 them come back for 15 minutes.

11 MR. WETBURN: Yes, ma'am.

12 THE COURT: Please bring in the jury.

13 I was not aware of any newspaper
14 articles this morning, just from 2014 -- looks like
15 both articles were from 2014. I had my secretary
16 do a search and there were not any in today's
17 paper, at least that she was able to find from this
18 morning.

19 And I need the statements that you all
20 intend to introduce so I can look at them in
21 advance of the hearing.

22 MR. WETMORE: Judge, the only statement
23 -- there was a recorded audio video statement, and
24 Mr. Benn talked to the police at length about all
25 kinds of things.

1 THE COURT: Well, I mean, if you're
2 seeking to introduce any of it, I need it.

3 MR. WETMORE: Exactly. And the only
4 thing that I was going to introduce, Judge, is when
5 they finally stopped the discussion they said,
6 listen -- because this case was caught on
7 surveillance tape. And they confronted him and
8 they said, we've got you on surveillance video and
9 you're going to be charged.

10 At that point he said, just take me to
11 jail. And that's the only part that I would admit
12 -- or seek to admit.

13 THE COURT: Wait one second. They're
14 brining the jury in.

15 MR. WETBURN: That's it.

16 (Jury in, 1:27 p.m.)

17 THE BAILIFF: All jurors are present.

18 THE COURT: Thank you. You may be
19 seated. Ladies and gentlemen, due to some
20 scheduling challenges with witness availability,
21 we're going to begin this trial in the morning at
22 9:30. It doesn't make sense to send you to lunch
23 and bring you back for 15 minutes for opening
24 instruction and argument, and then restart in the
25 morning. We'll just start fresh in the morning.

1 During this break, please do not
2 discuss the case in any manner whatsoever. Please
3 do not watch, read, or listen to any media accounts
4 about this case, that includes newspaper, radio,
5 television, and especially the Internet. You are
6 bound by your oath to decide this case by the
7 testimony you hear from the lips of the sworn
8 witnesses, and you are not to rely on anything that
9 would be outside the evidence of this case. And I
10 would ask that you strictly abide by those
11 instructions.

12 Please do not post any comments
13 regarding your status on any social networking
14 sites. You would be amazed at the people who watch
15 and look at Instagram, Snapchat, Facebook, Twitter,
16 and call our jury coordinator to let us know what
17 you said. I would hate for an innocent comment to
18 be misinterpreted, so please refrain from making
19 any comments regarding your status on any social
20 networking sites during your jury service.

21 Also, please don't have any contact
22 with anyone in or about the courthouse. Even an
23 innocent conversation can be misinterpreted and
24 misconstrued. You see these little bubbles that
25 are everywhere? Those are high-definition cameras

1 that record everything we do. They're in the
2 elevators, the snack room, and the hallways. And
3 so, again, we would not want an innocent
4 conversation to be misinterpreted.

5 And, in addition to that, people will
6 also record you on their cell phones and tablets.
7 People tend to think that you're discussing the
8 case instead of having an innocent conversation.

9 We will resume at 9:30 in the morning.
10 You will come directly to your jury room in the
11 morning and we will resume as soon as everyone has
12 arrived. We will start with opening instruction,
13 opening arguments, and begin the witnesses.

14 You all have been incredibly patient
15 with us today. We appreciate it. We do not take
16 your time for granted. We could not do what we do
17 without having people really willing to donate
18 their time to us for jury service. At the end of
19 the process, after the dust has cleared, I hope
20 that it will be an educational process for you. I
21 hope that you will have firsthand knowledge of the
22 system and how it really works, other than what you
23 see on television.

24 Hope you have a great day. See you at
25 9:30 in the morning. You're excused with the

1 Court's thanks.

2 (Jury out, 1:34 p.m.)

3 THE COURT: I am probably going to
4 finish up probations about 2:00. Come back about
5 3:15 for the Court Reporter to mark exhibits.

6 MR. LIETZOW: Your Honor, may I
7 approach?

8 THE COURT: Sure.

9 MR. LIETZOW: I'm handing you a copy of
10 the State's brief to one of the defense's motions.
11 I've already provided Mr. Smith a copy of that. I
12 will e-mail you copies as soon as we get back to --

13 THE COURT: I don't need you to e-mail
14 a copy. Thank you.

15 MR. WETBURN: Thank you, Judge. I
16 appreciate your patience.

17 THE COURT: Not a problem. See you all
18 at 9:30.

19 (These proceedings were recessed at
20 1:35 p.m., to be continued at a later date and
21 time.)

22

23

24

25

1 (The following proceeding were had in
2 re State v. Benn, 4/12/2016, Charleston County
3 Circuit Court, 9:44 a.m.)

4 (STATE EXH. 1 - 14, Photographs, were
5 marked for identification.)

6 (STATE EXH. 15 - 17, Shell casings,
7 were marked for identification.)

8 (STATE EXH. 18, Hat, was marked for
9 identification.)

10 (STATE EXH. 19, Photograph, was marked
11 for identification.)

12 (STATE EXH. 20, Shoes, was marked for
13 identification.)

14 (STATE EXH. 21, Photograph, was marked
15 for identification.)

16 (STATE EXH. 22, Bullet, was marked for
17 identification.)

18 (STATE EXH. 23 - 33, Photographs, were
19 marked for identification.)

20 (STATE EXH. 34, CD, jail calls, was
21 marked for identification.)

22 (STATE EXH. 35, CD, was marked for
23 identification.)

24 (STATE EXH. 36, Transcript of jail
25 calls, was marked for identification.)

1 (STATE EXH. 37, CD, was marked for
2 identification.)

3 MR. WETMORE: Judge, we just premarked
4 everything.

5 THE COURT: The purpose of premarking
6 is, I wanted to know what you agree to and what you
7 didn't agree to.

8 MR. WETMORE: Okay. I think there was
9 a limited number that --

10 THE COURT: Just tell me the numbers
11 you've agreed on.

12 MR. SMITH: Your Honor, we have
13 objections to --

14 THE COURT: I don't need to know your
15 objections. I need to know what you've agreed to.
16 You'll have to make a contemporaneous objection
17 when they seek to admit the document.

18 MR. SMITH: Yes, Your Honor. We agree
19 to number 1, 2 through 11 --

20 THE COURT: That's 1 thorough 11.

21 MR. SMITH: One through 11, then 13 and
22 14, and then 15 through 33.

23 THE COURT: So State's 1 through 11, 13
24 and 14, and 15 through 33 will be marked and
25 admitted without objection; is that correct? From

1 the State?

2 MR. WETMORE: Yes, Your Honor.

3 THE COURT: From the defense?

4 MR. SMITH: Yes, Your

5 Honor.

6 (STATE EXH. 1 - 11, 13, 14, 15 - 33 in

7 evidence.)

8 THE COURT: Do we have notebooks and

9 pens for the jurors?

10 (A recess transpired.)

11 THE COURT: Does the defense have any

12 exhibits?

13 MR. SMITH: No, Your Honor.

14 THE COURT: My next question becomes,

15 does the defense have any objection to the

16 admission of any of the statements the State seeks

17 to introduce in the video of the defendant's

18 statement.

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: And what would be the basis

21 of those objections? They're not inculpatory, I've

22 listened to them. They don't say what Mr. Wetmore

23 says they say, it's his interpretation of what they

24 say, but I don't think they're particularly

25 inculpatory.

1 MR. SMITH: Your Honor, I believe, at
2 least from my reading of Detective Redman's report,
3 is that my client asked for an attorney and the
4 admissions were made --

5 THE COURT: We only listened to the
6 parts where Mr. Wetmore indicated he sought to
7 introduce it. So we only listened to the time
8 stamps that he gave us because it's a lengthy --

9 MR. SMITH: It is, and I think --

10 THE COURT: So if you give me the time
11 and date stamp where you believe he, after being
12 Mirandized, asked for an attorney, I need to look
13 at that as well. Do you have that time stamp at
14 the part of the video?

15 MR. SMITH: I think that I do, Your
16 Honor.

17 THE COURT: Do you want to take a
18 moment to look for it?

19 MR. SMITH: If I could just take a
20 minute.

21 Your Honor, I believe it's about three
22 minutes prior to the --

23 THE COURT: I need the exact time that
24 you're talking about so that I can -- because I
25 don't have the ability or luxury for the timing of

1 what I'm looking for. I need to know the time that
2 you are referring to so I can either fast forward
3 or rewind it to that portion of the video.

4 MS. HANSOTIA: Is it okay if I try to
5 find it?

6 THE COURT: I think that would be fine
7 because I may start with something else. I don't
8 know that I'm going to --

9 MS. HANSOTIA: Okay.

10 THE COURT: -- wait for you to do that.

11 MR. SMITH: I apologize, Your Honor, I
12 thought I had that written down.

13 THE COURT: Is there anything else we
14 need to take up before we begin with opening
15 instructions and argument? From the State?

16 MR. WETMORE: Judge, I don't have any
17 motions. I just have the witness present for the
18 Jackson v. Denno, if you wanted to do that.

19 Do we need to do that before or can we
20 do that in camera when you seek to introduce that?

21 MR. WETMORE: Judge, that is fine with
22 me. And just so the record is clear, the only
23 statement I was going to ask about is when he --
24 towards the end of the interview he confronts him
25 and says that we have you on video and we're going

1 to, in fact, arrest you.

2 THE COURT: You need to tell me exactly
3 what time and date stamp because it doesn't really
4 --

5 MR. WETMORE: Judge, it's written on
6 the disk that I gave --

7 THE COURT: We looked at that and it
8 doesn't say --

9 MR. WETMORE: -- the law clerk. If I
10 can see it, I'll -- do you have the cover still?
11 It's -- I wrote the time on the top here. It's at
12 4:21 p.m., or 1 minute -- 1 hour and 30 minutes
13 into it. When it becomes evident that -- the
14 detective says, we got you on video and we're going
15 to charge you, he says, just take me to jail.

16 And the detective stands up and says,
17 I'm going to go get a booking sheet. Obviously,
18 the jury can take that however they want to take it
19 --

20 THE COURT: I think that's your
21 interpretation of what was said, but I don't think
22 those are the words that were actually used.

23 MR. WETMORE: All right, Judge. Well
24 --

25 THE COURT: I listened to it, but I

1 don't think that's actually what was -- I think
2 that's your interpretation and your extrapolation.
3 He simply says, basically, are you going to charge
4 me and then take me to jail or are you going to get
5 a search warrant? He doesn't react to them saying
6 he has a video.

7 MR. WETMORE: I was just going to
8 introduce those words, take me to jail. The jury
9 --

10 THE COURT: I don't know how that's
11 inculpatory.

12 MR. WETMORE: The jury can weigh it
13 however they want. My argument would be, you know,
14 hey, this is --

15 THE COURT: There's no different than
16 when you're on the side of the highway and a police
17 officer or a highway patrolman is trying to have a
18 long protracted discussion with you and you're on
19 the way somewhere, and you're like, give me the
20 ticket.

21 MR. WETMORE: Sure. And --

22 THE COURT: That doesn't mean you're
23 guilty of speeding. That just means you're wasting
24 my time right now and I need you to do what you're
25 going to do so I can get on to what I need to do.

1 MR. WETMORE: Yes, ma'am.

2 THE COURT: I don't know that that's
3 necessarily inculpatory. Now, would I handle it
4 that way? Probably not. Might I be thinking it in
5 my head? Absolutely. Do most people do that these
6 days? Yes. They're not going to have a whole
7 protracted conversation on the side of the highway,
8 because most of us know by now an officer's already
9 decided whether he's going to give you a ticket or
10 a warning before he stops us.

11 So, you know, most people, especially
12 men, are going to say, give me the ticket if you're
13 going to give me the ticket. It doesn't mean that
14 you're speeding. It just means, I've just decided
15 I'm going to play this out and defend myself in
16 another arena and I'm not going to spend a whole
17 lot of my time dallying with you on the side of the
18 road. I don't know that it's necessarily
19 inculpatory.

20 MR. WETMORE: And, Judge --

21 THE COURT: The way I've listened to
22 the tape it's more like, okay, we've spent all the
23 time we're going to spend on this. Either you're
24 going to arrest me or you're not. And if you're
25 going to arrest me, do it.

1 MR. WETMORE: And, Judge, they may
2 agree with you, but my argument would be --

3 THE COURT: Well, it's not a matter of
4 agreeing or disagreeing. We have to determine if
5 the statement is inculpatory. It doesn't come in
6 just because he said it and he was Mirandized. It
7 has to have some probative value. So I'll listen
8 to it again and we can deal with it.

9 Mr. Smith, do you have any objection to
10 us taking up the Jackson v. Denno at the time the
11 State seeks to introduce the statement?

12 MR. SMITH: No, Your Honor.

13 THE COURT: Okay. So then we can go
14 ahead and proceed with opening argument and opening
15 instruction? From the State?

16 MR. WETMORE: Yes, Your Honor.

17 THE COURT: From the defense?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: And who is the State's
20 first witness going to be?

21 MR. WETMORE: Her name is Jessica
22 Tumblestone.

23 THE COURT: And she is present?

24 MR. WETMORE: She is. Judge, she was
25 told to be here at 10:00. She might not be here

1 this second.

2 THE COURT: I need you to check. I
3 don't want to be waiting for witnesses. I want you
4 all to have people standing at that door ready to
5 go forward when they're called.

6 MR. WETMORE: Yes, Judge. She was
7 given accommodations last night --

8 THE COURT: As a matter of fact,
9 you-all can put them in the waiting rooms. I don't
10 know why they have to be in the hallway. They
11 can't hear in the rooms, can they?

12 MR. WETMORE: That's fine with me,
13 Judge.

14 She is here, Judge.

15 THE COURT: I prefer that than having
16 to go look for witnesses.

17 MR. WETMORE: Will you make sure that
18 the witnesses are sequestered in this room here?

19 THE COURT: I assume that the opening
20 arguments are not going to be particularly long,
21 and that we won't -- I mean, that's -- usually,
22 they aren't. And I also caution you not to make
23 any reference to anything that's the subject of a
24 motion until the Court has ruled on the
25 admissibility of those matters, that being the

1 Jackson v. Denno.

2 Of course there would not be any
3 reference to his prior record unless he testified
4 and the Court made the findings appropriate for the
5 admissibility of his record as well as any prior
6 bad acts.

7 Yes, sir.

8 MR. WETMORE: Judge, in the opening --
9 our opening I'm obviously trying to lay out a
10 roadmap, and I was going to mention the comment by
11 the defendant --

12 THE COURT: I think you need to --

13 MR. WETMORE: -- subject to the Jackson
14 v. Denno.

15 THE COURT: I think in the interest of
16 time and the fact that I have accommodated -- I
17 just don't know that it's a good use of our time to
18 spend an hour having a Jackson v. Denno hearing
19 when we can do it within the scope of the
20 testimony. I don't see how you're prejudiced.

21 An opening argument is to say what the
22 evidence is going to show. It's not to argue the
23 merits of the case. So you're really not
24 prejudiced. If it comes in, you can argue it in
25 your closing argument.

1 MR. WETMORE: I will avoid that comment
2 then.

3 Judge, the other point I wanted to kind
4 of preview in my opening is his jail call, and that
5 is the subject of a pretrial motion you said you
6 would address --

7 THE COURT: They haven't been admitted
8 yet and I wouldn't even hear that until I've heard
9 some context about the case, because I don't know
10 -- I don't know anything about the facts. So I
11 don't know if it's germane or not. I can't tell
12 whether it's probative. Of course he doesn't have
13 any expectation in jail calls, but they don't just
14 come in because he -- because they aren't
15 protected. They have to be relevant, they have to
16 be probative.

17 MR. WETMORE: It's authenticated and
18 all that stuff. Judge, with the good faith belief
19 that we're going to do that --

20 THE COURT: I would stay away from it.

21 MR. WETMORE: Ma'am?

22 THE COURT: Stay away from it until it
23 comes in so that if it doesn't come in, it hurts
24 you. Because I'm going to have to give a curative
25 instruction to disregard it.

1 I just think that opening arguments are
2 what the evidence will show and you don't argue
3 anything that hasn't come in yet, and when you have
4 steps that you have to meet for the admissibility
5 of something, I think it's best to wait until it
6 actually comes in so you can make reference to it.

7 MR. WETMORE: Yes, ma'am.

8 THE COURT: All right. Is there
9 anything else we need to take up before we begin
10 opening argument and instruction? From the State?

11 MR. WETMORE: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SMITH: No, Your Honor.

14 THE COURT: All right. Please bring in
15 the jury.

16 And, also, Number 327 is the
17 Foreperson.

18 (Jury in, 10:00 a.m.)

19 THE COURT: Good morning, ladies and
20 gentlemen. Okay. Let's start over.

21 Good morning.

22 THE JURY: Good morning.

23 THE COURT: I know it's raining and I
24 know it's dreary, I know that there are no windows
25 in here, that doesn't help, and, of course, the

OPENING INSTRUCTIONS BY THE COURT

1 fluorescent light doesn't help either, but we're
2 happy to have you back with us this morning. We
3 appreciate your patience. We needed to deal with
4 some matters of law before we proceeded, hopefully,
5 in an attempt to save some time as we go forward in
6 the process.

7 You've been selected for the case of
8 the State v. Tyrone Malcolm Benn, which I've
9 already explained are Indictments for murder and
10 possession of a firearm during the commission of a
11 violent crime.

12 I'm going to give you some preliminary
13 instructions so you will know how we will proceed
14 in the trial of this case procedurally. What I am
15 now saying to you are not a charge on the law or
16 instructions on the law of this case. I will
17 instruct you on the law that is applicable to the
18 case at the end of the trial before you retire to
19 consider your verdict.

20 Again, this is merely an explanation of
21 the procedure that we will follow in the trial of
22 this case so that you may better understand what is
23 happening as we proceed.

24 You will be given the opportunity to
25 take notes. Each of you has a notepad. There is a

OPENING INSTRUCTIONS BY THE COURT

1 white sticker on the front of each notebook. You
2 should place your juror number on that sticker so
3 that you will be able to identify which notepad
4 belongs to you. And I will give you some further
5 instructions regarding note-taking at the
6 conclusion of this instruction.

7 As I've already indicated to you what
8 the defendant is charged and the Indictments that
9 have been filed with this Court, I will explain to
10 you the elements of each of these crimes at the
11 conclusion of the case.

12 The Indictments, ladies and gentlemen,
13 are simply the charge or charges by which the case
14 is brought into court. They are not in any sense
15 evidence of any of the allegations they may
16 contain. The defendant has pled not guilty to the
17 Indictment. The State, therefore, has the burden
18 of proving each of the elements of the Indictments
19 beyond a reasonable doubt. And it will be your
20 duty, ladies and gentlemen, to decide whether the
21 State has met that burden or not.

22 Your purpose as jurors is to find and
23 determine the facts. You are the sole judges of
24 the facts in this case. If at any time I make a
25 comment regarding the facts, you must disregard it.

OPENING INSTRUCTIONS BY THE COURT

1 You are to determine the facts from the testimony
2 that you hear and the other evidence introduced in
3 Court.

4 It is up to you to determine the
5 inferences which you feel may be properly drawn
6 from the evidence. It is especially important that
7 you perform your duty of determining the facts
8 diligently and conscientiously because ordinarily
9 there is no way to correct an erroneous
10 determination of facts made by a trial jury.

11 On the other hand, and with equal
12 emphasis, the same law that makes you the judges of
13 the facts makes me the judge of the law. The law
14 as given by the Court is the only law you may
15 consider. You must accept and follow it even
16 though you may disagree with it. The Court cannot
17 tell you what the facts are and you cannot disagree
18 with the Court about what the law is or what the
19 law should be.

20 Your responsibility, ladies and
21 gentlemen, is to take the law as it is instructed,
22 and apply it to the facts as you find them from the
23 testimony of the witnesses and the other evidence
24 that will be introduced during the course of this
25 trial. After doing that you'll render your

OPENING INSTRUCTIONS BY THE COURT

1 verdict, a true and just verdict, under the solemn
2 oath that you have taken as jurors in this case.

3 Until I advise you to begin your
4 deliberations, you must not discuss this case with
5 anyone. That includes your fellow jurors, your
6 friends, your family members or anyone involved in
7 the case. After the case is submitted to you, you
8 must discuss it only in the jury room with your
9 fellow jurors.

10 The attorneys and the parties, as well
11 as witnesses, have been advised that they are not
12 to speak to you at all. So if you should run into
13 them at lunchtime in the elevator or in the
14 hallway, on the way to the garage, and they don't
15 speak with you, please don't think they're being
16 unfriendly or untoward. They are simply strictly
17 following the Court's instructions. Again, we
18 would not want an innocent conversation to be
19 observed and misinterpreted.

20 During this trial, do not read, listen
21 to, or watch any media accounts about this case.
22 This includes anything that may be in the
23 newspapers, radio, on the Internet, or television.
24 You also cannot do any independent research
25 regarding any issue or matter involved in this case

OPENING INSTRUCTIONS BY THE COURT

1 on the Internet. That includes any kind of search
2 engines or sites. As tempting as it might be,
3 you're strictly instructed that you're precluded
4 from doing that. You must not consider anything
5 that you may have read or heard about this case
6 outside of the courtroom whether before or during
7 the trial.

8 It is essential that you maintain an
9 open mind and not decide any issue in this case
10 until all of the evidence has been presented, the
11 parties have made their closing arguments, and I
12 have instructed you on the law of this case. It is
13 your solemn responsibility to determine whether the
14 State has met their burden of proof, and your
15 verdict must be based solely on the evidence as it
16 is presented to you in this trial and on the law as
17 I will instruct you during and at the close of the
18 trial.

19 In just a moment the Solicitor will
20 make what is called an opening statement in which
21 he will tell you what he believes to be the facts
22 or the issues in this case. The attorney for the
23 defendant may also make an opening statement,
24 although he is not required to do so. What the
25 attorneys tell you during their opening statements

OPENING INSTRUCTIONS BY THE COURT

1 is not evidence, ladies and gentlemen. It is only
2 their contention as to what they believe the
3 evidence will show in this case.

4 The evidence in this case will be
5 presented to you by the testimony of sworn
6 witnesses from the witness stand and other exhibits
7 that may be introduced into evidence.

8 From time to time during the trial, you
9 will hear the attorneys say, Your Honor, I object.
10 Just as in business, sports, or any other
11 structured activities there are certain rules that
12 you must obey in the presentation of evidence.
13 These rules have a definite purpose. They ensure
14 that you receive the most trustworthy and reliable
15 evidence available.

16 An objection is the procedure that the
17 attorney uses to call a possible violation of these
18 Rules to my attention as the judge of this Court,
19 and for this reason you should never hold an
20 attorney's objection against them, nor should you
21 conclude from the Court overruling or sustaining an
22 objection that I favor one side or the other.

23 Also, from time to time you will hear
24 the attorneys say, Your Honor, we have a matter of
25 law or a matter of law to discuss with you, or they

OPENING INSTRUCTIONS BY THE COURT

1 may ask to approach the bench, or I may ask them to
2 approach the bench, or it may even be necessary
3 that we exclude you from the courtroom for a short
4 while, while we discuss matters of law.

5 The reason we do this is because you
6 are the finders of the facts, and sometimes when
7 I'm discussing matters of law with the attorneys,
8 it may be necessary for me to make a comment about
9 the facts in connection with ruling whether a
10 statute applies, or an evidentiary rule, or
11 procedural rule, and for this reason we exclude you
12 from the courtroom so that in no way will you be
13 influenced by anything that the Court may say or do
14 in connection with the facts in this case.

15 In determining what the true facts are
16 in this case, ladies and gentlemen, you must decide
17 whether or not the testimony of a witness or
18 witnesses is believable. It is my responsibility
19 to rule as a matter of law as to whether certain
20 testimony is admissible at all, or not. Once it is
21 admitted, whether or not you believe it is solely a
22 matter for you to determine.

23 In deciding whether to believe a
24 witness you have the right to consider the interest
25 of any witness, the bias of any witness, the

OPENING INSTRUCTIONS BY THE COURT

1 prejudice of any witness, the opportunity for the
2 witness to have seen the matters about which the
3 witness may testify, and the way the witness acts
4 on the witness stand, what we commonly refer to as
5 demeanor.

6 You have the right to consider anything
7 that is in the record that will help you evaluate
8 the testimony of the witnesses. That means, ladies
9 and gentlemen, that it is your duty to pay close
10 attention to the witnesses, to observe them, to
11 listen to them, and to pay close attention to the
12 attorneys and the Court.

13 Although I know it can be very
14 difficult, please do not allow your thoughts to
15 wander, but give strict attention to the testimony
16 so that at the end of the testimony, after the
17 arguments of the attorneys, and the charge on the
18 law given by the Court, you will then be in a
19 position to determine what the true facts are,
20 apply the law to the facts, and thus render a true
21 and just verdict in this case.

22 During the course of the trial you will
23 be given the opportunity to take notes.
24 Note-taking is a privilege that you may choose to
25 exercise or choose not to exercise. Not everyone

OPENING INSTRUCTIONS BY THE COURT

1 finds note-taking helpful to them. So please don't
2 feel that you're required to take notes.

3 If you should decide to take notes,
4 don't record everything that is said; it's
5 physically impossible. The average person speaks
6 at over 200 words a minute, so even if you thought
7 you were writing it down verbatim, if you were to
8 go back and listen to it, you would find that it
9 was not accurate.

10 So you may want to keep an outline of
11 the main points and arguments that are being made
12 so that you can allow those notes to refresh your
13 memory when you retire to deliberate. And, again
14 please, don't try to record everything that is said
15 because we don't want note-taking to become a
16 distraction to you. As I've explained, you are the
17 finders of the facts, which means you must rely on
18 your powers of observation in watching and
19 listening to the witnesses.

20 Your notes are for your specific and
21 your individual purposes. They are only to be used
22 to refresh your own memory. They are not to be
23 shared with anyone else. During breaks and
24 recesses your notes will be left in your seats, and
25 that's to ensure that there is no premature

OPENING INSTRUCTIONS BY THE COURT

1 temptation to deliberate regarding some matter that
2 was discussed prior to a break.

3 And, ladies and gentlemen, I would
4 remind you that your notes should not be considered
5 any more reliable than a fellow juror's memory.
6 That person's memory should be considered just as
7 reliable as notes that may have been taken by a
8 fellow juror.

9 It is your added duty, Madame Forelady,
10 to fill out the verdict form and to write out any
11 questions the jury may have during deliberations,
12 and I will give you further instructions regarding
13 that at the conclusion of the case.

14 Ladies and gentlemen, a foreperson is
15 purely an administrative function. That person
16 does not have any greater voice or vote than you
17 do. It's purely administrative. We need someone
18 to fill out the verdict form and write out the
19 questions that you may have during the deliberative
20 process. And the selection of a foreperson is
21 purely random so that we can make sure that a fair
22 cross section of individuals are represented in
23 that capacity.

24 In order to preserve everyone's rights,
25 I will give the parties an opportunity to take

OPENING STATEMENT BY THE STATE

1 exception to anything that the Court has said by
2 way of opening instructions.

3 Are there any exceptions from the
4 State?

5 MR. WETMORE: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Ladies and gentlemen of the
9 jury, I would ask that you give counsel your full
10 attention in opening argument.

11 You may proceed.

12 MR. WETMORE: Thank you, Judge. May it
13 please the Court.

14 Counsel.

15 THE COURT: Yes, sir, you may proceed.

16 MR. WETMORE: Morning, you all. Thank
17 you for your service. This is an important case.
18 This is a murder case. This is the most serious
19 kind of case we have. It's also an important case
20 to the defendant. It's an important case to the
21 victim's family seated in this section over here.
22 (Indicating) It's an important case to me. So I
23 appreciate you being here and taking it seriously.

24 Hopefully, this is a little bit simpler
25 case than some of the cases that we have because

OPENING STATEMENT BY THE STATE

1 you don't have to decide and figure out what it is
2 that happened, because the murder was caught on
3 surveillance video. So starting from square one,
4 you will see that a murder did happen. And I will
5 tell you it is the most premeditated, cold,
6 calculated hit that I have seen in 16 years doing
7 this job. All caught on video.

8 I just have to convince you that it is
9 this man right here (Indicating) that did it. And
10 I am firmly convinced and I want you to be firmly
11 convinced that it is him on the video committing
12 this murder, committing this hit.

13 How can you know that? Well, I'm going
14 to play the video -- the surveillance video for you
15 to see. It happened in July of 2014, in North
16 Charleston, right in front of a convenience store
17 off of Spruill Avenue. That's where this
18 surveillance video comes from, a convenience store.
19 And it happened at 9:40 in the morning in broad
20 daylight.

21 The defendant and victim walked to the
22 store together, they hang out in front of the store
23 together for almost two minutes. And --
24 two minutes, nothing happens. And they hang out
25 together before the defendant shoots the victim.

OPENING STATEMENT BY THE STATE

1 There's no fight, no nothing. They just hang out,
2 and it's obvious that the victim has no idea he is
3 about to be shot.

4 The defendant waits, and he waits until
5 the parking lot is clear, and he waits until the
6 victim has turned his back, and he shoots him. He
7 shoots him in the back of the head, and he runs off
8 along the side of the convenience store still
9 shooting. And you are going to get to see that.

10 And I'm going to tell you it's
11 disturbing to watch. I've probably watched it 50
12 times, maybe more, in getting ready for this, but
13 it's still disturbing to see that sort of disregard
14 for life. But I have to ask you to watch it and I
15 have to ask you to watch it over and over so you
16 can be confident that this man's in the video.

17 Now, the video is a very good view of
18 the murder. It is almost like a movie is being
19 shot. It's staged right in the center of the
20 video. It's not perfect, high def, like you'd see
21 in the movies or on TV, and don't expect that.
22 This is reality and this is the best kind of video
23 equipment that a little family-owned convenience
24 store on Spruill Avenue has. It's not perfect, but
25 it's a very good video; and when you see it, I

OPENING STATEMENT BY THE STATE

1 think you will agree it's a very good view. And
2 the more you watch it, the more you are going to be
3 convinced it's the defendant captured on the video
4 killing the victim.

5 First things first, at the time of the
6 murder, the defendant didn't look like he does now.
7 And during -- if you could please display his
8 booking photo. (Indicating) This is what the
9 defendant looked like on the day of the incident
10 when he was arrested. This is what he looked like
11 at the time of the murder, 2014, and this is who
12 you will see on the video comitting the murder.

13 Compare what you see on the video to
14 this, not what you see today in court. You will
15 obviously recognize there is a black male on the
16 video. You will recognize the defendant's build;
17 he is just under six feet, he's thin, especially
18 very thin legs. You'll recognize the defendant's
19 distinctive face. He has what I would describe as
20 a high forehead. You'll recognize his eyes, his
21 eyebrows, you will see the profile of his nostrils,
22 his nose, his mouth, his facial hair. Everything
23 you'll be able to see on that video and compare to
24 the defendant.

25 Also, you will recognize the

OPENING STATEMENT BY THE STATE

1 defendant's distinctive hair. He has, again, the
2 receding hairline, what I would describe as medium
3 thick braids or dreadlocks. Same length -- exactly
4 the same length as he had in the video.

5 And this is also important, I want you
6 guys to take a look at the shoes. On the video,
7 you will notice and you will be able to see that
8 the defendant was wearing the exact same shoes as
9 when he was arrested. These are his shoes when he
10 was arrested. And in the video you will see that
11 he's wearing the exact same shoes. Okay.

12 He changed his clothes, but he's
13 wearing the exact same shoes. You will see the
14 short white socks that come just above the high
15 tops, obviously, black basketball-type shoes. A
16 little bit unusual, they're like what I describe as
17 a retro kind of a Nike Air basketball high tops,
18 black laces, a high tongue, a Velcro strap. You'll
19 see all that in the video and you'll be able to
20 say, these are the exact same shoes he was arrested
21 in shortly thereafter.

22 And this is very distinctive, on the
23 very first lace of those shoes there is a silver
24 tab. And I hadn't seen a lot of those. I think
25 it's pretty distinctive, and you can see it in the

OPENING STATEMENT BY THE STATE

1 video; the same shoes he was wearing just hours
2 later when he was arrested. So please watch the
3 video as many times as you need.

4 You will recognize his body, his build,
5 his face, his hair, and his shoes and size. And
6 you will be able to be firmly convinced it's him on
7 the video committing the murder.

8 Now, the police watched this video and
9 they immediately knew it was the defendant; they
10 recognized him. They didn't have any doubt, so
11 they went to the neighborhood a short time later
12 and they picked him up and brought him back to the
13 police station. And when they did, they were
14 overwhelmed that this man reeked of bleach. And
15 when they talked to him they noticed that.

16 And when they interview somebody, they
17 take them into like a little interview room, like a
18 small kind of booth. And in that small setting,
19 the detectives say it was literally overwhelming,
20 the strong fresh smell of bleach all over his body.
21 They said it was powerful and they said they had
22 never smelled that before. They were confident,
23 and I want you to believe, that he had used that
24 bleach to clean himself, to wash away any gunshot
25 residue, wash away any blood from the victim, to

OPENING STATEMENT BY THE STATE

1 basically wash the evidence from himself.

2 So the police arrested him and they
3 changed him with murder, and they charged him with
4 the possession of a firearm during the commission
5 of a violent crime. That's the second charge.

6 Please, like I said, watch this video.
7 When you go back and you deliberate, please watch
8 as many times as you can. I know it's hard, but
9 please do that. The defendant is entitled to that,
10 the victim's family is entitled to that. Take a
11 look at the pictures. I've done some comparisons
12 for you that I hope will assist you in making that
13 determination.

14 I want you to look at it and be firmly
15 convinced that this man did it. He is guilty.
16 Don't let him run away, don't let him wash it away,
17 don't let him get away with it. I ask you to find
18 him guilty of both the murder and the possession of
19 a firearm during the commission of a violent crime.

20 And, again, I thank you for your
21 service and we will get underway shortly.

22 THE COURT: You may proceed, Mr. Smith.

23 MR. SMITH: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. SMITH: Good morning, ladies and

OPENING STATEMENT BY THE DEFENSE

1 gentlemen. July 12, 2014 was a chaotic day in
2 North Charleston. There's no question about that.
3 There had been a shooting at a convenience store
4 that occurred early that day in broad daylight.
5 The police were out, they were looking around, they
6 continued to look, they continued to search, and
7 they continued to talk to people over and over
8 again. And you're going to hear all about that.

9 They began to investigate leads, they
10 began to question people and talk to people. No
11 less chaotic at the scene in the store, you will
12 hear testimony about that. They talked to several
13 women hoping that they could identify the shooter
14 in this case. They could not identify Tyrone Benn,
15 and you're going to hear about that.

16 So a little later that day, my client,
17 Tyrone Benn, was walking down Craft Avenue and he
18 sees an officer, and the officer calls him over.
19 He doesn't turn tail or he doesn't run, he doesn't
20 try to avoid the officer, he comes right over. The
21 officer asked him his name; he gives it. Not a
22 false name, not someone else's name. He says, my
23 name is Tyrone Benn.

24 At that point, he's put against the
25 car, he's put in handcuffs, and he knows at that

OPENING STATEMENT BY THE DEFENSE

1 point that something is wrong. He doesn't know
2 what, but he knows something is wrong and he's
3 going to find out shortly.

4 From there, they take him to the police
5 station, they question him, and they don't like his
6 answers so they charge him with murder. And that's
7 why we're here today. We are here so that a judge
8 and jury can hear this case and that each and
9 everyone of you can look at the evidence and decide
10 for yourselves what happened on July 12, 2014.

11 You are going to get to watch the
12 video. It's a rarity for us to have objective
13 evidence in a case. Usually, it's subjective; two
14 people telling different stories. But you're going
15 to have the ability to see an objective video, you
16 will have the ability to see still photos from that
17 video; and I'm convinced once you see those, the
18 video and those stills, you're going to realize the
19 physical traits of my client, Tyrone Benn, don't
20 match up with what you see on that video. I'm
21 going to discuss that more at the conclusion of the
22 case.

23 It's important as what you'll see is
24 what you will not have to consider in the case.
25 You are not going to have DNA evidence to consider,

JESSICA TUMBLESTON - DIRECT EXAM BY WETMORE

1 you're not going to have gunshot residue to
2 consider, and you're not going to hear about a gun
3 being found. Not a gun being found on Mr. Benn,
4 anywhere he had been that day, or a gun found at
5 all.

6 So what I'm asking you to do in this
7 case is to look at the evidence, to look at the
8 objective evidence because I believe that will be
9 key in this case. At the conclusion of this case
10 I'm going to ask you to find my client, Tyrone
11 Benn, not guilty.

12 THE COURT: The State may proceed.

13 MR. WETMORE: State calls Jessica
14 Tumbleston.

15 JESSICA TUMBLESTON,
16 being first duly sworn, testified as follows:

17 THE CLERK: Once seated, please state
18 your first and last name and spell your last loudly
19 and clearly into the microphone for the record.

20 THE WITNESS: Jessica Tumbleston,
21 T-U-M-B-L-E-S-T-O-N.

22 DIRECT EXAMINATION

23 BY MR. WETMORE:

24 Q. Ms. Tumbleston, how are you?

25 A. I'm doing good. How are you doing?

1 Q. Doing fine.

2 Tell the jury a little bit about
3 yourself. Did you grow up in this area?

4 A. Yeah. I've stayed in Hanahan most all
5 my life. I've worked at the Circle K for about a
6 year-and-a-half, two years.

7 Q. Okay. So you work in the area now?

8 A. Yeah.

9 Q. Okay. Now, back at the time of this
10 case, this was July 12, 2014, where did you work?

11 A. The Circle A.

12 Q. The Circle A. Is that a convenience
13 store?

14 A. Yes.

15 Q. Do you know what street or avenue
16 that's on?

17 A. Spruill Avenue and Buist.

18 Q. Okay. Now, how long had you worked
19 there at the time this case happened?

20 A. About a year-and-a-half.

21 Q. Year-and-a-half?

22 A. Uh-huh.

23 Q. What were you doing at the convenience
24 store at that time? What was your job?

25 A. I worked the cash register.

JESSICA TUMBLESTON - DIRECT EXAM BY WETMORE

1 Q. So you were like the clerk?

2 A. Yeah.

3 Q. Okay. And you were working that
4 morning?

5 A. Uh-huh.

6 Q. If you would, describe for the jury in
7 as much detail as you can remember what you
8 experienced that morning, July 12, 2014, when this
9 murder happened.

10 A. Well, I was working behind the counter
11 and I was serving customers and then, all of a
12 sudden, I heard some loud pops. I looked outside,
13 I seen the guy fall to the ground. I ran back
14 inside, I grabbed my phone. I tried to go outside
15 to help him again while I was on the phone with
16 911, no one would let me outside, so I just stayed
17 inside the store while I was on the phone with 911
18 until the police got there.

19 Q. Now, did you notice these guys out
20 front of the store before you heard the shot?

21 A. No. I didn't notice them standing
22 outside until the shots rang out, and that's when I
23 saw the guy drop to the ground.

24 Q. Could you tell if they were fighting or
25 fussing?

JESSICA TUMBLESTON - DIRECT EXAM BY WETMORE

1 A. I didn't even hear anything, and you --
2 you -- if somebody was yelling outside, you could
3 hear something. You could hear someone yelling,
4 but I didn't hear anything.

5 Q. So you didn't notice anything unusual
6 about anybody?

7 A. Uh-huh.

8 Q. Until the shots?

9 A. Yeah.

10 Q. And you said that you were the one that
11 called 911?

12 A. Yes, sir.

13 Q. Did you leave the store or did you stay
14 inside?

15 A. I mean, I stayed inside until the cops
16 took me to the police station.

17 Q. Okay.

18 A. After they got there.

19 Q. So you stayed inside the store while
20 the police worked the scene?

21 A. For the most part. And then I was so
22 hysterical, they took me away from the scene and
23 took me to the police station while they were doing
24 the rest of it.

25 Q. You were obviously upset?

JESSICA TUMBLESTON - DIRECT EXAM BY WETMORE

1 A. Yeah.

2 Q. Because of what you had seen?

3 A. Uh-huh.

4 THE COURT: Ma'am, if you could say yes
5 or no.

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 BY MR. WETMORE:

9 Q. And so did you go with them to the
10 police department?

11 A. Yes, sir.

12 Q. Okay. What did you do there?

13 A. I had two or -- well, I had another
14 officer talk to me and write down the statement. I
15 just sat in a room and talked with them, and then I
16 answered questions about what was going on and what
17 I saw. And then I wrote down another statement at
18 the police station.

19 Q. And the statement you gave to the
20 police is what you're telling us today?

21 A. Yes, sir.

22 Q. Okay. And you had been in that store
23 you said about a year, year-and-a-half?

24 A. Uh-huh, yes, sir.

25 Q. Do you know if that store at the time

1 was equipped with video surveillance cameras?

2 A. Yes, sir; it was.

3 Q. Now, do you know if the sidewalk in
4 front of the store was covered, was viewed by those
5 cameras?

6 A. Yes, sir.

7 Q. So on the day of the shooting where it
8 happened, that was in view of the cameras?

9 A. Yes, sir.

10 MR. WETMORE: May I approach, Your
11 Honor?

12 THE COURT: You may.

13 By MR. WETMORE:

14 Q. I'm going to show you what was
15 previously marked as State's Number 1. Have you
16 taken a look at that piece of evidence?

17 A. Yes, sir.

18 Q. Okay. How do you know that you have
19 reviewed it?

20 A. My initials are on the DVD.

21 Q. Your initials are there on the DVD?

22 A. Yes, sir.

23 Q. So that's the same one that you
24 reviewed.

25 A. Yes, sir.

JESSICA TUMBLESTON - DIRECT EXAM BY WETMORE

1 Q. Now, is that a video of the sidewalk in
2 front of the store?

3 A. Yes.

4 Q. Okay. And you are familiar with that?

5 A. Yes, sir.

6 Q. And does the video fairly and
7 accurately depict the view in front of the store?

8 A. Yes, sir.

9 Q. Fairly and accurately captures the
10 shooting as it happened in front of the store?

11 A. Yes, sir.

12 MR. WETMORE: At this point, we would
13 like to admit State's Number 1 and play the video.

14 THE COURT: They've already been marked
15 and admitted.

16 MR. WETMORE: Thank you.

17 (Video played)

18 BY MR. WETMORE:

19 Q. All right. Now, Ms. Tumbleston, that's
20 obviously the video that was shot in front of your
21 store?

22 A. Yes.

23 Q. I did notice on there that the date
24 said July 13th. This actually happened on the
25 12th. Do you have any idea what was going on with

1 that?

2 A. The dates were off on the camera, on
3 the surveillance camera.

4 Q. So that was the video from the 12th?

5 A. Yes, sir.

6 Q. Okay. Now, did you or anybody that
7 works at the store, did they turn that video over
8 to the North Charleston Police Department?

9 A. Yes, sir.

10 Q. It was turned over?

11 A. Yes, sir.

12 MR. WETMORE: Beg the Court's
13 indulgence. No further questions.

14 THE COURT: Any questions for the
15 witness, Mr. Smith?

16 MR. SMITH: Just very briefly.

17 THE COURT: Take your time.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. I want to make sure that I was clear.
21 You didn't see either party walking up to the
22 store; is that correct?

23 A. No.

24 Q. And you saw neither party standing out
25 in front?

JESSICA TUMBLESTON - CROSS EXAM BY SMITH

1 A. No, sir.

2 Q. The only people that you were aware of
3 were the people inside the store?

4 A. Yes, sir.

5 Q. And how many people were inside the
6 store?

7 A. At the time it was the two elderly
8 ladies and then my manager.

9 Q. And were those the ladies that we saw
10 on the video walking into the store?

11 A. Yes, sir.

12 Q. And your manager was there?

13 A. Yes, sir.

14 Q. And where was he?

15 A. He was in the back office.

16 Q. He was in the office --

17 A. Yes, sir.

18 Q. -- at the time?

19 MR. SMITH: No further questions, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. WETMORE: No, Your Honor.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MR. WETMORE: None, Your Honor.

ANDREW MCGAUVVRAN - DIRECT EXAM BY WETMORE

1 THE COURT: From the defense?

2 MR. SMITH: No, Your Honor.

3 THE COURT: Ma'am, you're excused.

4 You may call your next witness.

5 MR. WETMORE: The State calls Andrew
6 McGauvran.

7 ANDREW MCGAUVVRAN,
8 being first duly sworn, testified as follows:

9 THE CLERK: You may be seated. Sir,
10 once seated, state your first and last name and
11 spell your last name loudly and clearly into the
12 microphone.

13 THE WITNESS: Andrew McGauvran,
14 M-C-G-A-U-V-R-A-N.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. WETMORE:

18 Q. Sergeant McGauvran, how long have you
19 been with North Charleston Police Department?

20 A. Approximately, 17 years.

21 Q. And what are your duties or
22 responsibilities with the department?

23 A. I'm south day shift supervisor.

24 THE COURT REPORTER: I'm sorry, can you
25 speak into the microphone and repeat that?

ANDREW MCGAUVVRAN - DIRECT EXAM BY WETMORE

1 THE WITNESS: South day shift

2 supervisor. I supervise the day shift.

3 BY MR. WETMORE:

4 Q. You're one of the supervisor of the
5 department?

6 A. Yes, sir.

7 Q. Briefly, any training or experience
8 that helps you do your job?

9 A. I'm certified law enforcement, been
10 doing this for about 24 years now.

11 Q. And you are trained and have the
12 experience to do that job?

13 A. Yes, sir.

14 Q. Okay. Now, let me take you back to the
15 time of the incident, July 12, 2014, about 9:40 in
16 the morning. Were you on duty at that time?

17 A. Yes, I was.

18 Q. Now, did you become involved in this
19 case?

20 A. Yes, I did.

21 Q. Can you describe how that happened?

22 A. A call went out about a shooting that
23 occurred at the A1 on Spruill Avenue at Burton in
24 the City of North Charleston. I arrived on scene
25 and began the investigation for the onsite.

1 Q. So what was the location of the store?

2 A. Spruill and Burton, the A1.

3 Q. That's in the City of North Charleston?

4 A. Correct.

5 Q. Is that in Charleston County?

6 A. Yes.

7 Q. Tell the jury, if you would, what did
8 you initially see. What did you do?

9 A. When I first arrived, there was a
10 vehicle trying to leave the parking lot. I
11 observed the victim lying on his back on the
12 sidewalk in front of the store. I saw some blood
13 by his head. I stopped the vehicle, identified the
14 vehicle. The store owner stepped out and told me
15 that he hadn't been involved, he had just pulled up
16 and he was trying to get away, so we let him go.

17 I then secured the scene and contacted
18 the Crime Scene Unit detectives and cleared it for
19 EMS to come out and to assist if possible.

20 Q. Okay. So the vehicle that was -- that
21 was occupied when you arrived, they were allowed to
22 leave?

23 A. Yes, sir.

24 Q. Why is that? Tell us again.

25 A. He had pulled into the store after the

ANDREW MCGAUVVRAN - DIRECT EXAM BY WETMORE

1 shooting occurred and was trying to flee. I prefer
2 not to have anybody inside my crime scene to
3 contaminate it any further than it already is.

4 Q. Were you able to determine if he was
5 involved or not?

6 A. Correct, I was. The store owner
7 stepped out and told me that he hadn't been
8 involved, he had pulled up after.

9 Q. So as he was uninvolved, he was told to
10 leave?

11 A. Correct; exit the parking lot.

12 Q. And you said -- I think you mentioned
13 that you notified the detectives from the North
14 Charleston Police Department?

15 A. Yes.

16 Q. Did they respond?

17 A. Yes, they did.

18 Q. Did you ask for crime scene
19 investigators to come to this --

20 A. Yes.

21 Q. Did they respond?

22 A. Yes, they did.

23 Q. What about any kind of emergency
24 medical services or doctors or anybody, did you
25 notify them?

1 A. Yes; the first responders and EMS and
2 the ambulance arrived as well.

3 Q. So they came. Were they able to do
4 anything?

5 A. No. They contacted the Coroner.

6 Q. Contacted the Coroner because the
7 victim was obviously dead?

8 A. Correct.

9 Q. So what did you do for the remainder of
10 the time there on the scene?

11 A. I secured the perimeter with crime
12 scene tape, made sure my units kept individuals not
13 involved away from the crime scene.

14 Q. It was kept organized by you?

15 A. By my unit officers, yes.

16 Q. And no one entered that didn't have any
17 business being there?

18 A. That's correct.

19 MR. WETMORE: No further questions.

20 THE COURT: Any questions of the
21 witness?

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q. Officer, when you stopped the car
25 leaving the parking lot, did you make note of the

1 persons's name and information?

2 A. I had his driver's license and I handed
3 it to another unit and asked him to write it down,
4 and I went and checked on the victim.

5 Q. When you arrived on scene, were their
6 people inside the store?

7 A. Yes, and one person entering the store.

8 Q. So do you remember how many people were
9 inside the store?

10 A. I can't give an exact number, no.

11 Q. And there was one person on the outside
12 trying to enter the store as well?

13 A. That entered the store.

14 Q. That entered the store. Okay.

15 A. She was going in to buy beer.

16 Q. And did -- were you there when any of
17 those people left the store? Were they escorted
18 out?

19 A. No, they stayed inside the store. I
20 kept them there for my detectives and crime scene.

21 MR. SMITH: No further questions.

22 THE COURT: Any redirect?

23 MR. WETMORE: No, Your Honor.

24 THE COURT: Any objection to the
25 witness being excused? From the State?

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 MR. WETMORE: No, Your Honor.

2 THE COURT: From the defense?

3 MR. SMITH: No, Your Honor.

4 THE COURT: Sir, you're excused.

5 THE WITNESS: Thank you.

6 THE COURT: You're welcome.

7 You may call your next witness.

8 MR. WETMORE: The State calls Lisa

9 Kubicko with the North Charleston Police

10 Department.

11 LISA KUBICKO,

12 being first duly sworn, testified as follows:

13 THE CLERK: You may be seated. Once
14 seated, please state your first and last name and
15 spell your last loudly and clearly into the
16 microphone.

17 THE WITNESS: Lisa Kubicko,
18 K-U-B-I-C-S-K-O.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. WETMORE:

22 Q. Officer, how are you?

23 A. Good. How are you?

24 Q. Tell the jury how long you've been with
25 North Charleston.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 A. I've been with North Charleston -- I
2 hit five years in December.

3 Q. And what are your duties, your jobs
4 there?

5 A. I'm a crime scene technician and latent
6 fingerprint examiner.

7 Q. Were those your duties back in July
8 2014?

9 A. Yes.

10 Q. Very briefly, what is your training and
11 your experience to do that job?

12 A. I have a Bachelor's in forensics from
13 West Virginia University, and I also have a
14 Master's in Criminal Justice from Charleston
15 Southern University. I also did a variety of
16 on-the-job training, different specialty courses
17 while with North Charleston.

18 Q. Now, were you on duty when this case
19 happened July 12, 2014, 9:40 in the morning?

20 A. Yes.

21 Q. Did you become involved in the case?

22 A. Yes.

23 Q. Can you tell the jury how you became
24 involved in the case?

25 A. I was notified of the incident by our

1 dispatch, so I immediately responded to the
2 incident location.

3 Q. And where was that -- what's the
4 address?

5 A. 2739 Spruill Avenue.

6 Q. That's in Charleston County?

7 A. Yes.

8 Q. Tell us, what did you see when you
9 first got there. What did you do?

10 A. When I first got there, I saw the front
11 of the convenience store and the parking lot
12 blocked off with yellow crime scene tape, several
13 officers surrounding the area making sure nobody
14 entered the crime scene, a lot of people on the
15 outside perimeter of the crime scene, and an
16 officer taking a crime scene log.

17 MR. WETMORE: Okay. If I may approach,
18 Your Honor?

19 THE COURT: You may.

20 BY MR. WETMORE:

21 Q. Take a look at these please. It's
22 State's 2 through State's 14. Can you take a look
23 at those and see if you can identify those.

24 A. These are all photos that I took of the
25 incident.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 Q. So you actually took those?

2 A. Yes.

3 Q. And they obviously fairly and
4 accurately represent the scene --

5 A. Yes.

6 Q. -- as you came upon it?

7 A. Yes.

8 MR. WETMORE: Your Honor, I would like
9 to admit these and publish them.

10 THE COURT: They've already been
11 admitted. What are the numbers again?

12 MR. WETMORE: It's 2 through 14. I
13 believe the defendant may have had an objection to
14 one of them.

15 THE COURT: I need to know which number
16 there is an objection to.

17 MR. SMITH: Number 12.

18 THE COURT: All are admitted with the
19 exception of Number 12, and I need you to approach.

20 (Bench conference)

21 THE COURT: Can I see Number 12 please?
22 Do you have a black and white of this?

23 MR. WETMORE: I don't.

24 THE COURT: You need to make a black
25 and white of this. I think it's a little -- since

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 we see this all the time, it's not a problem, but I
2 think to the average juror it would be troubling.

3 Is that why you objected?

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: You don't have any
6 objection to it in black and white, do you?

7 MR. SMITH: Not in black and white.

8 THE COURT: Black and white is fine.
9 You need to convert Number 12 into black and white.
10 You should be able to do that on the computer when
11 you're showing it.

12 MR. WETMORE: I was going to show them
13 on the projector.

14 THE COURT: Yeah. Well, you can't
15 change it on the projector.

16 MR. WETMORE: We could print one, if we
17 could have five minutes.

18 THE COURT: He can do that while you're
19 talking.

20 MR. SMITH: Thank you.

21 THE COURT: You're welcome.

22 (End of bench conference.)

23 THE COURT: Number 12 will be marked
24 and admitted in black and white without
25 objection.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 (STATE EXH. 12 in evidence.)

2 BY MR. WETMORE:

3 Q. I will show you what was first marked
4 as State's Number 2 -- admitted as State's Number
5 2.

6 MR. WETMORE: Can you see that all
7 right, Jurors?

8 Q. (BY MR. WETMORE) Tell us what we're
9 looking at there, please. You can turn around and
10 point to it, do whatever you need to do.

11 A. Sure. We're looking at the front of
12 the convenience store. What's also shown is a
13 black scene screen.

14 Q. You can use this, Officer. This little
15 pointer.

16 (Off-the-record conference.)

17 BY MR. WETMORE:

18 Q. Whatever they said -- you can mark it
19 on here. You can point to it on this screen.

20 A. Okay. That black scene screen was put
21 up just to block the view of the victim. You also
22 see right here (Marking) before I arrived,
23 officers -- just so that nobody, you know,
24 accidentally kicked any of the evidence or anything,
25 officers marked two shell casings before I arrived

1 on scene. So that's just a brown envelope covering
2 up one of the shell casings.

3 THE COURT: Mr. Wetmore, please make
4 sure that you're referring to the number of the
5 exhibit so the record is clear.

6 BY MR. WETMORE:

7 Q. This is number 2, State's Number 2.

8 Is there anything else that you need to
9 point out in number 2?

10 A. No.

11 Q. Anything else of interest?

12 A. I don't believe so.

13 Q. I would like to publish State's Number
14 3. Again, this appears to be a little different.
15 All right. Again, take a look at State's Number 3.
16 Show us again where the body was located.

17 A. The victim was located behind the scene
18 screen on that platform in front of the business,
19 so right down there. (Marking)

20 Q. Okay. And then show us again where you
21 found the shell casings.

22 A. The shell casing is not depicted in the
23 picture. It's more to the left.

24 Q. Okay. I show you State's Number 4.

25 A. This is --

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 Q. Describe your investigation using that
2 picture, please.

3 A. This is the view from the left side of
4 the store. You can see the shell casing that I
5 described was marked by the envelope underneath of
6 it, and also the location of the victim which was
7 covered by a sheet just from onlookers.

8 Q. That's the victim's body?

9 A. Yes.

10 Q. Under the yellow sheet?

11 A. Yes.

12 Q. And the yellow placard is one of the
13 shell casings?

14 A. This is just an envelope that the
15 officers had marked the casings with. These are my
16 overall photographs. Once I completed these
17 overall photographs, I then laid out the numbered
18 placards and retook the photos. So there is a
19 photo of the placard number 1 where the shell
20 casing is.

21 Q. And I show you next State's Number 5.
22 What does this angle show us?

23 A. This is from the left side of the
24 convenience store. And this is an additional shell
25 casing that was located under this envelope. I

1 later marked this with evidence placard number 2
2 and took several more photos.

3 Q. That's the same side --

4 A. It's the same side as the first shell
5 casing.

6 Q. Okay. State's Number 6. Is that also
7 the same side?

8 A. Yes. Again, just an overall
9 photograph.

10 Q. And that's -- underneath that envelope
11 is the same shell casing we were talking about?

12 A. Yes, number 2.

13 Q. All right. And I'll show you what was
14 marked as State's Number 7.

15 A. This was taken from by the front door
16 of the convenience store showing the deceased, a
17 black Atlanta Braves hat, and in the distance you
18 can see the number 1 marked shell casing.

19 Q. Show us where that is.

20 A. This is the number 1 shell casing right
21 down here. (Indicating)

22 Q. You found the shell casings around --
23 as you go around the left side of the store?

24 A. Yes.

25 Q. And shell casings -- tell the jury, in

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 case they're not sure, what that is.

2 A. Shell casing is the part of the
3 projectile that projects from the firearm after the
4 shot has been fired.

5 Q. Okay. I'm going to show you State's
6 Number 8. I see a number 1. Is that your marking?

7 A. Yes. That is the evidence placard that
8 we used in order to identify that evidence.

9 Q. That marks what?

10 A. That marks a 380 shell casing.

11 Q. I'm going to show you State's Number 9
12 now, the photo. Is that a close-up of what you're
13 talking about?

14 A. Yes.

15 Q. So that object is the shell casing?

16 A. Yes.

17 Q. 380?

18 A. Yes.

19 Q. That's the first one that you found
20 around the side --

21 A. Yes. That's the first one the officers
22 found while they were on scene.

23 Q. Now, I will show you what was marked as
24 State's Number 10. Can you identify that?

25 A. This, again, is showing the second

1 shell casing that was located marked with evidence
2 placard number 2.

3 Q. That was farther around the left side?

4 A. Yes.

5 Q. I show you State's Number 11. Is that
6 a shell casing?

7 A. Yes. And this, again, is a 380. And
8 the color, whether it's brass or silver, does not
9 matter; they can be different brands of 380 ammo.
10 So by looking at this, the different color, do not
11 assume that that means it's a different gun that
12 fired the shell casing. It could just be a
13 different brand. And in this case, it was a
14 different brand. The two silver ones were Speer.

15 Q. Same caliber?

16 A. Yes, same caliber.

17 MR. WETMORE: Judge, this is 12 as
18 instructed. Do we need a new sticker?

19 THE COURT: We can do that at the
20 break.

21 BY MR. WETMORE:

22 Q. That's the second piece of evidence
23 that you marked?

24 A. Yes. And that brand was a DRT 380 auto
25 shell casing.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 Q. Same caliber?

2 A. Yes.

3 Q. All right. Now, the third piece of
4 evidence that you marked by that number 3, what is
5 that?

6 A. That is a black Atlanta Braves hat. We
7 identified that as the victim's hat.

8 Q. How did you identify that?

9 A. From the surveillance video showing the
10 incident.

11 Q. That's the third piece of evidence,
12 third placard?

13 A. Yes.

14 Q. I'm showing you what's been marked
15 State's Number 13. This is the fourth piece of
16 evidence that I see.

17 A. So this was an additional shell casing
18 that we located after, you know, the initial
19 investigation. Once we removed the victim from the
20 scene, again, we researched the area to make sure
21 that we didn't miss anything. And at this time we
22 located another 380 shell casing that was kind of
23 hidden in the crack in the sidewalk.

24 Q. That's your number 4?

25 A. Yes.

1 Q. I show you what's been marked as
2 State's Number 14. This provides a better view of
3 number 4?

4 A. Yes.

5 Q. Okay.

6 A. And we were glad when we found this
7 because we knew there had to be another shell
8 casing in that general vicinity because that is
9 where the shooting happened. Shell casings, you
10 know, typically will eject from the firearm, but
11 where number 1 was located was very far from the
12 incident location. So we knew somewhere in between
13 there had to be another shell casing from that
14 shot. So we found this one which is very close to
15 the incident location.

16 Q. So it's your belief that this shell
17 casing is the shot that killed the victim?

18 A. I believe so, and that's just from my
19 experience.

20 Q. How close was it located to the
21 victim's body?

22 A. I believe I have a scene sketch. Can I
23 refer to that?

24 Q. Sure.

25 A. Okay. So along the front sidewalk, the

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 distance from the end of the sidewalk at the end of
2 the business to approximately where the victim's
3 head was located was 23 feet. And that shell
4 casing along the sidewalk was found at 11 feet,
5 11 inches.

6 Q. So it was -- this was the one closest
7 to the victim's body?

8 A. Yes.

9 Q. Okay. And it was the same caliber as
10 the others?

11 A. Yes.

12 Q. You-all didn't notice it at first
13 because it's in a crack?

14 A. Correct. And we, you know, always do a
15 search once we, you know, take the overall
16 photographs, collect the -- you know, the initial
17 evidence we locate, and then we really make sure we
18 do a good search of the area.

19 Q. All right. Thank you, Officer.

20 So if I may approach again, can you
21 take a look at what's been marked as State's 15, 16
22 and 17. Can you identify those pieces of evidence?

23 A. Yes. These are the shell casings that
24 I collected from the scene.

25 Q. So those are the ones that we just saw

1 in the pictures?

2 A. Yes.

3 Q. And there's three of them?

4 A. Yes; numbers 1, 2 and 4.

5 Q. And these are all the same caliber?

6 A. Yes.

7 THE COURT: You need to make sure the
8 record is clear the exhibits you're referring to.

9 MR. WETMORE: I was referring to 15,
10 16, and 17.

11 BY MR. WETMORE:

12 Q. Now, I also want to show you this if I
13 may, State's Number 18. Can you identify that
14 piece of evidence?

15 A. This is the black Atlanta Braves hat
16 marked as number 3 that I collected.

17 Q. And that was the victim's hat?

18 A. Yes.

19 Q. Can you take it out of the bag for us?

20 A. Sure.

21 Q. Is that the hat that you recovered?

22 A. Yes.

23 Q. And you believe it belonged to the
24 victim?

25 A. Yes.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 Q. All right. This is the victim's hat
2 that you recovered?

3 THE COURT: Do not put that there. It
4 contains biological material. It needs to be back
5 in the evidence bag.

6 MR. WETMORE: All right.

7 THE COURT: Thank you.

8 BY MR. WETMORE:

9 Q. All right. Now, do you understand or
10 did you come to learn that the -- that the murder
11 was actually captured on surveillance video?

12 A. Yes.

13 Q. And from the video, were you aware that
14 your agency was able to arrest the defendant?

15 A. Yes.

16 Q. Did you have any contact with the
17 defendant at the time of his arrest?

18 A. I did.

19 Q. What did you do then?

20 A. I was called in to respond to our
21 detective bay where the defendant was in the
22 interview room for questioning. I made contact
23 with him and was directed to collect a buccal swab
24 from him, which is just a cotton tip swab that we
25 used to swab the inner cheeks of the mouth to

1 collect a known standard of DNA.

2 We then -- by examining the clothes he
3 was wearing, we compared those clothes to what the
4 defendant was wearing in the video, and we
5 determined that they could be the same shoes that
6 he was wearing during the incident. So we
7 collected his shoes and his socks as potential
8 evidence.

9 Q. Okay. If I may approach again, this
10 has been marked as State's Number 19. Can you
11 identify that?

12 A. Yes. This is a photo I took of the
13 defendant in the interview room.

14 Q. Okay.

15 MR. WETMORE: I would like to admit
16 this, Judge.

17 THE COURT: It's already been admitted.
18 BY MR. WETMORE:

19 Q. All right. So you took this photo?

20 A. Yes.

21 Q. Okay. And that obviously shows the
22 defendant?

23 A. Yes.

24 Q. And this is at the time of his arrest?

25 A. Yes.

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 Q. How long after the shooting was this
2 taken, at his arrest?

3 A. I got called out to the shooting, I
4 arrived about 10:00 in the morning. I received a
5 phone call and took this photograph at 10:30 at
6 night, the same day.

7 Q. So later that same day?

8 A. Yes.

9 Q. You can see his shirt and his shorts
10 there. What kind of shoes was he wearing when he
11 was arrested?

12 A. They are black Nike Air shoes.

13 Q. And did you collect those shoes?

14 A. Yes.

15 Q. Tell me again why you collected those
16 shoes.

17 A. We collected those shoes because they
18 appeared to be the same ones worn in the
19 surveillance video.

20 Q. If I may show you what's been marked
21 and admitted as State's Number 20. Take a look at
22 those, please. Can you tell me what those are?

23 A. Those are the Nike Air black shoes.

24 Q. Those are the shoes that the defendant
25 was wearing?

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. I show you what's been marked and
3 admitted as State's Number 21. Can you identify
4 this?

5 A. Yes. These are these shoes just
6 photographed while the defendant was in the
7 interview room.

8 MR. WETMORE: I would submit 21 and
9 publish it as the defendant's shoes.

10 Judge, I would like to publish them to
11 the jury by hand if that's okay.

12 THE COURT: Put them on the ELMO. They
13 can't -- it's not an efficient use of time. They
14 can review them -- they'll have the option to
15 review them during deliberations. It's better to
16 show them on the ELMO because you won't be able to
17 question the witness while they're doing that. So
18 it's easier for them. I think you get a better
19 picture looking at them on the ELMO.

20 BY MR. WETMORE:

21 Q. So that's the defendant's legs?

22 A. Yes.

23 Q. And you took the picture?

24 A. Yes.

25 Q. And that's him wearing those shoes?

LISA KUBICKO - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. All this evidence that you collected,
3 and obviously the photos -- the physical evidence
4 that you collected, what did you do with it at the
5 end of the day?

6 A. We bring it back to our crime scene
7 lab. Anything that would be wet with blood would
8 be dried in our forensic drying chamber. Once
9 everything is dried, we package all the evidence.
10 We then have a double-sided locker where we can
11 pass things back and forth to our evidence unit.
12 They are the ones that log in and store all of the
13 evidence that we collect.

14 Q. So the evidence is kept in a secure
15 area?

16 A. Yes.

17 MR. WETMORE: Beg the Court's
18 indulgence.

19

20

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1 BY MR. WETMORE:

2 Q. Just to be clear, when you were
3 identifying State's Number 12, that was the hat?
4 The victim's hat? Is that State's Number 12?

5 A. The hat is --

6 Q. The photograph. I may not have clearly
7 stated that 12 -- just to make sure I have
8 everything clear, when I showed you Number 12,
9 Number 12 -- here is State's Number 12. And
10 placard number 3 is what?

11 A. The black Atlanta Braves hat.

12 Q. The actual hat itself is right there
13 below you?

14 A. Yes. And that is State's Exhibit 18.

15 Q. Okay. And we discussed 15 through 18.

16 MR. WETMORE: Judge, I believe that's
17 already been admitted.

18 THE COURT: What number?

19 MR. WETMORE: 15 through 18.

20 THE COURT: They have already been
21 admitted.

22 MR. WETMORE: Thank you. No further
23 questions.

24 THE COURT: Any questions for the
25 witness?

LISA KUBICKO - CROSS EXAM BY SMITH

1 MR. SMITH: Yes, judge.

2 CROSS-EXAMINATION

3 BY MR. SMITH:

4 Q. Good afternoon, Officer.

5 A. Good afternoon.

6 Q. Morning, I guess. I'm going to -- I've
7 put up what's been marked and admitted State's
8 Exhibit Number 2. I just wanted to ask you a
9 question. From this photo, can you show us what
10 vehicles involved are North Charleston Police
11 vehicles and what were vehicles that were --

12 THE COURT: Mr. Smith, I need you to
13 speak up.

14 MR. SMITH: Sorry, Your Honor.

15 THE WITNESS: Yes. This right here is
16 a North Charleston Police Officer, and that as
17 well, probably initial officers arriving on scene,
18 and this is my vehicle that I pulled up in.

19 Q. (BY MR. SMITH) So the three other
20 vehicles you see are not vehicles that are in front
21 of the --

22 A. Correct.

23 Q. Were any of those vehicles tested,
24 looked at in any way?

25 A. I mean, yes, they were examined for

1 bullet holes, blood. I mean, any kind of evidence.

2 Q. So they were looked at for any
3 potential evidence that would have been there,
4 fingerprints, DNA, or anything of that type?

5 A. Not fingerprints or DNA. We were able
6 to review the surveillance video of the store and
7 we could see that the defendant never touched the
8 vehicles.

9 Q. When we're talking about evidence that
10 is collected from a crime scene, can you tell us
11 what trace evidence is?

12 A. Trace evidence in our case normally is
13 gunshot residue. Would you like me to explain?

14 Q. Yes.

15 A. Gunshot residue, that is kind of the
16 plume of smoke that is discharged from a firearm
17 when you fire the firearm. So we have gunshot
18 residue kits that allow us to use sticky pads,
19 normally we use them on the hands, you know, palms
20 and the back of the hands, to collect gunshot
21 residue. SLED also has the ability to examine
22 clothing for gunshot residue.

23 Q. Can gunshot residue be found on shoes
24 and socks?

25 A. Yes.

LISA KUBICKO - CROSS EXAM BY SMITH

1 Q. And can it be found on surrounding
2 surfaces as well?

3 A. Yes. There is a limit though, however.
4 To be able to send anything to SLED, it has to be
5 taken within six hours of the incident, as well as
6 gunshot residue, you know, you simply wash you're
7 your hands and it's gone. If you do a lot of
8 things with your hands, it can be gone. It's just
9 very small particles.

10 Q. But those particles could be found on,
11 for example, the ground, the car surface --

12 A. Potentially.

13 Q. Now at some point you were called to
14 the detective bay; is that correct?

15 A. Yes.

16 Q. And when you went there you did some
17 buccal swabs of Mr. Benn; is that correct?

18 A. Yes.

19 Q. Did you also do some swabs of his hair?

20 A. I did.

21 Q. And what were you looking for with
22 regard to that?

23 A. At that point what we were essentially
24 looking for is any traces of blood in the front
25 dreads, on his hair. Given the video from, you

1 know, shooting the victim, potentially if there was
2 any sort of blow-back with the blood or anything,
3 that's basically all we were trying to capture.

4 Q. You also photographed his shoes; is
5 that correct?

6 A. Yes.

7 Q. And eventually those shoes and socks
8 were submitted to SLED?

9 A. Yes.

10 Q. And with regard to those, again, you
11 were looking for any type of trace evidence, blood
12 evidence, DNA evidence?

13 A. Yes.

14 Q. Now, you mentioned that -- with regard
15 to the shell casings, I just want to make sure that
16 I'm clear -- there were different types of
17 ammunition used; is that correct?

18 A. Brands, yes.

19 Q. And could you tell me the varieties of
20 those again?

21 A. The two silver ones that you saw were
22 Speer, S-P-E-E-R, 380 Auto, and the one brass was a
23 DRT 380 Auto.

24 MR. SMITH: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

LISA KUBICKO - REDIRECT EXAM BY WETMORE

1 MR. SMITH: That's all the questions I
2 have of this witness.

3 THE COURT: Any redirect?

4 MR. WETMORE: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. WETMORE:

7 Q. Officer Kubicko, you were able to see
8 the surveillance video that the jury saw while you
9 were on the scene?

10 A. Yes.

11 Q. So you knew what had happened?

12 A. Yes.

13 Q. And you conducted your investigation
14 with that knowledge?

15 A. Yes.

16 Q. You did things certain ways or didn't
17 do it certain ways because you had seen the video?

18 A. Exactly.

19 Q. Mr. Smith asked you about gunshot
20 residue --

21 A. Yes.

22 Q. -- on the suspect?

23 A. Yes.

24 Q. Would you expect bleach to remove
25 gunshot residue?

1 A. Yes. Any sort of washing could get rid
2 of it. And at this point, by the time we got him,
3 I mean, that's way past the six-hour mark. So who
4 knows what, you know, the defendant could have done
5 within that time.

6 Q. So the length of time from the shooting
7 to the arrest was longer than you would expect to
8 find gunshot residue?

9 A. Yes.

10 Q. And certainly you would expect that the
11 bleach would disrupt that?

12 A. Potentially, yes.

13 Q. Mr. Smith asked you about searching for
14 blood on the defendant's hair and face?

15 A. Yes.

16 Q. Again, would the passage of time cause
17 you to be concerned that might be removed?

18 A. Correct. The only assumption there was
19 that perhaps the defendant didn't shower or wash
20 his hair so there could still be traces in the
21 dreads potentially. That was just our thinking.

22 Q. Would you expect something like bleach
23 to remove blood possibly from the --

24 A. Potentially, yes. Or there could just
25 simply not be any there.

LISA KUBICKO - REDIRECT EXAM BY WETMORE

1 Q. Right. Now, Mr. Smith also asked you
2 about the shell casings that were ejected from the
3 handgun. All the same caliber?

4 A. Yes.

5 Q. All 380s?

6 A. Yes.

7 Q. Different brands?

8 A. Yes.

9 Q. All the same caliber?

10 A. Correct.

11 Q. Anyone else shooting on the video?

12 A. No.

13 MR. WETMORE: No further questions.

14 THE COURT: Any objection to the
15 witness being excused? From the State?

16 MR. WETMORE: None, Your Honor.

17 THE COURT: From the defense?

18 MR. SMITH: No, Your Honor.

19 THE COURT: Ma'am, you're excused.

20 Madame Forelady, ladies and gentlemen,
21 we're going to take advantage of this break in
22 testimony to take a brief rest room break. During
23 the break do not discuss the case and leave your
24 notepads in your seats.

25 (Jury out, 11:20 a.m.)

1 THE COURT: You may be seated.

2 Mr. Wetmore, I need you to put those exhibits on
3 the table.

4 MR. WETMORE: Yes, ma'am. I'm going to
5 go ahead and mark this black and white photo as
6 well, Judge.

7 THE COURT: I'm going to deal with that
8 in a moment.

9 Now, do we have the original Number 12?

10 MR. WETMORE: Yes.

11 THE COURT: That needs to be marked as
12 a Court's exhibit, and then the substituted black
13 and white photograph needs to be marked as State's
14 Exhibit 12.

15 (COURT EXH. 1, State's original Exhibit
16 Number 12, colored photograph, was marked for
17 identification.)

18 (STATE EXH. 12, black and white
19 photograph, marked and admitted in evidence.)

20 THE COURT: Before we break, I need to
21 advise the gallery that all cell phones should be
22 turned off; not silent, not vibrate, off. If any
23 further phones go off, they will be taken by the
24 deputies and they will not be returned to you.

25 Also, the movement in the gallery is

1 unacceptable. When you come into the courtroom,
2 you need to remain seated until a break unless
3 there's some emergency. If there is, let the
4 bailiff know.

5 Also, I understand that this is a very
6 emotional situation. If anyone gets visibly upset,
7 you need to excuse yourself from the courtroom.
8 Okay.

9 Anything further before we break? From
10 the State?

11 MR. WETMORE: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SMITH: No, Your Honor.

14 THE COURT: We will be at ease for ten
15 minutes.

16 (A recess transpired.)

17 THE COURT: State ready to proceed?

18 MR. WETMORE: Yes.

19 THE COURT: Defense ready to proceed?
20 We need the defendant, please.

21 MR. SMITH: As soon as he comes out,
22 Your Honor.

23 THE COURT: Defense ready to proceed?

24 MR. SMITH: Yes, Your Honor.

25 THE COURT: Please bring in the jury.

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 Who is the State's next witness?

2 MR. WETMORE: Joe Niemiec.

3 (Jury in, 11:37 a.m.)

4 THE BAILIFF: All jurors are seated.

5 THE COURT: Thank you. You may be
6 seated.

7 Ladies and gentlemen, we will now
8 proceed with testimony.

9 State may call their next witness.

10 MR. WETMORE: State calls Joe Niemiec
11 with the North Charleston Police Department.

12 JOSEPH NIEMIEC,
13 being first duly sworn, testified as follows:

14 THE CLERK: You may be seated. Sir,
15 once seated, please state your first and last name
16 and spell your last loudly and clearly into the
17 microphone for the record.

18 THE WITNESS: Yes. Joseph Niemiec,
19 N-I-E-M-I-E-C, Sergeant, North Charleston Police
20 Department.

21 THE COURT: You may proceed.

22 THE WITNESS: Thank you.

23 DIRECT EXAMINATION

24 BY MR. WETMORE:

25 Q. Sergeant Niemiec, how long have you

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 been with North Charleston?

2 A. About 12 years.

3 Q. What are your duties and
4 responsibilities and that sort of thing?

5 A. I'm currently the supervisor of the
6 North Charleston Detective Division Property Crime
7 Unit.

8 Q. And at the time this shooting happened,
9 July 12, 2014, what were your responsibilities?

10 A. I was the master control officer of the
11 Property Crime Unit and on the call out team, one
12 of the lead investigators.

13 Q. Would you just share with the jury your
14 training and your experience?

15 A. I've been with North Charleston for
16 about 12 years, I've served time with patrol,
17 speeding, vice. I've done numerous classes in
18 investigation, interrogation and interview, along
19 with other types of training such as narcotics and
20 kidnapping and so forth that will help me do the
21 job.

22 Q. And were you on duty when this murder
23 happened July 12, 2014?

24 A. Yes; I was on call-out status.

25 Q. Call out?

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. I'm going to take you back to about
3 9:40 that morning. Did you become involved in the
4 case?

5 A. I did.

6 Q. How did you become involved?

7 A. I was called to come to the location in
8 reference to a shooting that just occurred with a
9 person laying on the ground deceased.

10 Q. Okay. Tell the jury what you initially
11 saw and did.

12 A. When I arrived on scene, I observed
13 that the crime scene was set up by patrol officers.
14 I observed the victim laying on the ground in a
15 pool of his own blood, at which time I helped
16 organize the crime scene, make sure the patrol
17 officers got a good perimeter around the crime
18 scene so nobody would go into it and started
19 examining the area.

20 At that time I saw the victim laying on
21 the ground. He had copious amount of blood around
22 him and there appeared several shell casings on the
23 ground, at which time I went inside to talk to the
24 witnesses that could be inside the store. When I
25 went into the store, the witnesses were very

1 shook up, taken aback by the event.

2 I first asked the cashier if there was
3 a video that showed the outside, and she said that
4 there was. At that point I went ahead and started
5 to work the process of looking at the video to see
6 what the video would show me and how good the video
7 was going to be.

8 Q. You were the one at North Charleston
9 who actually first took a look at the video?

10 A. Yes, I was the first one that went to
11 look at the video. I went in directly -- once the
12 other detectives got there and I knew the scene was
13 secured, I went inside to start examining the
14 video. Sometimes getting to that might be the
15 longest part, depending on what kind of video
16 system they have at the stores.

17 Q. I will play the video that's been
18 admitted in this case as Number 1.

19 (Video playing)

20 Q. This is the store that you responded
21 to, Sergeant?

22 A. Yes, this is the store that I responded
23 to.

24 Q. And that front sidewalk area, is that
25 where you observed the body?

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 A. Yes, that is.

2 (End of video)

3 Q. Sergeant, that's the video that you
4 saw?

5 A. This is the video I observed.

6 Q. And when you saw that, did you
7 recognize the shooter in the video?

8 A. I did.

9 Q. Okay. Tell me about who you thought
10 that was.

11 A. Before I was a detective, I worked
12 selective enforcement, aggressive police contact,
13 so we would go into neighborhood and do drug buys,
14 prostitution, so forth and so on, so I've been in
15 that area for a long time. When I saw the video, I
16 recognized it as the person that I knew as being
17 Benn, which was something I kind of kept to myself
18 at first because, you know, it was my visual. I
19 didn't want to cloud anybody else's judgment on
20 that, but it appeared to me to be the person that I
21 knew as Benn.

22 And I remembered him by his last name
23 mainly because of his forehead and his dreads. It
24 just stuck out to me.

25 Q. Okay. And when you saw that video we

1 just saw, you were confident it was the guy Benn?

2 A. I was very confident at that time. I
3 did keep it to myself for a little bit because I
4 didn't want to cloud anybody else's judgment, but I
5 was very confident at that time.

6 Q. So I don't want you to give any details
7 at all, but you've had significant contact to
8 recognize this person?

9 A. Yes.

10 Q. Approximately, what period of time --
11 how long of a time have you known the defendant?

12 A. At least since 2008.

13 Q. 2008?

14 A. At least since 2008. 2008 on to -- to
15 this time now.

16 Q. Okay. So based on those contacts, you
17 were able to identify him?

18 A. Yes.

19 Q. But you didn't immediately push that
20 identification?

21 A. No.

22 Q. What did you do?

23 A. Well, when I was sitting there, I saw
24 it, and I was thinking, well, we're going to burn
25 the video, when we get back we can really take a

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 good look and confirm some things. At this point,
2 I received a call as this video was kind of getting
3 going and we were trying to get it to burn. We
4 received a call that there could be some
5 information at the family's house of the victim.

6 So all of the other detectives were
7 kind of on another scene, kind of checking that
8 scene out, and I guess more so kind of vetting that
9 location, checking out other leads, so I went to
10 the family's house. When I went there, I spoke to
11 the family and they provided me -- they provided me
12 saying that the street told them --

13 MR. SMITH: Objection, Your Honor.

14 THE COURT: Basis of the -- approach
15 please.

16 (Bench conference)

17 THE COURT: He can't say what someone
18 said to him. A generalized statement about the
19 investigation is one thing, but a direct statement
20 that inculcated somebody is another.

21 MR. WETMORE: Yes, ma'am.

22 THE COURT: So he can say what he did
23 as a result, but not what someone said to him. The
24 objection is sustained.

25 (End of bench conference)

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 THE COURT: You may proceed.

2 BY MR. WETMORE:

3 Q. Sergeant, you said you went to the
4 family's house. You're speaking of the victim's
5 family?

6 A. Yes, the victim's family's house.

7 Q. So why would you go there?

8 A. I received a call from -- actually, I
9 believe one of the captain's told me, if I can
10 remember correctly, that the family might have
11 information in reference to some possible leads for
12 the suspect.

13 Q. Okay. And did they have that
14 information?

15 A. Yes, they did.

16 Q. Okay. Don't get into what anybody said
17 or what the street said. Based on your
18 conversations, did you develop the defendant as a
19 suspect?

20 A. Yes, I did.

21 Q. And what did you do after you met with
22 the victim's family and confirmed him as a suspect?

23 A. I went back to the -- I went back to
24 the scene, to make sure that the video was
25 collected, and when we came back to the station we

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 -- I showed the video to the other officers on the
2 scene to let them see what was going on and what we
3 had. A lot of people do not go in directly to
4 places where the body was located because we want
5 to maintain the crime scene.

6 I was one of the primary people that
7 was inside the store going back and forth and
8 trying to get the witnesses out so they could be
9 talked to and all that kind of stuff; they were
10 very distressed at that point. So I went back and
11 made sure that the video was secured and then went
12 back to the station with the video in my -- well,
13 who I saw as the suspect in my mind, went back to
14 the station and played it for the other detectives
15 to let them see the video.

16 Q. Okay. And you mentioned already when
17 you saw it you were confident in your
18 identification?

19 A. Yes.

20 Q. When you met with the victim's family,
21 did you share with them who you thought it was?

22 A. No, I did not at all.

23 Q. And after talking with them, they
24 confirmed your suspicions?

25 A. Yes. When I went to the family, I

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 actually advised them that I didn't know and I
2 wasn't --

3 MR. SMITH: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. SMITH: Hearsay again.

6 THE COURT: He's saying what he said.

7 He's not saying what anybody else said to him and
8 you can cross-examine on that. Overruled.

9 You may proceed.

10 THE WITNESS: Thank you, Your Honor.

11 So when I went there, I didn't say
12 anything about who I thought it was. Typically,
13 when I go to a homicide scene where -- a victim's
14 family, I don't say anything even if I think it,
15 because I don't want to get somebody's hopes up, or
16 I don't want them to believe that I've got
17 something that I do not have. That sometimes can
18 be more disappointing than, you know, not having
19 any information at all.

20 So what I tend to do is just kind of
21 open-ended questions; hey, what do you guys know?
22 What have you seen? It's very important. You
23 know, a lot of times people live in that
24 neighborhood, people can give you information, so
25 forth and so on. I try to provide -- get

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 information that way and then comfort as well.

2 BY MR. WETMORE:

3 Q. So you didn't let them know who you
4 thought it was?

5 A. No, not at all.

6 Q. Didn't want it to cloud the
7 investigation?

8 A. No, not at all.

9 Q. Didn't want it to arouse the
10 frustration in somebody?

11 A. No. There's also the thought process
12 of retaliation as well. So at that point in the
13 investigation, unless I was, you know -- and even
14 if I was 100 percent sure, I probably wouldn't say
15 anything to the family until I had that person in
16 my custody. That's just kind of standard
17 procedure.

18 It's just a dangerous game to tell
19 people too much information. It clouds their
20 views, it clouds their judgment, and as a standard
21 practice I wouldn't do that.

22 Q. But they confirmed your initial
23 suspicions?

24 A. They did, they confirmed my initial
25 suspicions.

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 Q. After you got back from the family,
2 what else did you do with this -- with this case?

3 A. All right. When I went back to the
4 station, I reviewed the video, I kind of slowed it
5 down and I did some really good looking to really
6 make sure in my heart that what I was looking at is
7 who I thought it was. It's a big deal, you know,
8 voicing that opinion, especially with something so
9 -- so great.

10 So I looked at the video and I really
11 confirmed it. I pulled a current jail photo, kind
12 of looked at a current jail photo, and compared it
13 to the video. And after I looked at the current
14 jail photo and the video I was able to say to
15 myself -- I was very, very confident it was going
16 to be Mr. Benn.

17 Q. Based on your lengthy familiarity with
18 the defendant?

19 A. Yes. Based on that and just the facts
20 that I received on scene talking to -- talking to
21 the family members and so forth, that was my
22 conclusion at the time.

23 Q. So were you there when he was later
24 arrested?

25 A. I was there when he was later arrested.

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 Q. Tell me about that process.

2 A. Well, he -- when he walked in, I
3 noticed -- his stride was one of the things that I
4 wanted to look at. The stride was something I
5 really remember on people. I looked at his stride
6 and the stride was very familiar to -- it was
7 almost perfect to what the -- what the video
8 showed. When I looked at him, it was -- I became
9 more confident than I was looking at the jail photo
10 that the person on the video was Mr. Benn.

11 Q. So when you saw the defendant, his
12 mannerism also matched your identification?

13 A. Yes.

14 Q. Okay. Tell me about what he was
15 wearing, if you recall.

16 A. I recall he was wearing a black shirt
17 and I want to say he was wearing khaki pants at the
18 time that we picked him up.

19 Q. Did you notice anything about his shoes
20 or his socks?

21 A. His shoes were black, they were the
22 same type of black shoes that I saw in the video.
23 It was one of the things that caught my eye, the
24 way it -- just the way the shoes were, and just
25 seeing him from the video down, it was just

JOSEPH NIEMIEC - DIRECT EXAM BY WETMORE

1 something -- and I apologize, I'm trying to
2 remember exactly as it was so I'm not saying
3 anything -- it was exactly what I saw in the video.
4 It was one of the things that kind of nailed me to
5 knowing that the person in the video was Mr. Benn.

6 Q. So in addition to the face and
7 mannerism, the shoes helped you make the
8 identification?

9 A. Yes.

10 Q. So you were confident and you are
11 confident now that the defendant was on the video
12 committing murder?

13 A. I am.

14 MR. WETMORE: Court's indulgence?

15 THE COURT: Uh-huh.

16 BY MR. WETMORE:

17 Q. Sergeant Niemiec, if you could, you
18 mentioned the mannerisms of the defendant, and you
19 stated that when he arrived at the police station
20 that made you more positive in your identification.

21 A. Yes.

22 Q. Can you describe a little bit about
23 what that is, and if you feel inclined you can
24 demonstrate?

25 A. He had like -- and I don't want to

19 And so that's why -- and it's hard for
20 me to kind of explain that look that I had, but
21 it's just that gait, that movement, that -- almost
22 that swiftness that he kind of moved with, if I'm
23 making -- I hope I'm making some good sense to you
24 all.

Q. I appreciate it. And was he animating

JOSEPH NIEMIEC - CROSS EXAM BY SMITH

1 with his hands at all?

2 A. When he was in the -- he was handcuffed
3 when he came in, so I was unable to see him with
4 his hands. I know he was in the interview of
5 course when I watched the -- when I watched it in
6 here, I did see some of that animation, but he was
7 handcuffed when he came in so I didn't see his
8 hands.

9 Q. And his gait or his mannerisms matched
10 what you saw in the video?

11 A. Yes.

12 Q. And the same with his animation with
13 his hands?

14 A. Yes.

15 MR. WETMORE: Okay. No further
16 questions.

17 THE COURT: Any questions for the
18 witness?

19 MR. SMITH: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Officer Niemiec?

23 A. Morning, sir.

24 Q. How are you this morning?

25 A. I'm well, sir.

JOSEPH NIEMIEC - CROSS EXAM BY SMITH

1 Q. As part of your duties in this case,
2 you prepared a report; is that correct?

3 A. That is correct.

4 Q. And in doing that, you were trying to
5 preserve information for the Court?

6 A. Yes.

7 Q. And the idea behind that is, if you for
8 some reason can't come testify, that your report
9 would reflect what you know about the case?

10 A. Yes.

11 Q. And so if for some reason something ill
12 will befall you, then someone else could pick up
13 that report and bring it to court and know what you
14 knew --

15 A. Yes.

16 Q. -- about the case; is that correct?
17 When you write reports, you learn about that at the
18 academy; is that accurate?

19 A. Yes.

20 Q. And one of the things that you're told
21 about report writing is that they need to be
22 fair --

23 A. Yes.

24 Q. -- is that correct? They need to
25 include all the information about a case that you

JOSEPH NIEMIEC - CROSS EXAM BY SMITH

1 can put in a report --

2 A. That is correct.

3 Q. -- is that correct? And they need to
4 be as accurate as they can be both with regard to
5 the investigation and to the defendant?

6 A. Yes.

7 Q. Did you review your report in
8 preparation for your testimony today?

9 A. Yes.

10 Q. And in your report did you mention
11 anywhere that you knew it was Mr. Benn on the
12 video?

13 A. The reason that I stayed away from
14 that, writing it in the report, is because that is
15 my opinion, that is what I felt. That was not
16 based on something that was factual, that I could
17 say. So, when I write a report, I want it to be as
18 factual as I possibly can. What I'm telling you is
19 what I believe it is. If I'd put that in the
20 report at that time, I felt that I would be
21 clouding some things up.

22 I know what I received -- I know the
23 fact is that the report -- as I received
24 information, that I placed in the report, if you
25 would like me to -- from -- from the person that I

JOSEPH NIEMIEC - CROSS EXAM BY SMITH

1 put in the report. Do you want me to go into that?

2 Q. No. I was just interested in that
3 particular --

4 A. So those were the -- those were --
5 although those were my confident opinions, I mean
6 -- you know, this is a very serious thing and those
7 were my confident opinions. I wanted to leave that
8 for what I know for fact, and that was the
9 information that I received on scene from getting
10 the video and that was the information that I
11 received from the interview of the family.

12 Q. So it's fair to say that was your
13 conclusion, but you didn't know for sure?

14 A. I was kind -- I was very confident on
15 it, but obviously I didn't want to bleed that onto
16 everybody else.

17 Q. Okay. And at some point did you share
18 your conclusions with other officers in the case?

19 A. Only after several other officers made
20 the same conclusion. I actually kind of kept it to
21 myself in this aspect. And the purpose was, I
22 didn't really want to kind of give it out, and
23 that's where, you know, we had -- we had someone
24 else that worked the area come up and kind of
25 confirm what was going on, another officer who

JOSEPH NIEMIEC - CROSS EXAM BY SMITH

1 worked that area as a primary job.

2 And at that point, once me and him kind
3 of came up -- and we came to the same conclusion,
4 you know, that's when I was like, you know, look at
5 this picture and then let's look at what's going on
6 and see what you guys think.

7 Q. Was that before or after Mr. Benn was
8 in custody?

9 A. Before. And let me -- let me say
10 something, I believe it was before. I'm pretty
11 sure it was before.

12 Q. And would the detectives that later did
13 interviews have had that information from you when
14 they did the interview?

15 A. I believe Detective Repman might have
16 -- Detective Repman actually did. When I was
17 sitting there and we were talking about it,
18 Detective Repman did look at it. And, actually,
19 Detective Repman was -- was kind of on the fence.
20 He was kind of like -- he told me, well, you know,
21 I would like to see him in person to really see a
22 good picture of him, which I'd had dealings so I
23 kind of knew what he looked like.

24 So I was like, yeah, you know, it can't
25 hurt to go look and see what you have.

JOSEPH NIEMIEC - REDIRECT EXAM BY WETMORE

1 Q. With regards to the shoes, what you're
2 saying in court is the shoes are similar to what
3 you see in the store video?

4 A. I could never say exact, that would be
5 -- that would be -- that would just not be
6 appropriate of me, but they look just like the
7 shoes he's wearing.

8 MR. SMITH: Beg the Court's indulgence?

9 THE COURT: Yes, sir.

10 MR. SMITH: No further questions, Your
11 Honor.

12 THE COURT: Any questions?

13 MR. WETMORE: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WETMORE:

16 Q. Sergeant Niemiec, you indicated that
17 you were confident of your identification?

18 A. Yes.

19 Q. Very confident?

20 A. Very confident.

21 Q. But because that was your opinion
22 that's why it wasn't in the report?

23 A. Absolutely. I felt -- I'm a
24 factual-based person and -- not to go too long into
25 it, I have a degree in physics. In my mind, I work

1 in fact-based. So, in my mind, it was an opinion,
2 and I didn't want to shed that opinion as to what
3 we were doing until we get some hard facts.

4 So once he came up, that's when I
5 really felt that was really going -- you know, that
6 was the person and everybody kind of had that
7 conclusion.

8 Q. You didn't put it in your report in
9 fairness to the defendant?

10 A. Yes.

11 Q. Because it wasn't a fact?

12 A. You know -- exactly. I did not want to
13 put something in the report that is my belief and
14 my opinion, not based on, you know -- you know, a
15 billion percent fact. This is -- this is just how
16 I felt at that time.

17 Q. And that was done in --

18 A. In favor --

19 Q. -- actually, in favor to the defendant?

20 A. Yes.

21 Q. And certainly you can't put every one
22 of your thoughts into your report. Is that true?

23 A. Yes. Yeah. Yes, sir.

24 Q. You tried to capture the most basic
25 facts, but you were confident in your

1 identification?

2 A. I was very confident.

3 Q. And the victim's family confirmed that?

4 A. Yes, that is correct.

5 Q. And did other officers confirm that?

6 A. Yes.

7 MR. WETMORE: No further questions.

8 THE COURT: Any objection to the
9 witness being excused? From the State?

10 MR. WETMORE: No, Your Honor.

11 THE COURT: From the defense?

12 MR. SMITH: Your Honor, may I be
13 permitted to ask one follow-up question?

14 THE COURT: I will give you latitude
15 limited to redirect.

16 MR. SMITH: Yes, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. SMITH:

19 Q. Detective Niemiec, do you remember when
20 you prepared your report?

21 A. Should be the same day. Probably when
22 I was sitting right there when the interview was
23 going on I want to say, because I wanted to
24 remember the exact information that was provided by
25 the family.

JOSEPH NIEMIEC - RECROSS EXAM BY SMITH

1 Q. If I showed you a copy of your report,
2 would that --

3 A. Yes, it should have the time stamp on
4 it.

5 MR. SMITH: May I approach the witness?

6 THE COURT: You may.

7 THE WITNESS: So nine days after.

8 BY MR. SMITH:

9 Q. On the -- what's the date?

10 A. 7/29/2014. And I want to say I did my
11 report in -- I did my report in Word before I put
12 it in RMS because I have horrible grammar. So I
13 wanted to make sure that I don't look too silly
14 when I'm, you know, in front of you guys.

15 Q. So this happened on the 12th?

16 A. On the 12th? Yes, if you're saying
17 that. I apologize, I'm not sure of the exact date.

18 Q. And you entered your report on the
19 29th?

20 A. Yes.

21 MR. SMITH: No further questions, Your
22 Honor.

23 THE COURT: Anything further?

24 MR. WETMORE: No.

25 THE COURT: Any objection to the

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 witness being excused? From the State?

2 MR. WETMORE: No, Your Honor.

3 THE COURT: From the defense?

4 MR. SMITH: No, Your Honor.

5 THE COURT: Sir, you're excused.

6 Call your next witness.

7 MR. WETMORE: The State calls Charles
8 Martin from the North Charleston Police Department.

9 CHARLES MARTIN,

10 being first duly sworn, testified as follows:

11 THE CLERK: Sir, be seated. Please
12 state your first and last name, spell your last
13 loudly and clearly into the microphone.

14 THE WITNESS: My name is Charles
15 Martin. Last name is spelled, M-A-R-T-I-N.

16 THE COURT: You may proceed.

17 MR. WETMORE: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. WETMORE:

20 Q. Officer Martin, how long have you been
21 with North Charleston?

22 A. Since September of 2009. So September,
23 will be seven years.

24 Q. Okay. And presently what is your job
25 description?

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 A. I'm a Neighborhood Resource Officer for
2 the Chicora, Cherokee neighborhood.

3 Q. Is that what you were doing when this
4 happened back in July of 2014?

5 A. Yes.

6 Q. Okay. What does a Neighborhood
7 Resource Officer do?

8 A. I knew you were going to ask that.
9 Basically, we're a liaison between the neighborhood
10 and the police department. Any good or bad
11 situations that are going on in the neighborhood,
12 we kind of act as a go-between. If people have
13 problems, they come to me. Rather than trying to
14 get through to city hall or get through to the
15 police department, they come and talk to me about
16 it, and vice versa. If the police department has
17 any kind of issues that need to be addressed in the
18 neighborhood, they'll come to me and I'll go to the
19 people of the neighborhood.

20 Q. So you're very familiar with the
21 Chicora, Cherokee neighborhood?

22 A. Yes.

23 Q. And that's where this happened?

24 A. Yes.

25 Q. And you use your familiarity to try to

1 help the community deal with the police?

2 A. Yes.

3 Q. And use your familiarity to try to help
4 the police deal with the community?

5 A. Yes.

6 Q. So you're obviously familiar with the
7 people that live in that community?

8 A. Yes, sir.

9 Q. And you see these people daily when you
10 do your job?

11 A. Yes.

12 Q. And you interact with them and talk to
13 them?

14 A. Yes, sir.

15 Q. And you observe them walking around,
16 hanging out, and doing whatever they do?

17 A. Yes.

18 Q. And that was your assignment back in
19 July of 2014?

20 A. Yes, sir. I was assigned as the NRO in
21 July of 2013.

22 Q. Okay.

23 A. So, yes.

24 Q. So you had been doing it for a year
25 when this incident happened?

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. You had become very familiar with
3 Chicora, Cherokee?

4 A. Yes, sir.

5 Q. And the people in that area?

6 A. Yes, sir.

7 Q. Now, were you on duty when the case
8 happened July 12, 2014, 9:40 a.m.?

9 A. Yes, sir, I was.

10 Q. How did you become involved in the
11 case?

12 A. Well, I heard dispatch give a call over
13 the radio, and because of the -- I knew it was in
14 my area, I knew it was in Chicora. I headed
15 directly to the scene, Spruill and Burton.

16 Q. And that's common if something like
17 this happens in your neighborhood, you go try to
18 help out?

19 A. Yes, sir.

20 Q. Did you respond to the store?

21 A. Yes, sir.

22 Q. Okay. Initially, what did you see?
23 What did you do?

24 A. Initially, I pulled up in front of the
25 store and I saw a young male victim lying on the

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 ground in front of the store. And, initially, we
2 started -- myself and another officer, Officer
3 Foster, started to see if we can administer any
4 type of first aid to the victim, but at that time
5 we realized there was nothing that we could do for
6 the victim.

7 So then we started canvassing the area
8 and we set up -- I helped to set up crime scene
9 tape, get people away from the area, things we
10 normally do on a scene like this.

11 Q. Did you know the victim?

12 A. Yes, sir.

13 Q. From being in the area?

14 A. That's correct.

15 Q. After the crime scene was secured and
16 cleared, did you go and investigate this at all,
17 meet with anybody?

18 A. Yes.

19 Q. Did you meet with any persons that are
20 -- police were interested in?

21 A. The only thing that I did, one time I
22 believe it was an anonymous caller called in to
23 dispatch and said they saw --

24 Q. Don't get into what other people said.

25 A. Okay.

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 Q. That's hearsay. Just talk about just
2 the course of your investigation if you could,
3 please. Did you meet with any other people
4 interested in the case?

5 A. I was directed to 1819 Clements at one
6 point; apartment number ■ was where a male was of
7 interest to the police department.

8 Q. Okay.

9 A. So we went to his apartment and
10 obtained a consent to search his apartment for any
11 kind of evidence that might have been used in this
12 crime.

13 Q. Okay. And I'm sorry to make you phrase
14 it kind of awkwardly, but we have to make sure that
15 we follow the rules?

16 A. Sure.

17 Q. Thank you for stating it that way.

18 So you responded to an apartment, and
19 did you meet with the people --

20 A. Yes.

21 Q. -- inside?

22 A. Yes.

23 Q. Did you give them a pretty thorough
24 look to see if they were involved?

25 A. Yes.

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 Q. What did you determine?

2 A. Not just me, myself and detectives that
3 were on scene and other officers that were involved
4 determined that the two young men that were at the
5 apartment -- in the apartment were not involved in
6 this crime.

7 Q. How did you clear them as suspects of
8 the crime?

9 A. We searched the apartment for evidence.

10 Q. What did you find?

11 A. Nothing. We didn't find anything that
12 we thought was involved in this crime at all. We
13 spent a pretty good amount of time actually inside
14 the apartment trying to search just weird areas,
15 inside the freezer and things that we might think
16 they would put stuff. We couldn't find anything.

17 The detectives that were on scene -- I
18 believe Sergeant Evans, Mark Evans was the one who
19 was on scene there with us finally made the
20 determination that these two weren't involved.

21 Q. Okay. So you saw nothing, heard
22 nothing that made you believe they were involved?

23 A. That's correct.

24 Q. At that point had you seen the
25 surveillance video that we have all seen?

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 A. No, sir.

2 Q. Did you later see the video?

3 A. Yes.

4 Q. Those people that you were
5 investigating, were they on the video?

6 A. No, sir.

7 Q. So they were cleared at that time by
8 you and others?

9 A. Yes, sir.

10 Q. So you -- after you did that, did you
11 take any other steps? Did you ever get a chance to
12 watch the surveillance video?

13 A. Yes, sir.

14 Q. Tell me about that. Where did you see
15 it?

16 A. In the detective bureau at city hall in
17 North Charleston. One of the detectives, and I
18 can't remember which one it was, but one of the
19 detectives told me that I needed to go to city hall
20 and watch the video to see if I might be able to
21 identify who the person was that fired the shots.

22 Q. Because you're familiar with the people
23 in the area?

24 A. That's correct.

25 Q. And you knew the victim?

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 A. Yes, sir.

2 Q. When you had a chance to review the
3 video, did you recognize the shooter?

4 A. I recognized the shooter by face. I
5 could not remember his name at that time, but I
6 knew that I knew who the shooter was.

7 Q. So like with any of us, if you know
8 somebody but you can't place their name?

9 A. Yes, sir.

10 Q. Do the guys that you encounter on the
11 streets in Chicora, Cherokee, do they all the time
12 use their real names, or street names or nicknames?

13 A. They use their street names more than
14 they use their real names.

15 Q. So do you typically know people's real
16 names?

17 A. Not really. Most of the time I just
18 know them by -- if I have an encounter with them
19 and I have a reason to have their ID, then
20 obviously I knew their real names; but, typically,
21 I know people by their street names.

22 Q. And you recognized the shooter in the
23 video, but you didn't have an official name?

24 A. I didn't have a recollection of what
25 his correct -- what his real name was, that's

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1 correct. Government name is what most people say.

2 Q. Government name. Okay. And like I
3 said, please don't get into any details, good, bad,
4 or whatever, but how did you recognize the person
5 in the video?

6 A. Just as I recognized the victim, just
7 by having encounters with these people not -- I
8 wouldn't say on a daily basis, but on occasion,
9 because I get out of my vehicle and talk with these
10 people and interact with these people and try to
11 find out things that are going on in the
12 neighborhood, good or bad, it doesn't matter what
13 was going on, I'm out there trying to find out
14 what's going on.

15 So just as I knew who the victim was, I
16 knew that I knew who the shooter was.

17 Q. Okay. And you'd had significant
18 contacts with them at that time to make that
19 identification?

20 A. I don't know if I would use
21 significant. I've had --

22 Q. Sufficient?

23 A. -- sufficient, that's correct. That
24 would be a good word.

25 Q. So you've had sufficient contacts to

1 recognize the defendant in the video?

2 A. Yes, sir.

3 Q. Okay. And to be fair, when you say the
4 people, you're talking about the people that are
5 living and hanging out in Chicora, Cherokee?

6 A. Well, living there, hanging out,
7 passing through. There's a significant number of
8 people who do business in Chicora, Cherokee and I
9 know some of them, and they may live in Mount
10 Pleasant or James Island, but I know them because
11 they come to the area.

12 DSS is one of the big, big businesses,
13 government agencies in Chicora, Cherokee, and I
14 know a lot of them -- the employees of DSS because
15 they come -- and they don't all live in North
16 Charleston. They come from all over.

17 Q. Sure. Sure. And so you have
18 sufficient contacts with the people. And that's a
19 good example; not necessarily bad or good, just
20 contacts.

21 Did you recognize the defendant as the
22 shooter in the video?

23 A. Yes, sir.

24 Q. And when you saw that, did you think
25 about it, did you ponder on it, or did you

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1 immediately recognize him?

2 A. I immediately recognized him. I
3 believe the words I used were, I know that guy.
4 And like I said, I was in the detective bay in city
5 hall in North Charleston, and I believe Lieutenant
6 Love, Cathy Love, was there and Sergeant Niemiec,
7 Joe Niemiec, were there. And they said to me,
8 well, then go find him. So I left then to go look
9 for him.

10 Q. When you saw it you immediately said, I
11 know that guy? Even though you didn't know his
12 government name?

13 A. That's correct.

14 Q. And how were you able to identify him?
15 Was it his face, his body, his mannerisms? Can you
16 describe it to us?

17 A. Face mostly, but also he had -- at the
18 time he had long dreads and he had -- he had a -- I
19 don't want to say a funny gait, a run. He had a
20 funny way of movement when he was away from the
21 scene. And -- and I don't know -- I don't know --
22 I don't remember exactly how that relates to how I
23 recognized him, but I just remembered that it was
24 kind of funny-looking to me. And I know I had -- I
25 had -- I pictured that in my mind that I had seen

1 that before, that run.

2 Q. Okay. So his -- I guess you would call
3 it his mannerisms?

4 A. Mannerisms.

5 Q. His motions --

6 A. Right.

7 Q. -- movement, you recognized those as
8 being the defendant?

9 A. As well as his face, yes, sir.

10 Q. And his face as well?

11 A. Yes, sir.

12 Q. Did you recognize the hair?

13 A. Yes.

14 Q. All those things helped you to identify
15 the defendant?

16 A. Yes, sir.

17 Q. And so you were told to go find him?

18 A. Yes.

19 Q. So what did you do to make that happen?

20 A. I left city hall and went down to
21 Chicora area, and I started making some phone calls
22 to people who live in the area just to try to
23 figure out if anybody knew, had a word on the
24 street, anybody had heard anything that had been
25 going on in reference to the shooting earlier in

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1 the day.

2 At some point, and I don't remember
3 exactly how I was contacted, or who contacted me,
4 but at some point the name -- the defendant's name
5 came up. And so then -- then I just attempted to
6 put a name with the face.

7 Q. Okay. So, like I said, don't get into
8 anything that anybody said, but did your
9 investigation confirm your identification of the
10 defendant?

11 A. Yes, sir.

12 Q. Did your investigation point towards
13 anybody else --

14 A. No, sir.

15 Q. -- besides the defendant?

16 A. No, sir.

17 Q. Now, how did you actually find the
18 defendant?

19 A. I received a phone call on my city cell
20 phone at the time that was -- which was in my car.
21 I was on -- I was in the area I believe of Florida
22 maybe, Florida and Grayson maybe, which is south of
23 Reynolds Avenue. And the caller told me that a man
24 who looks like the shooter is on Craft Avenue,
25 which Craft Avenue is on the north side of

1 Reynolds.

2 So I immediately went to Craft Avenue
3 and I recognized and saw him walking on Craft
4 Avenue. I got on the radio and I called for other
5 assisting units, and by the time I turned around on
6 him and the assisting units arrived, he was on
7 Osceola Street. There's an apartment complex at
8 the corner of Osceola and Cherokee. He was right
9 on the fence line of that apartment complex.

10 I got out of my car. Obviously, he
11 knew who I was, I knew who he was, and I called him
12 over to me. And he came right over. About that
13 time, Sergeant McGauvran and Captain Joy Smith were
14 arriving on scene, and I announced -- keep going?

15 Q. That's fine.

16 A. I asked him his last name, I asked him
17 his first name, and I repeated that so that
18 Sergeant McGauvran -- because, again, by this time
19 we had a name attached to this crime. So I
20 announced loud enough for Sergeant McGauvran to
21 hear me the name of the defendant. And so he
22 recognized that name and we put -- we immediately
23 just put him in handcuffs on the front end of my
24 car.

25 Q. All right. So you had already

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 identified him personally?

2 A. Yes, sir.

3 Q. The information you received confirmed
4 that?

5 A. Yes.

6 Q. And, specifically, the information led
7 you to actually find him on the street?

8 A. Yes, sir.

9 Q. All pointing to the defendant?

10 A. Yes, sir.

11 Q. Now, when you -- when you took him into
12 custody, you mentioned you did that. Did you find
13 anything on him?

14 A. No, sir.

15 Q. And how long -- again, how long was
16 this after the murder?

17 A. Oh -- oh, probably -- I don't remember
18 exactly what time. It was probably about four or
19 five hours.

20 Q. Four or five hours after the murder?

21 A. Yes, sir.

22 Q. And so on into the afternoon?

23 A. Yes, sir.

24 Q. And when you made contact up close with
25 the Defendant Tyrone Benn, did you notice anything

1 unusual?

2 A. The only unusual thing was the smell of
3 bleach that I smelled. That was just -- just
4 unusual. It was weird to me.

5 Q. Okay.

6 A. I had never come across that before.

7 Q. Right. You had never taken somebody
8 into custody that smelled of bleach?

9 A. I had never done that before.

10 Q. Was it a pretty strong smell?

11 A. It was very strong.

12 Q. And was it coming from his clothing or
13 his person, could you tell?

14 A. I couldn't tell. I just knew it was --
15 it was coming from him. It was coming from either
16 his body or -- I doubt it was clothes because they
17 would have looked bleached, and I didn't see any
18 evidence of anything being bleached. So I just
19 assumed it was from his skin.

20 Q. Okay. And do you remember what color
21 shirt and shorts he had on?

22 A. When I took him into custody, I do not
23 remember.

24 MR. WETMORE: May I approach?

25 THE COURT: You may.

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 BY MR. WETMORE:

2 Q. This has been admitted as State's

3 Number 19. Is that the defendant --

4 A. Yes.

5 Q. -- clothed as you arrested him?

6 A. Yes, sir.

7 Q. So black shirt?

8 A. Black shirt, white looks like maybe a
9 T-shirt underneath, and tan cargo pants -- shorts,
10 tan cargo shorts, white socks, black shoes.

11 Q. And you didn't notice at the time any
12 bleach on the clothing?

13 A. No, sir.

14 Q. And you don't see anything on that
15 photograph?

16 A. No, sir.

17 Q. So the bleach was coming from his body?

18 A. Yes, sir.

19 Q. So what did you do with the defendant?

20 A. Myself and Officer Foster bagged his
21 hands with paper evidence bags.

22 Q. Why is that?

23 A. We preserve hands in the event that we
24 might be able to get gunshot residue off of his
25 hands. So we keep his hands bagged until he gets

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 to the detective bay so that the evidence people
2 can swab the hands.

3 Q. Now, if you -- if you expected he had
4 bleached himself, would that diminish your hopes of
5 finding GSR?

6 A. Absolutely.

7 Q. Gunshot residue?

8 A. Absolutely.

9 Q. The bleach would probably take that
10 off?

11 A. Yes, sir.

12 Q. But you did it any way?

13 A. Yes, sir.

14 Q. And where did you -- where did you take
15 him?

16 A. We went from Osceola Street straight to
17 the parking garage of city hall, and then we went
18 up to the detective bureau through the elevator.

19 Q. Okay. And did you stick around or did
20 you just leave him with the detectives?

21 A. I stuck around for a little while, but
22 it was getting close to quitting time so Lieutenant
23 Love cut me loose.

24 MR. WETMORE: Beg the Court's
25 indulgence one moment.

CHARLES MARTIN - DIRECT EXAM BY WETMORE

1 BY MR. WETMORE:

2 Q. You mentioned that you saw the
3 defendant as he was walking on I think you said
4 Craft?

5 A. Yes.

6 Q. Is that right?

7 A. Yes, sir.

8 Q. When you saw him on Craft, were you
9 able to identify the same mannerisms that you
10 talked about?

11 A. Yes, sir. Yes, sir.

12 Q. And so those mannerisms that you
13 noticed in the video matched the defendant's
14 mannerisms when you saw him?

15 A. Yes, sir.

16 Q. And that helped you to make sure you
17 had the right guy?

18 A. That's correct.

19 MR. WETMORE: Nothing further.

20 THE COURT: Any questions of the
21 witness?

22 MR. SMITH: Yes.

23 THE COURT: You may proceed.

24 CROSS-EXAMINATION

25 BY MR. SMITH:

CHARLES MARTIN - CROSS EXAM BY SMITH

1 Q. Afternoon, Officer.

2 A. Hey, sir. How are you?

3 Q. Do you remember the approximate time of
4 when you were called out in this case?

5 A. As soon as it came out over dispatch,
6 9:35, something like that. 9:40.

7 Q. Did you immediately respond to the
8 scene at that point?

9 A. Yes, sir.

10 Q. At some point you received a call there
11 was a possible suspect elsewhere?

12 A. Yes, sir.

13 Q. And I believe the Solicitor asked you
14 about that, but that was in an apartment on Clement
15 Avenue?

16 A. Clements Avenue, yes, sir.

17 Q. When did you leave the scene to go to
18 Clements Avenue? Do you have an idea of the time?

19 A. It wasn't long. Probably, I would say
20 45 minutes, maybe less -- less than an hour after I
21 got there. Captain Smith -- Captain Smith was
22 working that day too, so she came to the scene
23 pretty close to after -- right after I did. And
24 once -- once we needed to go to Clements, I went
25 over to Clements. I was one of the ones that was

CHARLES MARTIN - CROSS EXAM BY SMITH

1 tasked to go to Clements Avenue.

2 Q. When you arrived at Clements Avenue,
3 were you just kind of in place observing things?

4 A. At that moment, yes, sir.

5 Q. Okay. How long were you there
6 observing the apartment?

7 A. Probably half an hour.

8 Q. Okay. During that time, did someone
9 come up and talk to you?

10 A. Yes, sir.

11 Q. And was that person a resident of the
12 apartment that was under surveillance?

13 A. Yes, sir.

14 Q. And talked to you specifically about
15 that residence, and was he asking you about what
16 police were doing looking at the residence?

17 A. Well, I think we wouldn't let him go
18 near the residence because we were tasked to keep
19 people away from the residence. So he was
20 basically just conversing with me about what was
21 going on and why he couldn't go inside the
22 residence. And I kept telling him, hang on a
23 minute, the detectives are coming, they'll be here
24 in just a minute.

25 And then as soon as the detectives got

CHARLES MARTIN - CROSS EXAM BY SMITH

1 there is when we started talking to him about what
2 was actually going on there, and then we got the
3 consent to search his apartment.

4 Q. Were you involved in the search of his
5 apartment?

6 A. Yes, sir.

7 Q. And that would have been, give or take,
8 about when you got to the scene, about 45 minutes
9 after you initially responded to the incident
10 location on Spruill; is that --

11 A. That we did the search?

12 Q. No, I'm sorry, let me back up. I
13 unartfully asked the question. You were on scene
14 almost immediately at the shooting; is that
15 correct?

16 A. That's correct.

17 Q. About 45 minutes later, you were on the
18 scene on Clements Avenue?

19 A. That's correct.

20 Q. Okay. And so there were -- were there
21 any officers at the scene on Clements when you
22 arrived?

23 A. No.

24 Q. You were the first officer there?

25 A. Yes, sir.

CHARLES MARTIN - CROSS EXAM BY SMITH

1 Q. Now, you eventually made contact with
2 Mr. Benn; is that correct?

3 A. Yes, sir.

4 Q. And as I understand it, you drove --
5 you were driving past him and kind of turned
6 around?

7 A. That's correct.

8 Q. And you motioned for him to come over?

9 A. Yes.

10 Q. And he did that?

11 A. Yes, sir.

12 Q. He didn't try to run or walk away?

13 A. Not at all.

14 Q. At some point did you ask him for his
15 identification?

16 A. I don't know if I asked him for his
17 identification or I just asked him his last name.

18 Q. Okay. Did he tell you his last name?

19 A. He did.

20 Q. And then did you ask him for his first
21 name?

22 A. I did.

23 Q. And that's when you walked up with the
24 other officer and placed him in handcuffs?

25 A. Yes, sir, that's correct.

CHARLES MARTIN - CROSS EXAM BY SMITH

1 Q. And did you check him at that point for
2 weapons?

3 A. Yes, sir.

4 Q. And nothing was found as far as a
5 weapon goes?

6 A. Nothing.

7 Q. He didn't try to fight you during your
8 -- during his arrest?

9 A. No.

10 Q. You didn't have to use any other means
11 to get him to come with you?

12 A. No, sir.

13 Q. When he was in your car, were his hands
14 bagged immediately?

15 A. Yes, sir.

16 Q. Was that something you did or --

17 A. Myself and Officer Foster. Jamal
18 Foster is the one that actually -- he had the bags,
19 I didn't have any bags. He got the bags and we
20 both taped up the bags on the defendant's hands.

21 Q. Okay. Now, at some point you said that
22 you were asked to view the video; is that correct?

23 A. That's correct.

24 Q. And was that prior to coming into
25 contact with Mr. Benn, or after?

CHARLES MARTIN - REDIRECT EXAM BY WETMORE

1 A. Prior.

2 Q. And so did you -- did you view the
3 video at the crime scene or at the detective's
4 bureau?

5 A. At the detective's.

6 Q. And so was that -- I'm sorry for the
7 little bit of confusion. Is that before you go to
8 the apartment on Clements, or after?

9 A. I went to the apartment on Clements,
10 then I went to city hall to view the video.

11 MR. SMITH: Beg the Court's indulgence?

12 THE COURT: Yes, sir.

13 MR. SMITH: No further questions.

14 THE COURT: Any redirect?

15 MR. WETMORE: Yes, Your Honor.

16 THE COURT: You may proceed.

17 MR. WETMORE: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. WETMORE:

20 Q. Just so the jury is abundantly clear,
21 the first thing you did -- well, first, you went to
22 this apartment? First thing in investigating the
23 case you went to the apartment?

24 A. That's correct.

25 Q. You did that before you watched the

1 video?

2 A. That's correct.

3 Q. And after meeting and searching that
4 apartment, you fully cleared the people in the
5 apartment?

6 A. That's correct. Well, I didn't clear
7 them. The detective sergeant that was on scene
8 with us, he made the final call to clear the scene
9 and we left.

10 Q. But, in your mind, this apartment or
11 these people were not involved?

12 A. That's correct.

13 Q. And by the other people with North
14 Charleston, they also believed they were not
15 involved?

16 A. That's correct.

17 Q. And then the next thing after that is
18 you went and watched the video at city hall?

19 A. That's correct.

20 Q. And when seeing it, you made the
21 identification of this defendant?

22 A. That's correct.

23 Q. And that's your identification?

24 A. That's correct.

25 Q. It wasn't influenced by anybody else at

1 the department?

2 A. No, sir.

3 MR. WETMORE: No further questions.

4 THE COURT: Any objection to the
5 witness being excused? From the State?

6 MR. WETMORE: No, Your Honor.

7 THE COURT: From the defense?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: You may call your next
12 witness.

13 MR. WETMORE: Judge, the next witness
14 is Officer Repman. He's the subject of the Jackson
15 v. Denno.

16 THE COURT: Please don't discuss
17 matters of law in the presence of the jury.

18 Counsel, approach please.

19 (Bench conference)

20 THE COURT: Are you going to ask him
21 about that immediately, or somewhere in the middle
22 of his testimony? I'm going to break at the point
23 where you seek to introduce the testimony.

24 MR. WETMORE: Towards the end.

25 THE COURT: Well, then we need to go

1 ahead and start his testimony.

2 In the future, don't make reference to
3 any matters of law in the presence of the jury.

4 MR. WETMORE: I'm sorry. I didn't want
5 to start his --

6 THE COURT: Just say you have a matter
7 of law.

8 MR. WETMORE: I'm sorry, Judge.

9 THE COURT: You can go ahead and start
10 questioning him because we don't need to take it up
11 until you get to the point you want to introduce
12 that testimony.

13 MR. WETMORE: When I get to that point,
14 do you want me to stop and --

15 THE COURT: Yes, and say you have a
16 matter of law.

17 MR. WETMORE: My apologies.

18 THE COURT: No worries.

19 (End of bench conference.)

20 THE COURT: You may proceed.

21 MR. WETMORE: The State calls Officer
22 Travis Repman.

23 TRAVIS REPMAN,

24 being first duly sworn, testified as follows:

25 THE CLERK: Thank you, sir. You may be

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 seated. Once seated, please state your first and
2 last name, and spell your last loudly and clearly
3 into the microphone.

4 THE WITNESS: Yes, sir. Travis Repman,
5 R-E-P-M-A-N.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MR. WETMORE:

9 Q. Officer Repman, how long were you with
10 North Charleston before you left? You're not there
11 now, are you?

12 A. I'm not. Just under eight years.

13 Q. Eight years?

14 A. Yes, sir.

15 Q. Okay. Where do you work now?

16 A. City of Gastonia Police in North
17 Carolina.

18 Q. You're still in law enforcement?

19 A. Yes, sir.

20 Q. Back in July of 2014, when this
21 happened, what were you doing for North Charleston?

22 A. I was working for the Persons Unit in
23 the detective bureau.

24 Q. You were a detective?

25 A. Yes, sir.

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 Q. And the Persons Unit, what does that
2 mean?

3 A. We investigate any type of crimes
4 against persons, violent assaults, homicide,
5 shootings, stabbings, robberies.

6 Q. And would you share with the jury any
7 training and experience you've had to help you do
8 your job?

9 A. Along with the eight years, I did four
10 years with the Speed Team, I have a lot of training
11 from interviewing, to different types of evidence
12 documentation procedures. I have a college degree
13 in criminal justice, Bachelor's Degree. That's
14 about it.

15 Q. Sounds good. And were you working
16 July 12, 2014, about 9:40 in the morning?

17 A. Yes, sir, I was called in.

18 Q. Okay. You were called in to this case?

19 A. Yes.

20 Q. Describe that process for me please.

21 A. Every four weeks there is a group of
22 detectives that are placed on call. We work call
23 shift through the week from Sunday night until
24 Thursday night, from 8:00 p.m. to 4:00 a.m., and
25 any time we are not actually the station, we're on

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 call. We're on an on-call status. The supervisor
2 can call us in for a major incident.

3 Q. So you became called to this major
4 incident?

5 A. Yes.

6 Q. Did you respond to the scene?

7 A. I did.

8 Q. Tell us what you saw and what you did
9 when you first got there.

10 A. Well, the initial thing I saw was,
11 obviously, the crime scene tape, all the blue
12 lights, the crowd had gathered around Spruill
13 Avenue in front of the store, of course. When I
14 went into the crime scene, I saw the victim lying
15 on the sidewalk and knew who he was from prior
16 interactions in my career. And then I went inside
17 the store.

18 Q. So you knew the victim?

19 A. Yes.

20 Q. Okay. What else did you do when you
21 got to the store -- got inside the store?

22 A. There was a couple of women that were
23 in the store along, with the people that were
24 working there. I, along with a couple of other
25 detectives, spoke with them about what they had

1 seen or witnessed with the event. And then I also
2 spoke with the clerk about the surveillance video
3 that was from the store.

4 Q. So did you get a chance to watch the
5 video then at the store, or did you not see it
6 until later?

7 A. I did see it at the store, but,
8 obviously, combed through it a lot further after we
9 got it back to the station.

10 Q. While you were out in the area of
11 Chicora, Cherokee, you said you met with people
12 that were inside the store?

13 A. Yes.

14 Q. That would have been the clerk?

15 A. Correct.

16 Q. Were there any customers in there?

17 A. Yes.

18 Q. How many?

19 A. Two.

20 Q. Okay. And then anybody else that you
21 can recall, manager or anybody else like that?

22 A. I believe a manager was there. I
23 believe he was the one that had the video, the
24 access to the video.

25 Q. Okay. Did you -- while you were in the

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 area, did you meet with any other, you know, people
2 that the police were interested in with regards to
3 the case?

4 A. Correct.

5 Q. Besides the people that were actually
6 in the store?

7 A. Yes. After we obtained statements from
8 people inside the store, we received some
9 information of possibly people that were involved
10 were at an address across Spruill Avenue.

11 Q. Like an apartment complex?

12 A. Yes, an apartment complex. I believe
13 it was on Kobe. And we responded to that address
14 and conducted what we call a knock and talk, which
15 basically you knock on the door, make contact with
16 the residents, and then conduct a basic
17 investigation interview with those people at the
18 time.

19 Q. And so when you met with the people at
20 the apartment, did you conclude that they were
21 involved or not involved?

22 A. We concluded they were not involved.

23 Q. How were you able to clear them?

24 A. The one person didn't match the video;
25 he didn't have the same hairstyle, wasn't the right

1 size. You know, his physical appearance didn't
2 match. The other one, at first we thought possibly
3 because he did have the dreads, but his dreads were
4 way too long to match with the person in the video.

5 Q. Okay. So the people themselves you
6 concluded they had no involvement?

7 A. Yes.

8 Q. Did you find anything of interest in
9 their apartment?

10 A. No.

11 Q. This was simply you doing your duty
12 investigating every possible lead?

13 A. Correct. We didn't know who we had at
14 this point.

15 Q. But at the time this was a dead end?

16 A. Yes.

17 Q. Not involved?

18 A. Yes.

19 Q. Okay. And so you were aware that the
20 store had the surveillance equipment. Did you
21 later take the time to sit down and look at it
22 closely?

23 A. Yes.

24 Q. Okay. When you did that, did you
25 immediately recognize the shooter from the video?

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 A. No.

2 Q. Okay. You did not?

3 A. No.

4 Q. Is there ever a point in the case that
5 you were able to identify the shooter in the video?

6 A. Yes.

7 Q. Tell us about that point. When did
8 that point come about?

9 A. Well, other officers involved in the
10 case came up with, through sources, two names with
11 the defendant being one as possibly being involved
12 in the case. And at some point an officer made
13 contact with the defendant, and he was brought to
14 the detective bureau to speak with us.

15 The minute he walked through that door,
16 just seeing him in live person with, you know, the
17 video -- a static picture doesn't do it justice,
18 but when you see him in person, moving -- you know,
19 everybody has their own way that they walk and move
20 and features about their face, forehead,
21 everything, appearance, everything matched. I was
22 100 percent sure at that point.

23 Q. So when the defendant was brought in --

24 A. Yes.

25 Q. -- you were 100 percent sure that that

1 was the man in the video?

2 A. Yes.

3 Q. That was the murderer?

4 A. Yes.

5 Q. And you based it all on face?

6 A. Everything; his face, his mannerisms,
7 you know, he was very animated on the video, if you
8 watch that video.

9 Q. And as the defendant is being brought
10 into the detective's office, is he exhibiting those
11 same animated mannerisms?

12 A. His -- obviously, he was handcuffed at
13 this point, so I didn't have any of the arm motions
14 at that point, but his walk is very descriptive.
15 His hairline is very descriptive. You know,
16 everything -- his facial features, it just all
17 matched up. Everything about him matched up
18 perfectly.

19 Q. Okay. So in all honesty, you didn't
20 immediately recognize him, though, did you?

21 A. No.

22 Q. But when you saw him, you were
23 100 percent sure?

24 A. I was convinced.

25 Q. Based on everything about his

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 personality?

2 A. Yes.

3 Q. Did you ever have the opportunity to
4 interact with him when he wasn't handcuffed to kind
5 of gauge his mannerisms?

6 A. I did. I conducted an interview with
7 him once he was placed into an interview room.

8 Q. At that point was he handcuffed?

9 A. No. Well, let me be clear, one hand --
10 we usually restrain one hand to the chair and we
11 leave the other one free to write with.

12 Q. So he had one hand free?

13 A. Correct.

14 Q. With the one hand free, did you
15 identify any mannerisms that you saw in the video?

16 A. Yeah, he used his hand when he talked.

17 Q. Okay. So throughout your interaction
18 with him, did you become more or less confident
19 that he was the one?

20 A. I kept getting more and more sure as my
21 interactions with him went on.

22 Q. Okay. All right. So after they
23 brought him in, you were tasked with interviewing
24 him?

25 A. Yes.

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 Q. You're the case officer?

2 A. Correct.

3 Q. And you're the assigned detective?

4 A. Correct.

5 Q. All the other police officers we've
6 heard from progressed the investigation, but you're
7 the assigned investigator?

8 A. Yes.

9 Q. Now, when you talk with a suspect, like
10 the defendant that day, where do you -- where do
11 you do that?

12 A. In the -- we have four different
13 interview rooms that we use that are audio and
14 video recorded. That way there is no question
15 about what is said or done within the interview.
16 He was placed into an interview room.

17 Q. And that room, is it a good-sized room?
18 A small room?

19 A. I don't know the exact dimensions, but
20 it's enough for a few people to be inside and be
21 comfortable. There's a medium-sized table a little
22 bit smaller than the tables in this room and three
23 or four chairs, depending.

24 Q. Okay. About the size of a small
25 bedroom?

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 A. Yeah, small bedroom. Yeah.

2 Q. Okay. In that setting, did you notice
3 anything -- did you sense anything unusual about
4 the defendant?

5 A. Yes.

6 Q. What is that?

7 A. When initially I walked in that room, I
8 could smell what I would call Clorox or bleach-type
9 smell.

10 Q. And was that smell strong or faint?

11 A. It was enough that inside of that room
12 that I -- it was one of the first things that --
13 that hit my brain was the Clorox smell.

14 Q. And you sensed that coming from the
15 defendant's person?

16 A. It would be the only thing that would
17 be coming in, you know, from that room. It's not
18 something that we use in that room.

19 Q. Now, did you notice any bleach spots on
20 his clothes?

21 A. No.

22 Q. But you smelled it coming from his
23 person?

24 A. Yes.

25 Q. Body?

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. What did that -- what did that make you
3 think when you smelled it?

4 A. Well, a common -- for us, we are
5 trained on the scene to mix bleach and water to get
6 rid of blood. That's how you would -- that's how,
7 you know, anyone would be taught to properly clean
8 away blood from a scene, to go ahead and be rid of
9 it.

10 Q. And so you thought the bleach had been
11 used to clean perhaps blood?

12 A. Yeah.

13 MR. SMITH: Objection.

14 THE COURT: Basis?

15 MR. SMITH: Calls for speculation.

16 THE COURT: Sustained.

17 BY MR. WETMORE:

18 Q. What did the smell of bleach make you
19 think?

20 A. That he had cleaned up.

21 Q. Okay. Have you ever smelled that in an
22 interview room before?

23 A. No.

24 Q. Ever smelled it since?

25 A. Absolutely.

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 Q. Now, so you obviously were familiar
2 with the --

3 MR. WETMORE: If I may approach, Your
4 Honor?

5 THE COURT: You may.

6 By MR. WETMORE:

7 Q. I'm going to show you what's been
8 admitted as State's Number 19. Is that what the
9 defendant was wearing when you were dealing with
10 him?

11 A. Yes.

12 Q. Are those the same clothes as he was
13 wearing in the video?

14 A. I can't say.

15 Q. Have you seen the video?

16 A. Yes.

17 Q. But you don't know if those are the
18 exact same clothes or not?

19 A. No.

20 Q. What about shoes and socks, anything
21 about those when you were talking to him that
22 struck you?

23 A. I felt that the shoes were definitely
24 the shoes from the video.

25 Q. So you thought the defendant's shoes he

1 was wearing were the same ones in the video?

2 A. Yes, sir.

3 Q. All right. So you told us a little bit
4 about the circumstances surrounding the interview.
5 Do you know, was there anybody else that was there
6 while you were talking with him besides you and the
7 defendant?

8 A. Inside of the interview room?

9 Q. Correct.

10 A. No.

11 Q. Just the two of you?

12 A. Yes.

13 Q. Now, could you tell if the defendant
14 was under the influence of alcohol, drugs, anything
15 like that?

16 A. I didn't get the gist that he was under
17 any type of substance.

18 Q. Nothing struck you in that regard?

19 A. No.

20 Q. Did he have any kind of physical or
21 mental disability that would cause you concern that
22 he understood what was going on when you were
23 talking?

24 A. No.

25 Q. You described the room a little bit,

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 smaller kind of isolated room. How long was he --
2 was he kept in that room?

3 A. Several hours. I'm not sure of the
4 exact time.

5 Q. Okay. Did he have opportunity to take
6 a break, go to the bathroom?

7 A. Oh, absolutely. Yeah, I'm sure I
8 offered him, you know, a drink or break several
9 times.

10 Q. Okay. Was he -- was he offered any
11 opportunity to get water, food, or something like
12 that?

13 A. Absolutely.

14 Q. Okay. Was he able to call anybody?

15 A. I don't recall him asking to call
16 anybody, but if he was, you know, at times we would
17 allow that.

18 Q. Okay. So from what I understand from
19 the other officers, he was definitely in police
20 custody?

21 A. Yes.

22 Q. Because they believed he was caught on
23 video?

24 A. Yes.

25 Q. So was he under arrest at this time or

1 just in custody?

2 A. Well, initially, when he was coming up,
3 it was more of a detainment for purposes of the
4 interview because people had identified him from
5 the video.

6 Q. He was definitely in police custody?

7 A. Yes.

8 Q. He wasn't free to just keep on going?

9 A. No.

10 Q. Okay. And did he come in voluntarily
11 to talk to you guys or was he brought in by another
12 officer?

13 A. Another officer, Officer Martin brought
14 him.

15 Q. Officer Martin?

16 A. Yes.

17 Q. Okay. And so while you were in the
18 room, are you asking him questions and he's
19 answering you, or how does that process take place?

20 A. Initially, I conducted a GSR kit with
21 him, and it was just a little bit of chit-chat,
22 getting to know each other type of thing.

23 Q. And the GSR kit, describe that real
24 quick.

25 A. It's a gunshot residue kit. Basically,

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1 you blot the hand with a system that comes from a
2 sealed bag from SLED to detect any type of residue
3 from -- that would be fired from a firearm that
4 could be on your hands.

5 Q. And if the defendant had bleached
6 himself, would that diminish your hopes of getting
7 gunshot residue?

8 A. Just washing your hands with water and
9 soap would do that.

10 Q. Certainly bleach would?

11 A. Absolutely.

12 Q. Once you got past the gunshot residue
13 test, did you guys begin to discuss --

14 A. Yes.

15 Q. -- things?

16 A. Yes.

17 Q. Let's be honest, you were interrogating
18 him?

19 A. Yes.

20 Q. However cordial it may or may not have
21 been, you were trying to get information from him?

22 A. Yes.

23 Q. Okay. Based on the fact that he was in
24 police custody and he was being asked questions, or
25 interrogated, was he advised the nature of the

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1 investigation? Did you tell him what you were
2 talking about?

3 A. At some point.

4 Q. Okay.

5 A. You know, we went over that and went
6 through that.

7 Q. So at some point he knew that you were
8 talking about the murder that happened in front of
9 the convenience store?

10 A. Correct.

11 Q. Now, given all that, was he advised of
12 his rights pursuant to the famous Miranda case, his
13 Miranda rights?

14 A. Yes.

15 Q. How did you advise him of his rights?

16 A. At the City of North Charleston we have
17 a form that has a carbon copy on the back, and you
18 read it -- you read it verbatim from the form and
19 have them initial next to each right, and then down
20 below it is signed in two different places; one,
21 acknowledging that there wasn't any types of
22 threats, force, anything like that made against
23 them to force them to talk to us, and they sign
24 that, and then again saying they talked to us.

25 MR. WETMORE: If I may approach, Your

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1 Honor?

2 THE COURT: Uh-huh.

3 BY MR. WETMORE:

4 Q. Can you identify this document?

5 A. Yes. That is the Advice of
6 Constitutional Rights form that was filled out for
7 this investigation of the defendant.

8 Q. That's the document that you used to
9 advise him of his rights?

10 A. Yes.

11 MR. WETMORE: Can I get a sticker for
12 that, please?

13 (STATE EXH. 38, Advice of
14 Constitutional Rights form, was marked for
15 identification.)

16 BY MR. WETMORE:

17 Q. Detective, State's Number 38 is this
18 document that you used to advise Mr. Benn of his
19 Constitutional rights, Miranda?

20 A. Yes.

21 Q. And in using this document, if you
22 would, please share with the jury the rights that
23 you advised him he had.

24 A. I, Tyrone Benne, have been advised by
25 Detective Repman, of the North Charleston Police

1 Department, that I have the absolute right to
2 remain silent. I do not have to answer any
3 questions or give a statement, and this fact cannot
4 be used against me. If I do answer questions or
5 give a statement, anything I say can and will be
6 used against me in a court of law. I have the
7 right to consult with a lawyer of my choice before
8 I answer questions or give a statement and, also,
9 have him or her present while I'm being questioned.
10 If I wish to talk to a lawyer, have him or her
11 present, but I'm unable to afford to hire a lawyer,
12 one will be appointed to represent me free of
13 charge. If I decide to answer or give a statement
14 without having a lawyer present representing me, I
15 have the absolute right during this interview to
16 stop answering questions and remain silent.

17 And then it says in bold print, I fully
18 understand each of the rights as explained to me.

19 Q. Okay. Did he acknowledge that he
20 understood each of those rights?

21 A. Yes.

22 Q. How did he do that?

23 A. He initialed T, B next to each one.

24 Q. T, B?

25 A. Yes.

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1 Q. Tyrone Benn?

2 A. Yes.

3 Q. And did he sign at the end?

4 A. He signed under, I fully understand
5 each of these rights to me. And then in the next
6 statement down where it says, having these rights
7 in mind, I wish to waive these rights and answer
8 questions, and no threats, force, or promises of
9 any kind have been made to me by anyone to cause me
10 to waive these rights or answer questions. And he,
11 again, signs under that.

12 Q. Okay. So in writing on that document,
13 he understands his rights and he waived his rights?

14 A. Yes.

15 Q. Did he have any trouble understanding
16 his rights when you were talking with him?

17 A. He didn't seem to.

18 Q. He obviously understood what you guys
19 were talking about? Didn't appear to be impaired?

20 A. No.

21 Q. And his answers were rational and
22 appeared responsive?

23 A. Yes.

24 Q. You didn't threaten, promise him
25 anything, or coerce him in any way to waive his

1 rights?

2 A. No.

3 Q. Now, when you asked him initially if he
4 wanted -- he had the right to have a lawyer, did he
5 take you up on that right initially?

6 A. No.

7 Q. In fact, he agreed to go ahead and
8 waive his rights and speak with you about the
9 incident?

10 A. That's correct.

11 Q. Did he later change his mind and ask to
12 stop questioning and ask for a lawyer?

13 A. He did.

14 Q. But, initially, he understood his
15 rights, to the best of your knowledge?

16 A. Yes.

17 Q. And he waived them?

18 A. Yes.

19 Q. And talked to you?

20 A. Yes.

21 Q. Based on everything that you
22 experienced then from the defendant, was his
23 statement freely and voluntarily given?

24 A. Yes.

25 Q. And was it, in fact, recorded?

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1 A. Yes.

2 Q. How was it recorded?

3 A. The in-house system at the police
4 department is within the detective bureau.

5 MR. WETMORE: Okay. Judge, at this
6 point, I have a matter of law.

7 THE COURT: Madame Forelady, ladies and
8 gentlemen, we are going to take advantage of the
9 break in testimony to take our lunch break. During
10 the break, please do not discuss the case among
11 yourselves or with anyone else. Please leave your
12 notepads in your seats.

13 We're probably going to be working
14 another 30 minutes so we're going to break for
15 lunch until 2:30, because then that gives us the
16 opportunity to have lunch as well.

17 During the break, please don't have any
18 contact with anyone in or about the courthouse,
19 even an innocent conversation could be
20 misrepresented, and do not watch, read, or listen
21 to any media accounts about this case.

22 Hope you have a good lunch. Come
23 directly to your jury room at 2:30.

24 (Jury out 12:58 p.m.)

25 THE COURT: You may take your seats.

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1 You may continue with your questioning of the
2 witness.

3 I just heard another telephone go off.
4 Whose was it?

5 Whose telephone was it? Pardon me?

6 Thank you. Fair warning.

7 Proceed, Mr. Wetmore.

8 BY MR. WETMORE:

9 Q. State's Number 38, that was your form
10 that you used?

11 A. Yes.

12 Q. And you believe he voluntarily waived
13 his Miranda rights to speak?

14 A. Yes.

15 Q. Initially, I know you discussed a lot
16 of different things with the defendant. Was there
17 ever a point where you stopped the general
18 discussion and became more pointed with him?

19 A. Yes.

20 Q. Did you tell him that you believed you
21 had him on video?

22 A. Yes.

23 Q. Did you make it clear to him that you
24 were about to arrest him --

25 A. Yes.

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1 Q. -- for the murder?

2 A. Yes.

3 Q. When he was confronted with the video
4 and the fact that you were likely going to arrest
5 him, what did he say?

6 A. Take me.

7 Q. He said what?

8 A. Just take me to jail.

9 THE COURT: He wouldn't be allowed to
10 testify to what was said. The video would speak
11 for itself. So if I admitted the testimony, it
12 will be based on what the tape said. He wouldn't
13 be able to say what he said.

14 So if I were to admit the tape, you
15 would be able to publish the tape, but that would
16 be the extent of it.

17 MR. WETMORE: This witness shouldn't
18 say what the defendant said?

19 THE COURT: No, because we have a tape.
20 We have an actual recording to what he said. We
21 don't need somebody to interpret what he said. The
22 best evidence is what was actually said, which is
23 the video.

24 MR. WETMORE: Okay.

25 BY MR. WETMORE:

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1 Q. Did he make any other comments when he
2 was confronted with the video?

3 A. That it was, basically, just take me.
4 After that, at some point, a lawyer was requested
5 to come and assist him.

6 Q. So at that point it's safe to say that
7 the interview was terminated?

8 A. It was terminated, yes.

9 MR. WETMORE: Okay. Judge, for the
10 purpose of Jackson v. Denno, then that would be it.

11 THE COURT: Any questions for the
12 witness?

13 MR. SMITH: No, Your Honor.

14 THE COURT: Do you have the portion of
15 the tape that you referenced earlier?

16 MR. SMITH: I do, Your Honor.

17 THE COURT: And what is that?

18 MR. SMITH: Just a moment, Your Honor.
19 It's at 1:48 and 8 seconds.

20 THE COURT: What sections of the tape
21 are you seeking to admit, Mr. Wetmore?

22 MR. WETMORE: Judge, I didn't have a
23 redacted tape, because I thought the officer would
24 be able to testify about it, but it was just the
25 very one limited phrase where he says -- it becomes

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1 obvious that he is on video. And he says, just
2 take me to jail. This officer says, all right,
3 I'll go get a booking sheet. And that was it.

4 I wasn't going to play the remainder of
5 the tape because, number one, it's not all
6 relevant; they're talking about other cases in
7 North Charleston. And also, you know, from a
8 strategic standpoint, it's very self serving. He
9 tells his version of what he thinks happened. So I
10 wasn't going to introduce the video as a whole, I
11 was just going to ask about his response when he
12 was confronted with the video. That's all I was
13 going to ask the police officer to testify to.

14 So I hadn't prepared the video to play
15 to the jury, because it's pretty lengthy and I
16 wasn't going to extract a portion of it. I was
17 simply going to ask him what was said. And, I'd
18 argue that he could say, you know, what he heard.
19 If the defense has some other understanding of it,
20 they can certainly present that, but I just wanted
21 to ask the officer what he understood the defendant
22 to say. Not the entire conversation --

23 THE COURT: He doesn't get to say what
24 he understood him to say. If you want it in, you
25 have to play exactly what was said. You don't get

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1 to have somebody's interpretation of what was said.
2 The only time somebody get's to testify about what
3 somebody said is, one, if it's not recorded. If it
4 was -- or if you're doing it in response to
5 rehabilitate a witness or to impeach a witness.
6 But we have a recording, so we have what was
7 actually said.

8 So if it comes in, you get to play it
9 and that's the extent of it. He doesn't get to
10 interpret it or say what he thought or what he
11 thinks. It speaks for itself.

12 MR. WETMORE: Judge, like I said, I
13 need to maybe work on redacting just that portion
14 at that --

15 THE COURT: What section are you
16 referring to that you would be seeking to admit?

17 MR. WETMORE: It's, again, noted on my
18 copy that I gave to your law clerk. It's that
19 portion on the top. I think it's 4:21 p.m., and
20 the run time would be at an hour and 38 minutes.

21 THE COURT: The only portion that
22 you're seeking to introduce is not an hour and 28
23 minutes.

24 MR. WETMORE: It's at one hour and
25 38 minutes is where that comment is made.

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1 THE COURT: It's at 1:38 and how many
2 seconds?

3 MR. WETMORE: I don't know that.

4 (Discussion between the Court and
5 Clerk.)

6 THE COURT: So the reference you gave
7 is the actual time that is stamped on this
8 recording or is it your estimation? I'm not going
9 to fast forward an hour and 38 minutes. I need to
10 know exactly on the tape where we're talking about.

11 MR. SMITH: Yes, Your Honor. It is the
12 hour -- my understanding is one hour, 48 minutes,
13 and eight seconds.

14 THE COURT: That's not how this tape is
15 recorded. It has actual time. The recording is
16 eight hours and some. So it tells us 4 whatever --
17 it tells us 4:21, 4:28. So I need to know exactly
18 where it's at on that tape because what we have
19 designates the actual time. I need to know what
20 you're referring to.

21 MR. WETMORE: Judge, my notes just
22 indicate 4:21 p.m.

23 THE COURT: And that's what we have.
24 It says the actual time on the recording, so I need
25 to know what actual time you're referring to.

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1 MR. SMITH: Your Honor, I would have to
2 -- I would have to look again and see.

3 THE COURT: Your recording should have
4 the same kind of markers as ours does. I would
5 imagine they gave you the exact same tape.

6 MR. WETMORE: It's the same copy,
7 Judge. I think 4:21 should be the time I'm
8 discussing. If Your Honor would admit that, then I
9 can try to get it somehow isolated or simply play
10 that portion and turn it off. Whatever you think
11 is fair, Judge.

12 MR. SMITH: Your Honor, maybe we can
13 clear this up a little easier. If they're going to
14 hear the portion of the tape as opposed to what the
15 officer is testifying about, then we're okay with
16 that portion being played.

17 THE COURT: So you're withdrawing your
18 objection?

19 MR. SMITH: I am.

20 THE COURT: Okay. So then that
21 resolves the issue; the objection is withdrawn.
22 And I need to know exactly -- it's from 4:21 to
23 what time, Mr. Wetmore?

24 MR. WETMORE: Judge, it would be just
25 that one phrase.

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1 THE COURT: I need to know from 4:21 to
2 what time.

3 MR. WETMORE: Probably just a matter of
4 seconds. If you'd like, I can --

5 THE CLERK: Because he doesn't say that
6 until 4:26, not 4:21.

7 MR. WETMORE: Judge, I didn't note it
8 when it started. If you'd like --

9 THE COURT: Our notes reflect it went
10 from 4:21 to 4:27:45.

11 MR. WETMORE: And, Judge --

12 THE COURT: So I need you all to look
13 at that and make sure that that is accurate and
14 that that is what you seek to introduce so that
15 Mr. Smith can be on the same page as to what he's
16 agreeing to.

17 MR. WETMORE: Okay. I gave the law
18 clerk my disk.

19 THE COURT: Is that your only copy?

20 MR. WETMORE: That's my only copy.

21 THE COURT: Actually, what you're going
22 to need to do is burn you a separate copy with only
23 that portion on it. The jury has to have the
24 ability to watch that on their own.

25 MR. WETMORE: And I'll try to make that

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 happen -- can I have the lunch break to try to do
2 that?

3 THE COURT: Absolutely.

4 MR. WETMORE: I'll try to isolate --

5 THE COURT: I need for you to play it
6 right now so we'll be on the same page.

7 MR. WETMORE: Judge, I'm sorry, we
8 didn't have it cued up. I appreciate your
9 patience.

10 (Requested portion played.)

11 MR. WETMORE: Judge, that would be the
12 conversation that I would seek to introduce.

13 THE COURT: And is that what you
14 contemplated, Mr. Smith?

15 MR. WETMORE: The times are 4:21 p.m.
16 to 4:27 p.m. and approximately 50 seconds.

17 MR. SMITH: Your Honor, my
18 understanding was that he was just going to play
19 the last segment.

20 THE COURT: Do you have any objection
21 to what he wants to play?

22 MR. SMITH: No, Your Honor.

23 THE COURT: Okay. If you all could
24 make sure that the tape is cued, and also you need
25 to do something about that sound. It's very

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 muffled, very difficult to hear.

2 MR. WETMORE: Judge, would you like for
3 us to isolate that time period on a separate disk?

4 THE COURT: You're going to have to for
5 it to go to the jury. They have to be able to
6 listen to what they need to listen to in private.
7 They shouldn't have to deliberate in your presence.

8 MR. WETMORE: Judge, I will try to
9 isolate that part.

10 THE COURT: So we no longer have an
11 objection to the admissibility of that portion of
12 the statement; is that correct?

13 MR. SMITH: That's correct.

14 THE COURT: So we will now break for
15 lunch until 2:30. And I will see you all at that
16 time.

17 MR. LIETZOW: Thanks, Judge.

18 THE COURT: Thank you.

19 (A luncheon recess transpired, 1:30
20 p.m.)

21 (STATE EXH. 39 in evidence.)

22 (COURT EXH. 2, CD, was marked for
23 identification.)

24 (Jury in, 2:46 p.m.)

25 THE COURT: You may take your seats.

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1 Ladies and gentlemen, I hope you all
2 had a pleasant lunch. We will now resume the
3 testimony of the witness.

4 Mr. Wetmore, you may proceed.

5 MR. WETMORE: Thank you, Judge.

6 THE COURT: You're welcome.

7 BY MR. WETMORE:

8 Q. Detective Repman, I appreciate you
9 going through the particulars of the statement. I
10 want the jury to understand this is a voluntary
11 statement. You've said that State's 38 is the
12 document that you used --

13 A. Yes.

14 Q. -- to advise him of his rights?

15 A. Yes.

16 Q. And he acknowledged those in the
17 waiver?

18 A. Yes.

19 MR. WETMORE: I would like to admit
20 State's 38.

21 THE COURT: Any objection?

22 MR. SMITH: No objection.

23 THE COURT: Marked and admitted without
24 objection.

25 (STATE EXH. 38 in evidence.)

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 BY MR. WETMORE:

2 Q. Let's get down to it now, what was said
3 by the defendant. How do you typically begin an
4 interview with a suspect?

5 A. Well, it's a suspect, we would first
6 administer their rights.

7 Q. Which you did?

8 A. We did.

9 Q. With that document.

10 A. Typically, what I like to do is make
11 small talk a little bit, try to gain a little bit
12 of rapport with the individual and gauge at that
13 point how receptive he's going to be, maybe throw
14 in some questions not pertaining necessarily to the
15 case, the things that I have knowledge of that
16 could show deception, that he's going to cooperate
17 or not cooperate and how to go from there in the
18 interview.

19 Q. Okay. And did you make that kind of, I
20 guess, just general talk with the defendant?

21 A. Yes.

22 Q. Okay. Did you ever talk to him or
23 suggest that he might have been wearing a green
24 shirt?

25 A. I did.

1 Q. Tell me how that went.

2 A. There's many techniques when you're
3 interviewing people. In this case the crux of the
4 case comes down to a video. What I was trying to
5 obtain was what he was wearing this morning during
6 the crime, during this incident. By presenting
7 something that may not be involved in the case,
8 such as a green shirt, it's so out of the ordinary
9 that a normal person would maybe take offense, oh,
10 that's not what I'm wearing, and then they come out
11 and tell me exactly what they are wearing at the
12 time.

13 Q. You threw it out there as an
14 intentional tool to sort of see if he would open
15 up?

16 A. Correct.

17 Q. And after you engaged in that general
18 discussion and those specific tools to get some
19 more information, did you finally cut to it and
20 confront front him with the fact that you had him
21 on video?

22 A. Yes.

23 Q. How did you -- how did you do that?
24 Like, how did you let him know? Did you come out
25 and tell him or did you go through a process with

1 him?

2 A. I went through a process. You know, I
3 gave him opportunities to come out with, you know,
4 what happened, trying to allow him to give me his
5 side of the story or his views on what happened,
6 his time frame of events. I believe I started even
7 as far back as the night before going through this
8 morning until interaction with the police.

9 Q. Did you discuss with him in general
10 surveillance video helping to solve crimes?

11 A. Yes.

12 Q. Tell me about how that went and what
13 you did in the interview.

14 A. Well, being that I was on call-out and
15 being the person's detective on call-out at the
16 time, it just so happened that that night I was
17 called out in reference to a different crime that
18 was at another convenience store locally where a
19 shooting occurred, and I made an arrest based on --
20 made an identification based on the video.

21 Q. Unrelated?

22 A. Completely unrelated.

23 Q. And so how did you tie it into the
24 case?

25 A. I used it as a reference. He

1 acknowledged that he knew about that case. And
2 then I wrapped that in to how the video, you know,
3 involvement in that case would be similar in other
4 cases or could be used in other cases, and
5 eventually confronted the video in this case.

6 Q. Okay. So you eventually did confront
7 him with your belief that he was on that video?

8 A. Yes.

9 Q. Did you leave the interview room while
10 he was thinking about that, or did you stay there,
11 or what?

12 A. I brought it to his attention about --
13 you know, that we talked about the other crime that
14 happened on video and how convenience stores have
15 -- most convenience stores have really good audio
16 and video, mainly video surveillance. And then I
17 told him to think about it and I walked out of the
18 room.

19 Q. Okay. So you expressed to him the
20 benefits of surveillance video and you left?

21 A. Yes.

22 Q. Left him to think about it?

23 A. Yes.

24 Q. Were you watching him while you were
25 out of the room?

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1 A. Yes.

2 Q. What was he doing? Was he doing
3 anything?

4 A. Fidgeting, sitting in the chair. I
5 think eventually, before I came back in, he placed
6 his head on the table.

7 Q. Now, at some point did you return to
8 the interview room to finish the discussion with
9 him?

10 A. Yes.

11 Q. At that point, did you make it
12 abundantly clear that he was on video?

13 A. Yes.

14 Q. Did you let him know that because of
15 that he was likely to be arrested?

16 A. Yes.

17 Q. For this murder?

18 A. Yes.

19 Q. Okay. What was his response at that
20 point?

21 A. Go ahead and take him.

22 Q. Go ahead and take him where?

23 A. To jail.

24 Q. So he said, take me to jail?

25 A. Yes.

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1 Q. And when he was confronted with this
2 fact, besides saying take me to jail, did he
3 continue talking anymore or was that the end of the
4 interview?

5 A. I believe I said, okay, I'll go get a
6 booking sheet to fill out, and I walked out of the
7 room, and then came back awhile later with a
8 booking sheet to fill out.

9 Q. So that was the end of the interview?

10 A. For the most part, yes.

11 MR. WETMORE: All right. Your Honor,
12 at this point I would like to -- I would like to
13 present State's 39, which is a portion of the
14 conversation.

15 THE COURT: Just publish the disk
16 without any comment. Thank you. It's been
17 admitted without objection.

18 MR. WETMORE: This has been admitted as
19 State's 39. Just take a look if you would please
20 and watch the end of the interview.

21 (Tape played.)

22 BY MR. WETMORE:

23 Q. So, Detective, that was essentially the
24 end of your interview with the defendant?

25 A. Yes.

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 Q. And his last phrase to you was what?

2 A. Just take me to --

3 MR. SMITH: Objection, Your Honor.

4 THE COURT: Sustained. The video
5 speaks for itself.

6 BY MR. WETMORE:

7 Q. After he made that last statement to
8 you, did you arrest him and take him to jail?

9 A. Yes.

10 Q. What did you arrest him for?

11 A. Possession of a firearm during the
12 commission of a violent crime and murder.

13 Q. Now, in that -- last of that interview,
14 is his -- I guess it would be his left arm
15 handcuffed --

16 A. Yes.

17 Q. -- to the chair?

18 A. Yes.

19 Q. And he was using his right arm --

20 A. Yes.

21 Q. -- as he spoke?

22 A. Yes.

23 Q. Would you consider his mannerisms to be
24 animated, talking with his hands?

25 A. Yes.

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1 Q. Is that sort of what you were talking
2 about when you were talking about identifying him
3 from his mannerisms?

4 A. That is part of what I was talking
5 about with the mannerisms.

6 Q. Some of the similar mannerisms you
7 recognized in the video?

8 A. Yes.

9 Q. Surveillance video?

10 A. Yes.

11 Q. All right. After you interviewed the
12 defendant, you took him to jail and charged him.
13 Did you have an opportunity to listen to any of his
14 recorded phone calls from the jail?

15 A. Yes.

16 MR. WETMORE: If I may approach, Your
17 Honor.

18 BY MR. WETMORE:

19 Q. I'm going to show you State's --

20 THE COURT: He can't identify them.
21 He's not the records custodian.

22 MR. WETMORE: Judge, he's listened to
23 them --

24 THE COURT: He's not able to testify to
25 them. No.

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1 You can't -- unless you can establish
2 foundation, it is not admissible at this point.
3 You have to lay the appropriate foundation for the
4 admissibility of that document.

5 MR. WETMORE: May I approach?

6 THE COURT: Yes.

7 (Bench conference)

8 THE COURT: First of all, the
9 recordings are going to speak for themselves. He
10 can't testify to them. He can't really identify
11 his voice because he doesn't know him, even though
12 he talked to him for eight hours. I don't think
13 they're contesting any authenticity. What they're
14 contesting is the admissibility based on relevance
15 and constitutional grounds. You're going to have
16 to lay a foundation for that document through the
17 custodian of that document. You're not going to be
18 able to play it through him.

19 MR. WETMORE: No. No, I wasn't trying
20 to --

21 THE COURT: There's no need for him to
22 even have to identify it. For what purpose?

23 MR. WETMORE: What I was going to do is
24 this --

25 THE COURT: And there's no need to make

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 any reference to it until I've determined its
2 admissible.

3 MR. WETMORE: Here's what I was going
4 to do, Judge. He has listened to them and he's
5 initialed the CD. And I'm simply going to say,
6 have you heard them? Does it sound like --

7 THE COURT: Yeah, but if I haven't
8 ruled they are admissible, it doesn't matter
9 whether he's listened to them or not.

10 MR. WETMORE: What I was trying to do
11 was say, does it sound like the defendant's voice?

12 THE COURT: I don't think they're
13 contesting the authenticity of his voice.

14 MR. WETMORE: If they're stipulating to
15 that, then that's fine.

16 THE COURT: Their Memo was very clear,
17 that that's not the basis of their challenge.
18 They're saying constitutionally he was coerced into
19 consenting to a search of the recording. That's
20 the basis of their objection.

21 MR. LIETZOW: Judge, would it be
22 appropriate -- we were working under the assumption
23 that we had to authenticate the defendant's voice
24 for the purposes of getting it in. Would you
25 rather have, then, us move to have these entered

TRAVIS REPMAN - DIRECT EXAM BY WETMORE

1 into evidence and then possibly recall the witness
2 for --

3 THE COURT: You don't need to recall
4 him for any purpose because he can't testify about
5 what he said.

6 MR. LIETZOW: So then the
7 authentication would not be an issue?

8 THE COURT: They're not contesting
9 authentication.

10 Correct?

11 MR. WETMORE: But they're stipulating
12 --

13 MR. SMITH: That's correct.

14 MR. WETMORE: That's all I was doing,
15 Judge.

16 (End of bench conference.)

17 THE COURT: You may proceed.

18 MR. WETMORE: No further questions.

19 THE COURT: Any questions for the
20 witness?

21 MR. SMITH: Yes, Your Honor.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Afternoon.

TRAVIS REPMAN - CROSS EXAM BY SMITH

1 A. How are you doing, Mr. Smith?

2 Q. Good. How are you?

3 A. Well, thank you.

4 Q. So in this case you were the chief case
5 agent, is that --

6 A. That's correct.

7 Q. Okay. And as part of that, you're kind
8 of the clearing house for all information that
9 comes in about the case?

10 A. Yes. Basically, everything is -- comes
11 together to me and I kind of put the file together
12 to present later, to turn over.

13 Q. And part of that is because you can't
14 possibly go out and do every piece of the case --

15 A. That's correct.

16 Q. -- is that fair to say? Do you
17 remember -- I don't remember the solicitor asking
18 you this question or not, but do you remember how
19 long this interview went on?

20 A. Probably well over an hour. I don't
21 know the exact length.

22 Q. And at the time Mr. Benn was being
23 interviewed, was there anyone else at the police
24 station being interviewed as well?

25 A. Yes.

TRAVIS REPMAN - CROSS EXAM BY SMITH

1 Q. Were those people related to this case?

2 A. Yes.

3 Q. And you did not conduct the interview
4 with those people?

5 A. I did not.

6 Q. But you were given information from
7 other detectives about those people?

8 A. That's correct.

9 Q. And that information led you to believe
10 that those people were with Mr. Benn on this
11 particular day at some point?

12 A. Yes.

13 Q. At the time that you initially did the
14 interview with Mr. Benn, had you seen the video at
15 that point?

16 A. I had.

17 Q. Had you talked to other detectives
18 about the video at that point?

19 A. Absolutely.

20 Q. Now, during your interview with him,
21 you're trying to ascertain where someone has been,
22 is that -- during that day?

23 A. Right, a time line, things like that,
24 yes.

25 Q. And so you develop a time line based on

TRAVIS REPMAN - CROSS EXAM BY SMITH

1 not only what that person tells you, but maybe what
2 you've learned from interviewing others?

3 A. Correct.

4 Q. You're most concerned about the hours
5 right around a particular incident?

6 A. Yes.

7 Q. Now, with regard to Mr. Benn, was it
8 you that made the decision to take his socks and
9 shoes that day?

10 A. Yes.

11 Q. When you do that, do you call Evidence
12 and an evidence technician to come, or did you
13 actually bag the shoes?

14 A. Typically, we call an evidence
15 technician to keep everything on one chain.

16 Q. And you talked to Mr. Benn -- I think
17 the Solicitor talked to you about this, but you
18 talked to Mr. Benn about the specifics about what
19 the shooter could have had on?

20 A. True.

21 Q. And at any point -- at any point did
22 you talk to any of the other witnesses at the
23 police station?

24 A. Yes.

25 Q. Okay. And who were those two people

1 that were there?

2 A. Zaquan Watson, and I cannot say his
3 girlfriend's name, but it was Zaquan's girlfriend.

4 Q. Okay. And the idea was that the
5 information that you received was that they had
6 been with Mr. Benn at some point?

7 A. Yes.

8 Q. Now, at some point did you learn there
9 had been another witness in this case or a
10 potential witness?

11 A. Absolutely. I mean, we were trying to
12 track down whoever we could as witnesses in this
13 case.

14 Q. Was there a time that you learned about
15 a Dodge Challenger and somebody driving a Dodge
16 Challenger?

17 A. When I initially watched the video at
18 the store, that was the first thing that I noticed
19 was that the Challenger pulled up right in front of
20 where the incident happened. I wanted to find out
21 who he was.

22 Q. Okay. And you also were able to locate
23 the witness; is that correct?

24 A. Yes.

25 Q. And were you able to speak to him?

TRAVIS REPMAN - CROSS EXAM BY SMITH

1 A. Yes.

2 Q. And at no time did he identify Mr. Benn
3 as being the shooter in this case?

4 A. No. His exact words were, when I go to
5 a store in a tough neighborhood, I try not to make
6 contact with people that I don't know.

7 Q. At some point you learned how many
8 people were supposedly with Mr. Benn this morning?

9 A. We learned about the two that were at
10 the station, yes.

11 Q. Was there ever talk of a third person
12 being with Mr. Benn?

13 A. I don't recall a third person.

14 Q. Perhaps Charles Armstrong?

15 A. I don't recall his name coming up.

16 Q. Were you involved in the search of
17 Mr. Watson's girlfriend's car?

18 A. No.

19 Q. Did you come to learn whether anything
20 of any value was found in the car?

21 A. What we did do with the vehicle was,
22 she brought the vehicle to the station and then I
23 believe we got consent to go through the vehicle at
24 the station.

25 Q. Were any evidence -- items of evidence

TRAVIS REPMAN - CROSS EXAM BY SMITH

1 located in the vehicle?

2 A. No, nothing.

3 Q. At some point did officers speak with
4 the two people -- two witnesses that were inside
5 the store?

6 A. Yes.

7 Q. And neither one of them identified Mr.
8 Benn as the shooter; is that correct?

9 A. No. No.

10 Q. They made identifications of some
11 degree, but neither of them identified Mr. Benn?

12 A. That's correct.

13 Q. When we're talking about -- the
14 Solicitor was asking you about the night -- the
15 prior night's incident that you caught on video?

16 A. Yes.

17 Q. I just want to make sure that we're
18 clear about that. Mr. Benn was never suspected in
19 that crime?

20 A. Absolutely not.

21 Q. Had nothing to do with it?

22 A. No. No.

23 MR. SMITH: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. SMITH: No further questions of

1 this witness.

2 THE COURT: Any redirect?

3 MR. WETMORE: No.

4 THE COURT: Any objection -- well, I
5 guess he'll remain subject to recall. Or it's up
6 to you.

7 MR. WETMORE: Judge, I don't need him
8 for anything further.

9 THE COURT: Okay. Any objection to the
10 witness being excused? From the State?

11 MR. WETMORE: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SMITH: No, Your Honor.

14 THE COURT: Sir, you're excused.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Call your next witness.

18 MR. LIETZOW: The State calls Dr.
19 Schandl, Cynthia Schandl.

20 CYNTHIA SCHANDL, M.D.,

21 being first duly sworn, testified as follows:

22 THE CLERK: Thank you, ma'am. You may
23 be seated. Please state your full name and spell
24 your last loudly and clearly into the microphone
25 for the record.

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY LIETZOW

1 THE WITNESS: Cynthia Anna Schandl,
2 S-C-H-A-N-D-L.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. LIETZOW:

6 Q. Afternoon, Dr. Schandl. Please tell
7 the jury what you do for a living.

8 A. I'm a pathologist.

9 Q. What does that mean?

10 A. So a pathologist is a medical doctor.
11 So in order to become a pathologist, I graduated
12 from a four-year college with a bachelor's degree
13 and then continued in medical school here at the
14 Medical University of South Carolina where I
15 received my medical degree, and I also did some
16 graduate work and received my doctoral degree at
17 the same time.

18 I graduated from that program in 1999,
19 and then to be a pathologist after you're a doctor,
20 you need additional training in the field or
21 specialty of pathology. So that's called
22 residency. I did my residency program here in
23 Charleston at MUSC in anatomic pathology and
24 clinical pathology.

25 And then, in addition to that training,

1 I also did a year called a fellowship, more
2 subspecialty training in forensic pathology itself,
3 and following all that training and education, I
4 have my medical license and I have three board
5 certificates, one in anatomic pathology, one in
6 clinical pathology, and one in forensic pathology.

7 My day-to-day work varies quite a bit.
8 I perform autopsies quite regularly when I'm doing
9 my forensic pathology work, and I also do many
10 other things in the hospital including training new
11 residents, and we have a fellowship program here,
12 the one I took, and I was director of that for
13 quite some time. So I do quite a number of things.
14 One of the things that I do is perform autopsies.

15 Q. And how many autopsies have you
16 performed in your career?

17 A. I've performed over 2,000 autopsies.

18 Q. Have you ever been qualified as an
19 expert in state court?

20 A. Yes, sir.

21 Q. How many times would you say?

22 A. Somewhere around 100.

23 MR. LIETZOW: Your Honor, at this point
24 I would move to have Dr. Schandl qualified as an
25 expert witness under Rule 702.

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY LIETZOW

1 THE COURT: Any objections or
2 questions?

3 MR. SMITH: No objection.

4 THE COURT: Admitted as an expert in
5 the area of forensic pathology. You may proceed.

6 MR. LIETZOW: Thank you.

7 THE COURT: You're welcome.

8 BY MR. LIETZOW:

9 Q. Is part of doing the autopsy
10 determining cause of death?

11 A. Yes, sir, in the case of forensic
12 autopsy.

13 Q. And did you have an opportunity to
14 perform an autopsy on the victim in this case, a
15 Mr. Samuel Cords?

16 A. Yes.

17 Q. When was that done?

18 A. I performed the autopsy in July on the
19 12th in the year 2014, almost two years ago.

20 Q. And who requested you to perform that
21 autopsy?

22 A. In our state we have mostly a coroner
23 system and in Charleston County we have the
24 Charleston County Coroners, and they are the
25 individuals who are elected to take jurisdiction

1 over dead bodies. So it is -- in our case, it is
2 the coroner who refers cases to our office so that
3 the pathologist can then do an autopsy when they
4 think it's indicated.

5 Q. And in forming your opinion on a cause
6 of death, what are the kind of things that you look
7 for -- take the jury through your procedure when
8 you're determining what that cause of death is,
9 please.

10 A. Sure. So with the forensic autopsy, we
11 try to follow quite a straight protocol and quite a
12 detailed examination. So after the case is
13 referred to us from the county it came from, we
14 will receive the body in the morgue, and then --
15 the first I will see it, as the forensic
16 pathologist, will be when the body is brought up
17 from the morgue to the autopsy suite.

18 At that point I'll take a series of
19 photographs. In this county they frequently will
20 tag the transport bag for identification purposes,
21 so I'll take a photograph of that. And then the
22 body is removed from the bag and placed on the
23 autopsy table; I'll take photographs of the body as
24 I received it. And then we -- I continue with the
25 external exam.

1 In this case, there was history of a
2 gunshot wound. And in those cases I also look at
3 the clothing to see if it provides any additional
4 evidence, and I personally like to take photographs
5 of the clothing in most homicide cases.

6 Following that, and when the clothing
7 are removed from the body, in the case again where
8 there is suspected gunshot wounds, I'll take
9 x-rays. X-rays help me to find the bullet because
10 most bullets, as you know, are metal and you can
11 see it on x-rays. So it helps us well -- helps us
12 very well to locate that bullet in the body to know
13 where we're looking and to also confirm our
14 suspicions that it may have been a gunshot wound.
15 So x-rays are taken.

16 And then I'll concentrate on what we
17 call the external examination. And during that
18 examination I'm looking at the outside of the body
19 and I'm looking for anything that might be
20 identifying marks, like tattoos and scars. I do
21 the height and weight, all those sorts of things,
22 eye color, and then also whether there is any
23 evidence of injury to the outside of the body.

24 Following the external examination, we
25 continue with the internal examination, what people

1 usually think of when they think of an autopsy,
2 where we do a Y incision and look at each organ
3 inside the body to look for any injuries or any
4 disease processes that may be going on.

5 And in our office, our practice is to
6 look at every major organ while we're doing the
7 autopsy. It's my practice, also, to take sections
8 to look at under the microscope to either confirm
9 something that I'm seeing with my eyes, some sort
10 of injury or some sort of disease process, or just
11 for documentation that there isn't any disease in a
12 particular organ.

13 Other things we do during the internal
14 examination are gather fluids, usually blood, to do
15 toxicological studies. Again, that's routine in
16 all the forensic autopsy cases.

17 Once all of that is complete, we then
18 give up our jurisdiction of the body and then it
19 becomes my task to put all of the pieces of the
20 puzzle together into a report that I generate and
21 provide to the coroner who requested the case.

22 Q. So it's a pretty elaborate process?

23 A. Sometimes.

24 Q. And in this case, did you have an
25 opportunity to form an opinion about Mr. Cords'

1 cause of death?

2 A. Yes, sir.

3 Q. And please share with the jury what
4 that is.

5 A. The cause of death as I have it written
6 in the report is medulla/cervical spinal cord
7 transection due to penetrating gunshot wound to the
8 head. So what that means is that the bullet
9 actually went through part of the brainstem, the
10 medulla, right at where -- right where the
11 brainstem hooks up with the very upper part of the
12 spinal cord, and it actually separated the two
13 pieces, transected it into two pieces so that there
14 was now no connection between the brain and the
15 body, the spinal cord.

16 Now, what I mean by penetrating gunshot
17 wound to the head, so it was the medulla/cervical
18 spinal cord transection due to penetrating gunshot
19 wound to the head. We simply differentiate between
20 a penetrating gunshot wound and a perforating
21 gunshot wound.

22 So in the case of a penetrating gunshot
23 wound, that -- to me, that means that there's still
24 a bullet somewhere in the body as opposed to a
25 perforating gunshot wound which means the bullet

1 went through and through and out. And that's the
2 cause of death in this case.

3 Q. And did you determine a manner of
4 death?

5 A. Yes, sir. The manner of death in this
6 case is homicide. Now, in this state we are
7 offered several choices and they are limited to
8 homicide, suicide, accident, natural, and
9 undetermined. So of those five choices, homicide
10 was the most appropriate.

11 MR. LIETZOW: May I approach the
12 witness, Your Honor?

13 THE COURT: You may.

14 BY MR. LIETZOW:

15 Q. I'm showing you what was marked and
16 moved into evidence as State's 23. Do you
17 recognize that photo?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is a lateral photo, so from the
21 side, of an x-ray of Mr. Cord's head.

22 Q. And did you take that photo?

23 A. Well, the radiographs -- we have a
24 radiology service. So we have them come into the
25 autopsy suite and take the x-rays while we're

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY LIETZOW

1 there. So I was -- I was in the room while the
2 x-ray was taken.

3 Q. Is that a fair and accurate
4 representation of --

5 A. Yes, it is.

6 MR. LIETZOW: May I publish, Your
7 Honor?

8 THE COURT: Any objection -- what
9 number is that?

10 MR. LIETZOW: State's Exhibit 23.

11 MR. SMITH: No objection, Your Honor.

12 THE COURT: I think it's already been
13 admitted without objection. You may proceed.

14 BY MR. LIETZOW:

15 Q. Dr. Schandl, what are we seeing here?

16 A. So this is once again a photograph --
17 or a photographic depiction of the x-ray that was
18 taken of Samuel Cords.

19 Q. And you can mark on that to help
20 illustrate --

21 A. Okay. I'm a little short for this
22 chair. I know that it's Mr. Cords because I
23 reviewed the case, but also because his name is
24 imprinted here in the upper left corner of the
25 file. So this, again, is an x-ray taken from side

1 to side, so through the lateral -- they call
2 lateral head, so side to side. (Indicating).

3 So as you can see, this is the front of
4 his face here. This is a radiopaque thing, so this
5 is just like a filling or some sort of metal thing
6 on the tooth, but over here, this metal thing
7 there, is the bullet. (Indicating)

8 So from this you can see that there's
9 sort of a darkness to the image here where the
10 bullet entered, and then you can see some bullet
11 fragments -- bullet fragments or bone fragments
12 here in the pathway, and then the bullet here. So
13 this quite accurately and well depicts the bullet
14 pathway and where it was recovered from Mr. Cords'
15 brain.

16 Q. Okay. I don't think you mentioned this
17 yet, but please explain what soot and stippling is.

18 A. Okay. So soot and stippling is -- so
19 we're going back to the external examination. When
20 I'm considering a gunshot wound, as I was in this
21 case, I look around the entrance wound for things
22 called soot or stippling.

23 Soot is what you would think it is.
24 It's black stuff like sooty and it will rub off the
25 skin, and that indicates that the muzzle or the

1 business end of the gun was very close or in
2 contact with whatever the target was. As your
3 muzzle backs away from the target, the soot will
4 disperse before it gets there, but there still may
5 be particulates in the barrel of the gun that are
6 flying with the bullet that will come around and
7 scratch the skin surrounding the entrance wound.

8 So we look for soot and we look for
9 stippling, that scratching of the skin, to give us
10 some indication of distance of fire. So how far
11 away from the target was the muzzle of the gun when
12 it was fired? It is very specific to the weapon
13 and the ammunition used. So without test firing a
14 weapon, which isn't something that falls under the
15 forensic pathologist's responsibilities, I can't
16 give you a real good idea of what those distances
17 might be, but I can give you an indication.

18 So if we see soot, I will tell you it's
19 likely very close to or contact right on the skin.
20 If I see stippling, I would tell you that that is
21 close to the wound, probably within about three
22 feet. Anything beyond that and I won't see
23 anything, and then I will call it indeterminate as
24 far as range, because I don't have any indication
25 of it being contact or close and I don't have any

1 indication of it being nearby or close, so within
2 three feet or more.

3 So the thing about indeterminate is
4 that that's a negative finding, so I'm not going to
5 then say that it's a distant wound, meaning past
6 three feet, because there are other ways that you
7 can get no finding. So if the bullet had to go
8 through thick hair, if the bullet had to go through
9 a hat, if it went through some other intermediate
10 target, if the barrel of the gun is very clean from
11 a recent cleaning or a new gun, all of these things
12 are variables that play into whether or not you
13 actually see soot and stippling on the skin. So if
14 I don't see it I don't tell you a range. So in
15 this case I did not see soot or stippling.

16 Q. Okay. So does that automatically mean
17 then it wasn't close gunshot range?

18 A. Again, not to my interpretation,
19 because there are other things that can occur that
20 can lead to the circumstances where you don't see
21 soot or you don't see stippling and it's still
22 within that three-foot range. So I can't tell you
23 that for sure.

24 Q. Would it surprise you to learn that
25 this was a pretty close range gunshot wound?

1 A. No.

2 Q. Did you have the opportunity to
3 determine the actual pathway that the bullet took
4 when it entered the body?

5 A. Yes. So part of the internal
6 examination is following the pathway of the bullet
7 and simply do that by following where the injuries
8 are. And it essentially -- would you like me to
9 read that portion?

10 Q. If you just want to look at it and
11 refresh your memory and then testify to it.

12 A. Sure.

13 Q. Please don't read directly off of it.

14 A. Sure. So as you might imagine, if a
15 bullet is going to hit somebody in the head, it's
16 going to first go through the skin or the scalp of
17 the head, and then it's going to go through the
18 skull, the bone of the head, and then there is a
19 membrane called the dura and it will go through the
20 dura, and then it will hit whatever the brain parts
21 are that are there. In this case it was the lower
22 part of the brainstem and the upper part of the
23 spinal cord.

24 In this case, then, it continued to go
25 from back to front through the cerebellum, which is

1 a lower brain organ, that is in this area,
2 (Indicating) and ended up in that organ, that brain
3 organ, the cerebellum, just slightly to the left
4 which is where I found the bullet.

5 Q. And were you able to determine the
6 trajectory that the bullet took?

7 A. So trajectory, as opposed to pathway,
8 is sort of a direction. And we do that simply by
9 figuring out where is the entrance wound and where
10 did the bullet end up. And so, yes, in this case
11 it went from back to front and ever so slightly to
12 the left. And if I can -- and ever so slightly up.

13 So you can kind of see that -- since
14 the x-ray is still up, you can kind of see the up
15 and forwardness of it here, (Indicating) with the
16 lateral view looking at the debris along the
17 pathway.

18 Q. You mentioned that the bullet -- you
19 circled where the bullet was lodged in Mr. Cords'
20 head. Were you able to recover that bullet?

21 A. Yes, sir.

22 Q. Can you tell the jury a little bit
23 about that projectile that you recovered?

24 A. Sure. So when we find the bullet, or
25 other foreign object, inside of an individual, what

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY LIETZOW

1 we do is we measure it and describe it. And this
2 is something that I will have to review because I
3 don't remember exactly what kind of bullet it was.

4 So this particular bullet had a copper
5 color metal jacket and the projectile itself inside
6 the jacket was a gray metal, and the base -- we
7 measure the base because that roughly corresponds
8 to the caliber. And so the base was, and I will
9 read this, 0.3 by 0.22 inch, and it was kind of
10 smashed so the length was only 0.2 inch.

11 Q. So are you able to make a determination
12 then of the caliber based on this information?

13 A. No. I am not performing the
14 ballistics. These are simply rough measurements of
15 the bullet for identification and sort of
16 classification if it's a small caliber or large
17 caliber. This is kind of a medium caliber bullet.

18 Q. I know you can't say for sure, but does
19 a 380 sound about right to you?

20 A. That's one possibility.

21 Q. And just for clarification, where was
22 that bullet recovered?

23 A. From Mr. Cords' brain in the left
24 hemisphere of his cerebellum.

25 MR. LIETZOW: May I approach the

1 witness, Your Honor?

2 THE COURT: You may.

3 BY MR. LIETZOW:

4 Q. Doctor, I'm showing you what's been
5 marked and I believe entered into evidence as
6 State's Exhibit Number 22. Do you recognize what
7 that is?

8 A. No, I have never seen this before in my
9 life.

10 Q. Let me take a step back, Doctor. How
11 about this?

12 A. This looks much more familiar. Okay.
13 So when I remove something that I think is evidence
14 from the body, and after I measure it, I'll put it
15 in a container. This is actually a container that
16 we have in the autopsy suite and it's labeled as
17 our autopsy label and designated as bullet for
18 Samuel Cords. So, yes, this is the bullet that --
19 this bullet right here is now in here.

20 (Indicating)

21 Q. And that's the bullet right there that
22 ended Mr. Cords' life?

23 A. That's correct.

24 Q. So as an expert in forensic pathology,
25 I'm going to show you a video that was taken of

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1 what we are alleging is the murder, and I would
2 like your opinion on whether or not that matches
3 with the opinion that you formed in your report.

4 Okay?

5 A. Yes, sir.

6 (Video played.)

7 Q. Is that consistent with your findings,
8 Doctor?

9 A. Yes, I believe it is. It appears to
10 have been a single gunshot wound to the back of the
11 head which is what I saw, yes, sir.

12 MR. LIETZOW: Thank you, Doctor. I
13 don't have any further questions. Please answer
14 any questions Mr. Smith may have.

15 THE WITNESS: Yes, sir.

16 THE COURT: You may proceed.

17 MR. SMITH: Your Honor, we have no
18 questions of this witness.

19 THE COURT: Any objection to the
20 witness being excused? From the State?

21 MR. LIETZOW: No, ma'am.

22 THE COURT: From the defense?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Doctor, you're excused.

25 THE WITNESS: Thank you.

1 THE COURT: Madame Forelady, ladies and
2 gentlemen, we're going to take a brief restroom
3 break. During the break, please do not discuss the
4 case and please leave your notepads in your seats.
5 We should be out about ten minutes.

6 (Jury out, 3:36 p.m.)

7 THE COURT: You may be seated. Who is
8 the State's next witness?

9 MR. LIETZOW: Officer Kathryn Farmer.

10 THE COURT: And who would be after her.

11 MR. LIETZOW: Following her would be
12 Officer -- I'm sorry, Alex Rosen.

13 THE COURT: We have to break promptly
14 at 5:00. We have a juror who has to pick up
15 children and she requested that we not go beyond.
16 I'm going to stop at 5:00 anyway, but I just needed
17 you-all to know that. I'm not going to -- she has
18 to go all the way to West Ashley to get her child.

19 MR. LIETZOW: There's a really good
20 possibility that we could rest by then.

21 THE COURT: Okay. Also, I neglected to
22 do this initially and I meant to, and I guess
23 Monday was just a rough day, and I forgot to ask.
24 The State extended an offer to Mr. Benn; is that
25 correct? On Friday of last week? Or was it

1 Thursday?

2 MR. WETMORE: It was actually
3 Wednesday, Judge.

4 THE COURT: And what was the extent of
5 that offer?

6 MR. WETMORE: The offer was initially
7 murder, 30, and then I met with the Solicitor and
8 we improved that offer to voluntary manslaughter,
9 20 to 30 years.

10 THE COURT: So a minimum of 20 and a
11 maximum of 30, and you had the ability to argue for
12 whatever he wants.

13 MR. WETMORE: Yes, ma'am. And,
14 obviously, as you know, that's served a little bit
15 differently than murder, which is day for day. So
16 it was a substantial offer that he rejected.

17 THE COURT: Well, I just needed to
18 cover that for the record because I would imagine
19 we probably covered his other -- well, there
20 weren't any other offers.

21 MR. WETMORE: Judge, we had --

22 MR. SMITH: We had covered, Your Honor,
23 I believe when the offer was 30.

24 MR. WETMORE: We did that at status
25 conference.

TYRONE BENN - EXAM BY THE COURT

1 THE COURT: I can't remember. I just
2 wanted to make sure out of an abundance of caution.
3 And when did that offer expire?

4 MR. WETMORE: Judge, that expired when
5 he rejected it on Friday.

6 THE COURT: Friday morning?

7 MR. WETMORE? Yes, ma'am.

8 THE COURT: Which was the 8th or 9th of
9 April? The 8th of April. Yeah. That was the 8th
10 of April. Okay.

11 And, Mr. Smith, did you communicate
12 that offer to your client?

13 MR. SMITH: Yes, Judge.

14 THE COURT: Do you believe he
15 understood the conversation you had with him?

16 MR. SMITH: I do, Your Honor.

17 THE COURT: Sir, stand for me please
18 and raise your right hand to be sworn.

19 TYRONE MALCOLM BENN,
20 being first duly sworn, testified as follows:

21 THE COURT: You can put your right hand
22 down.

23 EXAMINATION

24 BY THE COURT:

25 Q. Sir, state your full name for the

TYRONE BENN - EXAM BY THE COURT

1 record.

2 A. Tyrone Malcolm Benn.

3 THE COURT: And, Mr. Smith, did your
4 client wish to accept or reject that offer?

5 MR. SMITH: He wished to reject that
6 offer.

7 THE COURT: And was that with or
8 against your advice.

9 MR. SMITH: Your Honor --

10 THE COURT: Or did you not take a
11 position?

12 MR. SMITH: I did not take a position.

13 BY THE COURT:

14 Q. Sir, did Mr. Smith fully explain to you
15 the State's offer of voluntary manslaughter with a
16 minimum of 20 years and a cap of 30 years to be
17 served at 65 percent?

18 A. Yes, ma'am.

19 Q. And did you fully understand your
20 conversations with him?

21 A. Yes, ma'am.

22 Q. And, sir, did you accept or reject that
23 offer?

24 A. I reject.

25 Q. And did you do that freely and

TYRONE BENN - EXAM BY THE COURT

1 voluntarily and of your own will?

2 A. Freely on my own will.

3 Q. Did anyone force you to do that?

4 A. No, ma'am.

5 Q. And were you suffering from any mental
6 disabilities or under the influence of any drugs or
7 alcohol?

8 A. No, ma'am.

9 THE COURT: Thank you, sir. You may
10 take your seat.

11 We'll be at ease about ten minutes
12 while the jury refreshes themselves.

13 THE COURT: Judge, you don't have any
14 problems with the non-fact witness being in the
15 courtroom just to expedite --

16 THE COURT: You have to ask Mr. Smith.

17 MR. SMITH: No objection to that.

18 THE COURT: Who is your next witness?

19 MR. LIETZOW: Officer Kathryn Farmer.

20 (Jury in 3:58 p.m.)

21 THE BAILIFF: Jurors are all seated,
22 Your Honor.

23 THE COURT: You may be seated.

24 State may call their next witness.

25 MR. LIETZOW: The State would call

KATHRYN FARMER - DIRECT EXAM BY LIETZOW

1 Officer Kathryn Farmer.

2 THE COURT: Officer, come forward to be
3 sworn.

4 KATHRYN FARMER,
5 being first duly sworn, testified as follows:

6 THE CLERK: You may be seated. Ma'am,
7 once seated, please state your first and last name
8 and spell your last loudly and clearly into the
9 microphone.

10 THE WITNESS: Kathryn Farmer,
11 F-A-R-M-E-R.

12 DIRECT EXAMINATION

13 BY MR. LIETZOW:

14 Q. Good afternoon, Officer Farmer. Please
15 tell the jury where you are employed.

16 A. Charleston County Detention Center.

17 Q. And what are your duties there?

18 A. I'm an identification officer. I take
19 photographs and fingerprints of all the inmates
20 entering the facility.

21 Q. Did you have an opportunity to take the
22 defendant's photograph in this case?

23 A. Yes, I did.

24 Q. And walk the jury through the process
25 that happens when that is done.

1 A. They come into a room that has a camera
2 and a fingerprint station in it, stand on the
3 fingerprint, look up at the camera. I take a front
4 photo and a side photo and any tattoos photos.

5 Q. And how do you verify that individual's
6 identity?

7 A. When we take their fingerprints, a copy
8 of the photo and the fingerprint are sent to SLED.
9 SLED verifies it and notifies us it's not the
10 person that they say they are.

11 Q. And for the sake of the jury, whose
12 photograph did you take?

13 A. Tyrone Benn.

14 Q. And did any information come back from
15 SLED or anything --

16 A. No.

17 Q. -- that indicated it wasn't the same
18 person?

19 A. No.

20 MR. LIETZOW: May I approach the
21 witness, Your Honor?

22 THE COURT: You may proceed.

23 BY MR. LIETZOW:

24 Q. Officer, I'm showing you what's been
25 marked and entered into evidence as State's Exhibit

KATHRYN FARMER - DIRECT EXAM BY LIETZOW

1 24.

2 A. Yes.

3 Q. Do you recognize that photo?

4 A. Yes, sir.

5 Q. And what is that a photo of?

6 A. Tyrone Benn.

7 Q. And did you take that photo?

8 A. Yes, sir.

9 Q. Is that a fair and accurate
10 representation of what Mr. Benn looked like that
11 very day he was arrested?

12 A. Yes.

13 MR. LIETZOW: May I publish that, Your
14 Honor?

15 THE COURT: You may proceed. Publish
16 it on the ELMO.

17 MR. LIETZOW: Yes, ma'am.

18 By MR. LIETZOW:

19 Q. Again, just tell the jury what that is
20 please.

21 A. A booking photo of Tyrone Benn.

22 Q. And what date was that taken?

23 A. On July 12, 2014.

24 MR. LIETZOW: Beg the Court's
25 indulgence.

KATHRYN FARMER - DIRECT EXAM BY LIETZOW

1 THE COURT: Yes, sir.

2 By MR. LIETZOW:

3 Q. And did you do anything to change
4 Mr. Benn's appearance for the sake of taking that
5 photo?

6 A. No.

7 Q. As he came to you, that's exactly how
8 you took the photograph?

9 A. We have them push their hair behind
10 their ears, that's all.

11 Q. But that's what he looked like that
12 day?

13 A. Yes, sir.

14 MR. LIETZOW: Your Honor, I have no
15 further questions of this witness.

16 THE COURT: Any questions of the
17 witness?

18 MR. SMITH: No questions, Your Honor.

19 THE COURT: Any objection to the
20 witness being excused? From the State?

21 MR. LIETZOW: No, ma'am.

22 THE COURT: From the defense?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Ma'am, you're excused.

25 Call your next witness.

ALEXANDER ROSEN - DIRECT EXAM BY WETMORE

1 MR. WETMORE: We call Alex Rosen.

2 ALEXANDER ROSEN,

3 being first duly sworn, testified as follows:

4 THE CLERK: You may be seated. Sir,
5 once seated, please state your first and last name
6 and spell your last loudly and clearly into the
7 microphone.

8 THE WITNESS: Alexander Rosen,
9 R-O-S-E-N.

10 THE COURT: You may proceed.

11 MR. WETMORE: Thank you, Judge.

12 DIRECT EXAMINATION

13 BY MR. WETMORE:

14 Q. Afternoon, Mr. Rosen. What is it that
15 you do for a living?

16 A. I'm a litigation technology consultant.
17 We offer litigation support services to attorneys
18 nationwide. When they go to trial, we handle their
19 graphics, their video editing and things of that
20 nature.

21 Q. So what is the name of your business?

22 A. Rosen Litigation Technology Consulting,
23 Incorporated.

24 Q. And you're here in Charleston?

25 A. We are.

ALEXANDER ROSEN - DIRECT EXAM BY WETMORE

1 Q. Did I ask you to become involved in
2 this case?

3 A. Yes.

4 MR. WETMORE: If I may approach?

5 THE COURT: You may.

6 BY MR. WETMORE:

7 Q. I will show you what's been admitted as
8 State's Number 1. Can you see if you can identify
9 that, Mr. Rosen?

10 A. Yes. This is a disk that was produced
11 in our office.

12 Q. Okay. And that's the surveillance
13 video from this convenience store?

14 A. Yes.

15 Q. I'm also going to show you what's been
16 admitted and just published as State's 24. Can you
17 take a look and see if you can identify that?

18 A. Yes. This is a couple of copies of
19 photographs that we received from your office.

20 Q. Okay. And, finally, what's been
21 admitted as State's 21, can you identify that?

22 A. Yes. This is another photo that we
23 received from your office.

24 Q. Okay. So we gave you those items,
25 correct?

ALEXANDER ROSEN - DIRECT EXAM BY WETMORE

1 A. Yes.

2 Q. What were you able to do with the video
3 and those still photos of the defendant?

4 A. We reviewed the video and pulled a
5 still image in the best lighting that we could.
6 And we then took that video still image and put it
7 in a PowerPoint slide next to one of the booking
8 photos here.

9 Q. Okay. So you took a snapshot from the
10 video and put it next to a known photo of the
11 defendant?

12 A. Yes.

13 Q. I'm going to show you what's been
14 admitted as State's Exhibit Number 25. Can you
15 identify that?

16 A. Yes. This is one of the PowerPoint
17 slides we produced in our office.

18 Q. Can you describe what that view is that
19 you've noted there?

20 A. So this particular slide is the
21 original image as it was pulled from the video.
22 The only modification being a slight adjustment to
23 the brightness and contrast, as well as cropping,
24 so it was just the picture of the person in the
25 video.

ALEXANDER ROSEN - DIRECT EXAM BY WETMORE

1 Q. So you changed perhaps the lighting or
2 the setting, but didn't alter the picture in any
3 way?

4 A. Correct.

5 Q. This is State's Exhibit Number 25. Now
6 I will show you what's been marked as -- admitted
7 as State's Exhibit Number 26. Describe how you
8 guys accomplished that, if you will please.

9 A. This is the exact same set of
10 photographs with the exception that we horizontally
11 flipped the booking photo so that it would be the
12 same angle as the photo taken in the still image of
13 the video.

14 Q. Other than flipping the view, nothing
15 was changed?

16 A. Correct.

17 Q. I am showing you next what's been
18 admitted as State's Exhibit Number 27. Describe to
19 us please how you got that one.

20 A. Again, this is the same set of images,
21 the booking photo and still image, pulled from the
22 surveillance camera. The only difference with this
23 one is we flipped the screen shot of the video
24 horizontally.

25 Q. This is State's Exhibit Number 27. So

ALEXANDER ROSEN - DIRECT EXAM BY WETMORE

1 those were pictures of his face. I show you now
2 Number 28. If you could tell me what that picture
3 is.

4 A. So this set of photographs -- we took
5 the photographs of the shoes we received from your
6 office and we took a still image from the video of
7 the shoes of the man and put them side by side.

8 Q. Of the shooter in the video?

9 A. Yes, of the shooter. Thank you.

10 Q. I show you what's been admitted as
11 State's Exhibit Number 29. Is this the same sort
12 of thing there?

13 A. This looks very much like the previous
14 one, only difference being a different angle -- not
15 a different angle, a different frame from the video
16 of the screen shot portion.

17 Q. Again, compared to the photo of the
18 defendant's shoes?

19 A. Yes.

20 Q. This is State's Number 30.

21 A. Thank you.

22 Q. Probably very similar, but just state
23 what that is please.

24 A. This is a screen shot of another frame
25 from the video on the right, as well as the photo

1 of the defendant's shoes on the left.

2 Q. Another view in this case, State's 31.

3 A. Again, it's the photo of the
4 defendant's shoes on the left and another freeze
5 frame from the video on the right.

6 Q. These are all different freeze frames
7 now, correct?

8 A. Correct.

9 Q. Almost done, Mr. Rosen. I appreciate
10 your patience. State's Number 32.

11 A. Again, it's the photo of the
12 defendant's shoes on the left and another freeze
13 frame from the video on the right.

14 Q. Last one, State's 33.

15 A. Again, it's the photo of the
16 defendant's shoes on the left and another freeze
17 frame of the shoes -- shooter's shoes on the right.

18 Q. So, Mr. Rosen, your role is simply
19 moving still images from the video and posting them
20 next to known photos?

21 A. Correct. It's a purely technical
22 exercise of taking the screen shot, putting them
23 next to the frame.

24 Q. You obviously took no other steps in
25 investigating this case whatsoever?

ALEXANDER ROSEN - CROSS EXAM BY SMITH

1 A. No.

2 Q. Mr. Rosen, you mentioned that you
3 brightened the picture a bit. You didn't change
4 the content in any way?

5 A. No. It was simply brightness and
6 saturation and contrast.

7 MR. WETMORE: Thank you, sir. Answer
8 any questions that the defense may have for you.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. SMITH:

12 Q. Afternoon, Mr. Rosen.

13 A. Afternoon.

14 Q. Just briefly, and maybe the Solicitor
15 just covered this and I was speaking to counsel,
16 but with regard to these pictures, the only
17 adjustment you made is with regard to contrast and
18 brightness, is that --

19 A. Contrast, brightness, and also cropped
20 them as we mentioned earlier.

21 Q. You cropped the photo.

22 A. And I mentioned saturation, which
23 doesn't really do much. There's not much color in
24 this video.

25 Q. So other than that, there has been no

1 alteration?

2 A. Correct.

3 MR. SMITH: No other questions.

4 THE COURT: Any redirect?

5 MR. WETMORE no, Your Honor.

6 THE COURT: Any objection to the
7 witness being excused?

8 MR. WETMORE no, Your Honor.

9 THE COURT: From the defense?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Sir, you're excused.

12 THE WITNESS: Thank you.

13 THE COURT: State may proceed.

14 MR. LIETZOW: Your Honor, we have a
15 matter of law to take up.

16 THE COURT: Madame Forelady, ladies and
17 gentlemen, we have a brief matter of law. During
18 this break, please do not discuss the case and
19 please leave your notepads in your seats. We
20 appreciate your patience.

21 (Jury out, 4:14 p.m.)

22 THE COURT: You may be seated. What's
23 the matter of law?

24 MR. LIETZOW: The State would seek to
25 enter the defendant's jail calls at this point. We

1 know Mr. Smith had an objection to that.

2 THE COURT: Mr. Smith, do you object --
3 well, first of all, I need to know what you're
4 seeking to admit. Saying jail calls, that's vague,
5 I don't know what you're talking about.

6 MR. LIETZOW: Yes, ma'am. There is one
7 particular call made on July 13, 2014, and that
8 call takes place at 12:45 in the morning. There is
9 a portion of the call five minutes into the call,
10 about a two-minute snippet --

11 THE COURT: Go ahead.

12 MR. LIETZOW: There is approximately a
13 two-minute portion of that phone call we would seek
14 to enter into evidence. And, Your Honor, we have
15 done a transcript of that particular portion if
16 you're interested in seeing that.

17 THE COURT: No, but I'm interested in
18 listening to it because that's all the jury gets to
19 hear if it comes in.

20 MR. LIETZOW: May I approach?

21 THE COURT: Uh-huh. If it's only two
22 minutes, why don't you just play it?

23 MR. WETMORE: Actually, Judge, it's
24 only 30 seconds, the part that we're trying to
25 introduce. Judge, do you want to hold the

1 transcript in your hand while you listen to it?

2 THE COURT: Nope. I don't need anybody
3 else's interpretation of somebody else's words. It
4 should be articulate enough for me to hear it and
5 understand it. Play the tape.

6 MR. LIETZOW: For purposes of the
7 record, the State is publishing State's Exhibit 34
8 for identification purposes only.

9 (Audio played.)

10 MR. LIETZOW: Your Honor, that portion
11 is what we would seek to publish to the jury.

12 THE COURT: What's the basis of -- why
13 do you seek to introduce the recording?

14 MR. LIETZOW: It's the State's position
15 that the defendant says, man, I killed that boy.
16 Man, I killed that boy, but they say green shirt.
17 They say green shirt. Man, be like you changed
18 clothes, didn't you?

19 So we think that portion is directly
20 relevant to the case, because he essentially is
21 admitting to killing Samuel Cords on that call.

22 THE COURT: What's the basis of the
23 objection?

24 MR. SMITH: Judge, as far as -- I guess
25 I should incorporate the written motion that I

1 submitted earlier to the Court.

2 THE COURT: Anything you all gave me,
3 you need to make sure it's filed because I don't
4 file it. So if you want anything filed, you need
5 to make sure you filed it downstairs to be part of
6 the record.

7 MR. SMITH: Yes, ma'am.

8 THE COURT: Part of the court file.

9 MR. SMITH: This has been filed. Your
10 Honor, what our bases are -- and in looking at this
11 motion, I think we lay out four grounds. The
12 fourth I don't think is applicable in this case
13 after --

14 THE COURT: I'm sorry, I couldn't
15 really hear you. Say that again.

16 MR. SMITH: I'm sorry, there are four
17 grounds we lay out. One is protection under the U.
18 S. Constitution's Fourth Amendment against
19 unreasonable search and seizures apply to the State
20 through the 14th. The other is, of course, the
21 South Carolina Constitution, Article I, Section X.

22 And also, Your Honor, based on the
23 statutory privacy protections under the South
24 Carolina Code 17-30-10, which is commonly known as
25 the wiretapping portion.

1 THE COURT: That -- I can tell you for
2 the record that's inapplicable. That deals with
3 private residences and businesses. It does not
4 deal with jails. The federal statute that it's
5 premised on is not extended to jail.

6 MR. SMITH: The fourth ground I don't
7 think would be applicable in this case.

8 THE COURT: Are you telling me you
9 didn't think 17-30 -- are you telling me the ones
10 you think are inapplicable?

11 MR. SMITH: No, Your Honor. Just with
12 regard to -- there were four grounds that were laid
13 out in our motion. The fourth of those which talks
14 about the attorney/client privilege portion, we do
15 not believe that this call in any way impinges --

16 THE COURT: Yeah, it's not privileged.
17 I don't think you can reasonably argue that.

18 MR. SMITH: That's correct, Your Honor.

19 THE COURT: So what is the basis of the
20 objection?

21 MR. SMITH: Your Honor, we believe that
22 this is -- comes as a -- let me back up.

23 THE COURT: I don't need you to read
24 your Memo to me because I've already read it. I
25 just need you to hit the highlights.

1 MR. SMITH: Okay. Thank you, Your
2 Honor.

3 THE COURT: You're welcome.

4 MR. SMITH: Your Honor, in this
5 instance what we're indicating to the Court is that
6 it's coerced consent by my client. He has no other
7 option or opportunity to make a call from jail.
8 What we think would be the appropriate situation
9 would be if they wanted his calls and they thought
10 there was something that was -- could be used
11 against him in any way, proper form would be to
12 seek a warrant and allow the Court to rule upon
13 that.

14 In this situation, they get those
15 calls. The only warning that someone at the jail
16 receives is that the call may be recorded or
17 monitored.

18 THE COURT: That's not accurate, is it?
19 When they sign into the jail, they go over that
20 form with them very carefully. And really this
21 argument is a bit premature because you all haven't
22 presented any witnesses to meet your burden of
23 proof. So maybe we need to start with them
24 establishing a foundation for the admissibility of
25 the calls. We'll put a pen right there, you all do

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 what you need to, and we'll come back to you.

2 THE SMITH: Thank you.

3 THE COURT: Call your witness.

4 MR. LIETZOW: The State calls Kevin
5 Sherbine. I'm sorry, Mark Lipsey, Your Honor.

6 THE COURT: I am thinking that -- well
7 -- well, maybe not. We will just press forward and
8 see.

9 MARK LIPSEY,

10 being first duly sworn, testified as follows:

11 THE CLERK: You may be seated. Sir,
12 once seated, state your first and last name and
13 spell the last loudly and clearly into the
14 microphone.

15 THE WITNESS: Okay. I'm Mark Lipsey,
16 M-A-R-K, L-I-P-S-E-Y.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. LIETZOW:

20 Q. Sergeant, right?

21 A. Yes.

22 Q. Where do you work?

23 A. Sheriff Al Cannon Detention Center.

24 Q. What are your duties there?

25 A. I'm the cash lobby supervisor.

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 Q. Explain to the Court what the
2 day-to-day things are that you do.

3 A. I oversee the front lobby which
4 includes -- we accept bonds, fines, visitation,
5 also we deal with Subpoenas.

6 Q. Subpoenas with regard to what?

7 A. The phone records.

8 Q. And was there a Subpoena in this case
9 for the defendant Tyrone Benn's phone records?

10 A. Yes.

11 Q. Explain the process that the defendant
12 undergoes when he first wants to make a phone call.

13 A. Yes. When the person is arrested, they
14 are issued a PIN number. And then once they are
15 issued that PIN number, then they are able to make
16 phone calls, and they're advised that they're all
17 recorded.

18 Q. Is that PIN number unique to each
19 inmate?

20 A. Yes.

21 Q. Are they provided with any -- anything
22 in writing that advises them that their calls are
23 being recorded?

24 A. Yes. They're given a little sheet that
25 says phone calls are being recorded, and it also

1 says it while they -- the conversation right before
2 the phone call.

3 Q. So then how are the inmates' phone
4 records stored in the system?

5 A. Stored into the GKO system and that's
6 how we're able to burn the copies.

7 Q. Are they stored under the PIN number?

8 A. Yes, that's their PIN number.

9 Q. When Mr. Benn makes a phone call, would
10 he have to put the PIN number in before the call
11 would go out?

12 A. Yes.

13 Q. Is there a process at any point that
14 the defendant has to announce what his name is for
15 recording into the system?

16 A. Yes.

17 Q. Explain that please.

18 A. When he initiates the phone call and
19 puts his PIN number in, and also you have to
20 announce your name, and then it will advise the
21 people where it's coming from and who it's from.

22 MR. LIETZOW: Okay. Court's indulgence
23 please.

24 BY MR. LIETZOW:

25 Q. Is he, Mr. Benn, warned when he makes

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 phone calls that they are being recorded?

2 A. Yes.

3 Q. Are there any written warnings or signs
4 posted in the area where the phone calls are made?

5 A. Yes. They're on the little tower area
6 where they make phone calls.

7 Q. What do those warnings say?

8 A. It says the phone calls are being
9 monitored or recorded.

10 Q. Is the area that the phone banks are
11 in, is that a communal area?

12 A. Yes.

13 MR. LIETZOW: Beg the Court's
14 indulgence.

15 Judge, for the purpose of the hearing,
16 the authentication is what we would argue we've
17 established through this witness at this point.

18 THE COURT: The issue is not
19 authentication. Mr. Lewis (sic) doesn't deny that
20 it's his client's voice. You need to address the
21 issue of the warnings, the issue of how those are
22 given to an inmate. It was always my understanding
23 that they give that to them in writing at the time
24 they issue the PIN number, and I still don't have
25 clarity on that if in fact that's the case.

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 MR. LIETZOW: May I approach the
2 witness?

3 THE COURT: You may.

4 (COURT EXH. 3, Telephone System
5 Directions, was marked for identification.)

6 BY MR. LIETZOW:

7 Q. Sergeant, I'm showing you what's been
8 marked as Court's Exhibit Number 3. Do you
9 recognize that?

10 A. Yes. This is what they receive.

11 Q. And for the Court, please read what is
12 on that paper and also please advise the Court when
13 the defendant would receive that in the process
14 of --

15 A. Do you want me to read it from the top?

16 Q. Please.

17 A. Number one, to place a call you will be
18 required to enter your six-digit PIN. You will be
19 instructed by a voice prompt when to enter this
20 pen. All instructions on how to place the call
21 will be by voice prompts from telephone dot. It
22 explains one plus the area code, plus the number,
23 enter your PIN number when instructed.

24 Number two, the first time you make a
25 telephone call, you will be asked to state your

1 name, which will be recorded and accompany the
2 announcement for all calls you place in the future.
3 All phone calls are monitored and recorded. The
4 first two local phone calls are free. When you're
5 assigned to the housing unit and when you are
6 trying to make a long distance phone call, number 0
7 will have to be used in place of 1.

8 Q. Thank you. And when is -- when was Mr.
9 Benn provided that, that written advisement?

10 A. He should have been provided that when
11 he first came through the booking process and he's
12 also -- through the ID process.

13 Q. So as soon as he was arrested, he was
14 made aware that his phone calls were going to be
15 recorded?

16 A. Yes.

17 Q. And so that's one warning. And then I
18 believe you're already mentioned it, but is he
19 again warned when he dials an out-going phone call?

20 A. Yes.

21 Q. Can you just approximate what that
22 warning consists of?

23 A. When he dials an outgoing phone call it
24 says, these phone calls are monitored and recorded.

25 Q. Every single time he makes a phone

1 call?

2 A. Yes.

3 Q. And, again, please advise the Court of
4 the warnings that are placed around the communal
5 phone?

6 A. There are several banks where they use
7 phones and it also says on there that the phone
8 calls are recorded.

9 Q. Are those visible?

10 A. Yes.

11 Q. And so how many warnings then would Mr.
12 Benn have that his phone calls are being recorded?

13 A. At least three.

14 MR. LIETZOW: Okay. Your Honor, at
15 this point, we would --

16 THE COURT: At this point you need to
17 give Mr. Smith -- Mr. Lewis -- Mr. Smith the
18 ability to cross-examine the witness.

19 MR. LIETZOW: Yes, ma'am. Please
20 answer any questions that Mr. Smith may have.

21 THE COURT: You may proceed.

22 MR. SMITH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Officer, when someone comes into the

1 jail, do they sign off on this policy that you're
2 speaking about?

3 A. Do they sign off on the policy?

4 Q. Do they sign the policy in some way?

5 A. They are made aware of it as far as
6 that they're going to be recorded as far as phone
7 calls.

8 Q. I guess what I'm saying, the Solicitor
9 showed you a form --

10 A. Yes.

11 Q. -- correct? Is there anywhere on there
12 or anywhere on other paperwork where they sign
13 indicating that they received that?

14 A. No.

15 Q. Okay. In this case, did you give this
16 notice to Mr. Tyrone Benn?

17 A. No.

18 Q. So when you were talking about it being
19 given to everyone, you're assuming as part of the
20 booking process that was done?

21 A. Yes; that's part of the booking
22 process.

23 Q. And when you were talking about the
24 announcement that comes over the jail calls, isn't
25 the -- the recording says that the call may be

1 monitored or recorded?

2 A. It's a -- it's -- I mean, it's, you
3 know, basically the warning that it's being
4 recorded.

5 Q. That it may be recorded?

6 A. May be recorded.

7 Q. The reason for recording phone calls is
8 for kind of the safety of everybody in the jail?

9 A. Yes.

10 Q. And so you can maintain security over
11 what's going on inside --

12 A. Yes, sir.

13 Q. -- is that fair to say?

14 MR. SMITH: I believe that's all the
15 questions I have, Your Honor.

16 THE COURT: Any redirect of the
17 witness?

18 MR. LIETZOW: Just briefly.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. LIETZOW:

22 Q. Are these phone calls free?

23 A. They -- they're -- it's collect.

24 Q. Are the individuals that are at the
25 Sheriff Al Cannon Detention Center guaranteed the

MARK LIPSEY - REDIRECT EXAM BY LIETZOW

1 right to use the phone?

2 A. Yes.

3 Q. But they are not free telephone calls?

4 A. No. They just get the first two free
5 when they first come through the process.

6 Q. And does the recording tell them why
7 it's being recorded?

8 A. That I'm not 100 percent sure. I just
9 know it tells them it may be recorded, yes.

10 Q. Is anybody forced to make phone calls
11 while inside the jail?

12 A. No.

13 MR. LIETZOW: No further questions.

14 THE COURT: Now, is there any exception
15 to the admission of the phone calls, Mr. Smith?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: What's the basis, other
18 than what is in your motion -- the Memo rather that
19 is contained in your motion?

20 MR. SMITH: Your Honor, I think the
21 Memo covers it. I don't think there's anything
22 additional except -- and I would just briefly argue
23 that in this particular case, there has been no
24 testimony that Mr. Benn received these particular
25 warnings, and just to highlight kind of the grounds

1 of my motion, that what was said on the phone call
2 is that it may be recorded.

3 THE COURT: Anything from the State?

4 MR. LIETZOW: Yes, ma'am, briefly.

5 THE COURT: You may proceed. You all
6 filed a Memo as well, correct?

7 MR. LIETZOW: Yes, ma'am.

8 THE COURT: Did you make sure it got
9 filed?

10 MR. LIETZOW: No, ma'am.

11 THE COURT: I jut need you to
12 supplement what you haven't already put in writing.

13 MR. LIETZOW: Your Honor, I think what
14 I wrote in response is sufficient, that there is no
15 expectation of privacy in the jail and, therefore,
16 the Fourth Amendment doesn't attach to the
17 situation. And for that reason it should not be
18 suppressed on the Fourth Amendment grounds.

19 Thank you.

20 THE COURT: You're welcome.

21 I've considered the arguments of both
22 parties and I find that these phone calls are
23 admissible. The only argument that really I've
24 given some real consideration to in the nature of
25 it having any merit, also I really didn't think

1 there was any real good-faith basis for the
2 position, although a novel one, is that there was
3 some Fourth Amendment guarantee of privacy or
4 protection that was being abridged regarding the
5 phone calls.

6 While there are no South Carolina cases
7 on point, there is a plethora of cases from the
8 United States Supreme Court that make it clear that
9 a prisoner, a detainee, has absolutely no
10 expectation or reasonable expectation of privacy in
11 any form in the detention center, whether it be in
12 his cell or telephone calls.

13 Again, as I've already indicated, there
14 is no merit to some indication that it's a
15 violation of the State's Wiretap Act to record a
16 prisoner's conversation. And the part -- and part
17 of the crux, and I digress a moment, of the Federal
18 Wiretap or -- the State's Wiretap Act mirrors the
19 Federal Act, is the premise that you are being
20 recorded and you don't know about it, and that
21 someone, therefore, is abridging your rights by
22 intruding into your expectation of privacy.

23 At my house and on my cell phone, I
24 have a reasonable expectation of privacy. I pay
25 for that line, it is mine. What I say on that line

1 I expect to be confined to whomever I am speaking
2 to and I communicate information to. And that is
3 why those conversations are protected and that is
4 why when bill collectors call you, and other folks,
5 they tell you your phone calls are being
6 recorded -- and that's for them to be in compliance
7 -- for training purposes, or whatever the
8 recordings usually say, but they do that to conform
9 with and be in compliance with the Federal Wiretap
10 Act. So I don't think there's any merit to that
11 argument either.

12 But even if I were to apply a Fourth
13 Amendment analysis to the defendant's claim that he
14 had some expectation of privacy in the phone call,
15 the United States Supreme Court has articulated
16 that there is a lowered expectation of privacy when
17 you're detained, and that you don't have any good
18 faith or reasonable expectation of privacy when you
19 are in a detention situation.

20 Of course the Fourth Amendment
21 guarantees an individual's right to be free from
22 unreasonable searches and seizures, and that's
23 reflected in the United States Constitution as well
24 as the South Carolina Constitution; however, for a
25 defendant to show that he has any legitimate

1 expectation of privacy, both our courts have said
2 that that analysis is both subjective and
3 objective, and when weighing that criteria, the
4 courts have said that the defendant must show, one,
5 that he had a subjective expectation of not being
6 discovered and that the expectation is one that
7 society recognizes as reasonable. And under these
8 set of circumstances, I don't think the defendant
9 can meet either prong of that test.

10 There can be no good faith argument
11 that he had any reasonable subjective expectation
12 of not being discovered when -- and I'm sure we'll
13 listen to the recording, they didn't play that part
14 of it, but I've heard enough of them, every five
15 seconds it says in a strange woman's voice, you're
16 being recorded. You are at the Al Cannon Detention
17 Center and you are being recorded.

18 In addition to that, I find credible
19 the detention supervisor's testimony, Mr. Lipsey,
20 that there are notices about the area where phone
21 calls are made telling you that you are being
22 recorded. So whether he actually received the
23 notice at the time of his booking is not
24 dispositive, but I believe credible, based on the
25 booking procedure, that he received this notice

1 because he wouldn't have received his PIN without
2 it. So I don't think there is any merit to that
3 argument either.

4 So based on what has been presented to
5 the Court, the Memorandum, and other -- both in
6 support and in opposition to the motion to exclude
7 the calls, I find that the defendant did not have a
8 subjective expectation of not being discovered and
9 that the one -- that the expectation he articulated
10 is not one that society recognizes as reasonable.

11 There are many reasons for that, but
12 the most important is that while he's -- the jail
13 has guaranteed him the right to use the telephone.
14 He understands when he enters into that agreement
15 that it is a limited situation. In other words,
16 that he has the right to use the phone, but he has
17 to make those calls collect, that he recognizes
18 they are being monitored, and that -- on the other
19 side of that coin, that the State has a reasonable
20 interest in recording those calls to ensure the
21 protection or the safety, not only of its workers
22 and society at large, but also the inmates who are
23 present in the detention center and to secure their
24 protection while they are serving time or while
25 they are there in a predetention capacity.

1 So the recording is admissible. The
2 defendant has not challenged the authenticity of
3 his client's voice, so that is not an issue. This
4 witness can establish, I would assume if the State
5 asks the appropriate questions, that the recording
6 was kept in the ordinary course and has been
7 maintained and the chain can be established and,
8 therefore, they can go forward with the admission
9 once they -- once they meet that criteria and move
10 for the admission of the document. Subject to that
11 criteria, it would be admitted over the objection
12 of the defendant.

13 And there will be no transcription; it
14 says what it says. The jury can draw from it what
15 it believes it says and what they believe the
16 parties are saying to one another.

17 And you all of course can argue what
18 you think it's saying, but a third party who was
19 not a party to a conversation, I'm not -- you know,
20 it speaks for itself. It's the best evidence, we
21 have the recording.

22 MR. LIETZOW: Yes, ma'am. Thank you.

23 THE COURT: Get the jury.

24 MR. SMITH: Your Honor, very briefly,
25 would you prefer me --

1 THE COURT: I don't think you have to
2 make a continuing objection. You've already -- you
3 know, our case law -- you don't have to make a
4 continuing objection. You preserved it, you argued
5 it and I've ruled on it. Now, if they fail in some
6 other regard, foundation, chain, then of course you
7 have to make a contemporaneous objection, otherwise
8 you've waived it.

9 MR. SMITH: Thank you.

10 THE COURT: You're welcome.

11 MR. LIETZOW: For the purpose of time,
12 do you want us to push through with this one
13 witness?

14 THE COURT: Yeah. It shouldn't take us
15 more than five minutes.

16 MR. LIETZOW: Yes, ma'am.

17 THE COURT: Unless you have some
18 extensive cross-examination.

19 MR. SMITH: No, Judge.

20 MR. LIETZOW: Judge, I just want to
21 clarify that we are introducing the entire
22 15-minute call, but only playing a very -- -

23 THE COURT: You're only introducing
24 what you're actually playing, so you need to redact
25 it because I can't send something back to them that

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 they're not going to listen to. I don't know
2 what's relevant, I don't know what else they've
3 talked about, I have no idea. My ruling is based
4 on what you sought to introduce which is that
5 portion.

6 MR. LIETZOW: Yes, ma'am.

7 THE COURT: Which also is in the nature
8 of an admission against interest.

9 (Jury in 4:49 p.m.)

10 THE BAILIFF: All jurors are seated.

11 THE COURT: Thank you. You may be
12 seated.

13 Ladies and gentlemen, we appreciate
14 your patience. We will resume the witness's
15 testimony.

16 Mr. Lietzow, you may proceed.

17 MR. LIETZOW: Thank you.

18 THE COURT: You're welcome.

19 DIRECT EXAMINATION

20 BY MR. LIETZOW:

21 Q. Would you mind stating your name for
22 the record?

23 A. Yes. My name is Mark Lipsey.

24 Q. How do you spell your last name?

25 A. L-I-P-S-E-Y.

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 Q. And are you a sergeant?

2 A. Yes.

3 Q. Where do you work at, Sergeant?

4 A. I work at the Sheriff Al Cannon
5 Detention Center.

6 Q. How long have you been employed there?

7 A. 17 years.

8 Q. What are your duties there?

9 A. I'm a cash lobby supervisor.

10 Q. Please explain to the jury what that
11 involves.

12 A. I oversee the front lobby where we
13 accept bonds, fines, visitation. We also proceed
14 with Subpoenas and stuff like that.

15 Q. Part of your duties involve receiving
16 Subpoenas for jail phone calls?

17 A. Yes.

18 Q. Describe what you do when you get a
19 Subpoena for a jail phone call.

20 A. When we receive a jail Subpoena, we --
21 what is requested on there for the jail phone calls
22 between the time and the dates, my two lobby
23 officers are required to do that; they burn it from
24 the system onto a CD.

25 Q. Okay. And are the inmates' telephone

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 calls recorded in the ordinary course of business?

2 A. Yes.

3 Q. And explain to the jury how those are
4 catalogued and stored.

5 A. Each individual when they are -- they
6 come into the facility, or detained, they receive a
7 PIN number that is specific to them.

8 Q. So no two individuals have the same PIN
9 number?

10 A. No.

11 Q. Okay. And then are those phone calls
12 recorded and monitored?

13 A. Yes.

14 Q. What does an inmate have to do before
15 they can make an outgoing phone call?

16 A. Well, they have to use their PIN
17 number, and once they use their PIN number to
18 execute the phone call they have to say their name.

19 Q. Okay. Are they advised that the phone
20 calls they are making are being recorded?

21 A. Yes.

22 Q. Okay. And just backing up a little
23 bit. You mentioned when you receive a Subpoena you
24 burn it onto a CD. What do you do at that point?

25 A. Once the request -- the Subpoena has

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 been filled and we burn it onto a CD, the --
2 whoever is requesting that, we actually put it in a
3 manila folder, seal it up. And once they come and
4 they request it, they actually sign for it and then
5 that person takes it back.

6 Q. And in this case was there a Subpoena
7 submitted for Tyrone Benn's jail phone calls?

8 A. Yes.

9 Q. Who submitted that?

10 A. Solicitor.

11 MR. LIETZOW: Beg the Court's
12 indulgence.

13 THE COURT: Yes, sir.

14 MR. WETMORE: Your Honor, may we
15 approach?

16 THE COURT: Uh-huh.

17 (Bench conference)

18 MR. WETMORE: Judge, what they did is,
19 they recorded a CD with all of his jail calls on
20 it.

21 THE COURT: Uh-huh.

22 MR. WETMORE: That's what they can
23 certainly authenticate. I had one of our
24 investigators isolate just that clip because I knew
25 that's what you would want me to do. So...

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 THE COURT: I don't think it matters
2 because my ruling is what altered it; it's all the
3 same disk.

4 MR. WETMORE: Right. I just didn't
5 want to send back the disk with all the calls on
6 it.

7 THE COURT: You're not going to.
8 You're going to mark that as a Court's Exhibit.

9 MR. WETMORE: Okay.

10 THE COURT: And the only thing that
11 will go back is just that one portion.

12 MR. WETMORE: Okay. Do I need to call
13 the investigator who do that or --

14 THE COURT: No, I don't think so.

15 MR. WETMORE: Okay.

16 THE COURT: You just need to make sure
17 Mr. -- you've already listened to it, so...

18 MR. SMITH: Yes, Judge.

19 MR. WETMORE: It's just that portion.
20 That 30-second portion.

21 THE COURT: Uh-huh. Just that portion.

22 MR. WETMORE: Well, we won't call him.

23 THE COURT: I don't think you need t.

24 MR. LIETZOW: So I can just publish it
25 as it is right now?

MARK LIPSEY - DIRECT EXAM BY LIETZOW

1 THE COURT: Yes, sir.

2 (End of bench conference.)

3 THE COURT: You may proceed.

4 MR. LIETZOW: Your Honor, at this point
5 the State would seek to enter into evidence from
6 State's Exhibit 34 a telephone call made by Tyrone
7 Benn.

8 THE COURT: What will be the next
9 Exhibit Number, Madame Court Reporter?

10 THE COURT REPORTER: 40.

11 THE COURT: It will be State's Number
12 40, marked and admitted subject to the objection.

13 MR. LIETZOW: Your Honor --

14 THE COURT: Don't make any other
15 references. I've already covered that.

16 MR. LIETZOW: Permission to publish
17 State's Exhibit 40?

18 THE COURT: You need to give it to the
19 Court Reporter so she can mark it.

20 (STATE EXH. 40 in evidence.)

21 (Audio played.)

22 MR. LIETZOW: Sergeant, we have no
23 further questions.

24 THE COURT: Any questions for the
25 witness?

MARK LIPSEY - CROSS EXAM BY SMITH

1 MR. SMITH: Very briefly, Your Honor.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. SMITH:

5 Q. Officer, you indicated that people are
6 issued PIN numbers when they come in; is that
7 correct?

8 A. Yes.

9 Q. And beyond that issuing, can people --
10 can people use other people's PIN number?

11 A. If that particular individual accesses
12 it from that other individual.

13 Q. So this person would have to give them
14 permission to use it?

15 A. Like I said, if somebody else steals it
16 from them or whatever, I mean, yeah, in that
17 aspect.

18 Q. In some situations, even though they
19 are prohibited, three-way calls also occur at the
20 jail; is that correct?

21 A. Sometimes, yes.

22 Q. Okay. And in this case, did you listen
23 to the calls or anything in advance?

24 A. No.

25 MR. SMITH: No further questions, Your

1 Honor.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. LIETZOW:

5 Q. When the calls are made, are they
6 usually made before they switch the PIN numbers
7 around?

8 A. I didn't understand.

9 Q. The initial calls that are made right
10 after the individual is arrested, have they usually
11 had the opportunity to switch the PIN numbers
12 around?

13 A. No.

14 MR. LIETZOW: No further questions,
15 Your Honor.

16 THE COURT: Any objection to the
17 witness being excused? From the State?

18 MR. LIETZOW: Not from the State, Your
19 Honor.

20 THE COURT: From the defense?

21 MR. SMITH: No, Your Honor.

22 THE COURT: Sir, you're excused.
23 Counsel approach for me.

24 (Bench conference)

25 THE COURT: I need to make sure before

1 their witness leaves, you're not going to challenge
2 the authenticity of your client's voice and claim
3 that somebody else made this phone call.

4 MR. SMITH: No, Your Honor.

5 THE COURT: Okay. I just wanted to
6 make sure. All right.

7 You-all can step back.

8 (End of bench conference.)

9 THE COURT: Madame Forelady, ladies and
10 gentlemen, we are going to take advantage of this
11 break in testimony to take our evening recess.
12 During the break, please do not discuss the case
13 among yourselves or with anyone else. Please do
14 not watch, read, or listen to any media accounts
15 about the case; and, again, please do not make any
16 comments regarding your social status on any of the
17 networking sites that people utilize like Facebook,
18 Twitter, Snapchat or Instagram.

19 You will return in the morning at 9:30
20 at which time we will resume testimony. You will
21 come directly to your jury room. Please do not
22 have any contact with anyone in or about the
23 courthouse. We would not want an innocent
24 conversation to be misinterpreted.

25 If you would leave your -- actually, if

1 you would stack up your notepads right there as you
2 leave, we will secure them during the evening
3 recess.

4 Have a good evening.

5 (Jury out, 4:56 p.m.)

6 THE COURT: You may be seated. Is
7 there anything before we adjourn for the evening?
8 From the State?

9 MR. LIETZOW: No, ma'am.

10 THE COURT: From the defense?

11 MR. SMITH: No, Your Honor.

12 THE COURT: All right. Now, we need to
13 mark the original recorded jailhouse recording as a
14 Court's Exhibit because those are the recordings in
15 their entirety.

16 So whatever number you need to mark
17 that Madame Court Reporter, please do so.

18 The redacted portion, which is the
19 portion that was published to the jury, is State's
20 Number 40.

21 Now, is the defense going to call any
22 further witnesses in the morning?

23 MR. SMITH: We don't --

24 THE COURT: I mean the State. I
25 apologize, I didn't mean to say the defense.

1 MR. WETMORE: I don't anticipate that.
2 I do want to make sure that we have all of our
3 evidence in that we think we have, but I don't
4 anticipate that we will.

5 THE COURT: So you're going to rest in
6 the morning?

7 MR. WETMORE: Yes, ma'am.

8 THE COURT: Do you have any record that
9 you would be seeking to introduce against the
10 defendant to impeach his credibility?

11 MR. WETMORE convictions? Judge, I do.

12 THE COURT: Did I say conviction? What
13 did I say?

14 MR. WETMORE: I didn't hear you, I'm
15 sorry.

16 We do. He has a criminal record,
17 Judge, we believe is admissible to impeach him. He
18 has a 2003 common law robbery, on that the
19 conviction was June --

20 THE COURT: What year was this?

21 MR. WETMORE: The conviction was
22 June 2, 2004, and he got five years suspended to
23 two years probation.

24 THE COURT: So he would have been
25 released from confinement in '06?

1 MR. WETMORE: He would have finished
2 his probation.

3 THE COURT: That's the release from
4 confinement date.

5 MR. WETMORE: Is 2006.

6 THE COURT: That's more than ten years.
7 Well, June 2nd -- that would be right at the
8 ten-year mark.

9 MR. WETMORE: It would be within,
10 Judge.

11 THE COURT: Was that as an adult or
12 juvenile?

13 MR. WETMORE: That was as an adult. I
14 believe he got a YOA sentence, so it was as an
15 adult. We would argue that since --

16 THE COURT: In light of the most recent
17 Supreme Court precedent, I don't think you're going
18 to be able to use that. It came out in the last
19 couple of months.

20 MR. WETMORE: Well, Judge, we would
21 still argue that it carries greater than --

22 THE COURT: I understand that, but you
23 need to read that case. It talks about robberies
24 is no longer presumptive and the Supreme Court is
25 getting very tight about that type of offense

1 coming in to impeach somebody's credibility.
2 They've narrowed the scope down to things that
3 really deal with a person's veracity, that being
4 telling the truth or not telling the truth and
5 moral turpitude.

6 MR. WETMORE: Right.

7 THE COURT: I will review it over the
8 evening recess. I'm not making any rulings now, I
9 just want to know what evidence you would be using
10 so that Mr. Lewis -- Mr. Smith -- I don't know why
11 I keep calling you Mr. -- I had a long hearing with
12 Mr. Lewis yesterday -- so that Mr. Smith can -- and
13 I usually don't do that -- so that Mr. Smith can
14 have a meaningful conversation with his client over
15 the recess so that when I question him about it,
16 he'll only have to ask additional questions if he
17 needs to.

18 MR. WETMORE: And, Judge, there are
19 others if you would like --

20 THE COURT: Well, I only need to know
21 what you're seeking to introduce --

22 MR. WETMORE: Exactly.

23 THE COURT: -- to impeach his
24 credibility.

25 MR. WETMORE: These are the ones that

1 I've -- strong-armed robbery for '04, 2011,
2 distribution of marijuana --

3 THE COURT: That wouldn't come in.

4 MR. WETMORE: -- June of 2011.

5 THE COURT: Yeah, that's a drug charge.
6 The Supreme Court has already found that's not
7 dispositive of truthfulness.

8 MR. WETMORE: Judge, like I said, these
9 are just within ten years --

10 THE COURT: I just need to know what
11 you would be seeking to introduce to impeach his
12 credibility. The only reason I would be interested
13 in his record would be for sentencing, and that's
14 premature. I only need to know what you would be
15 using to impeach his credibility.

16 MR. WETMORE: And, Judge, within
17 ten years, 2012, unlawful possession of a handgun,
18 that date is June 5th of 2013, received a 90-day
19 sentence. Judge, all three of those don't
20 necessarily go to truth-telling. They fit the bill
21 of ten years over a year.

22 THE COURT: Well, the gun charge
23 definitely wouldn't come in, the Supreme Court has
24 already spoken on that, as well as the distribution
25 of marijuana. And I have to study a little bit

1 about the strong-armed robbery, whether that would
2 be dispositive to truthfulness. And especially in
3 light of the fact that there's an allegation that a
4 gun was used in this case, it would be more
5 prejudicial than probative.

6 And the distribution of marijuana
7 charge really would start to bring in the issue of
8 his character, as well as the Supreme Court having
9 found that a drug offense is not dispositive to
10 truthfulness or moral turpitude.

11 All right. Is there anything else we
12 need to take up before we adjourn for the evening?
13 From the State?

14 MR. WETMORE: No, ma'am.

15 THE COURT: From the defense?

16 MR. SMITH: No, Your Honor.

17 THE COURT: And do you still plan to
18 call any witnesses, Mr. Smith?

19 MR. SMITH: Your Honor, at this point
20 it would be my client.

21 THE COURT: Mr. Sherbine has already
22 testified.

23 MR. SMITH: That's taken care of. My
24 investigator is not needed based on who the State
25 calls. It would only be my client if he elected to

TYRONE BENN - EXAM BY THE COURT

1 testify.

2 THE COURT: All right. We'll question
3 him in the morning. Now -- we might as well do it
4 now so you can have a meaningful conversation with
5 him.

6 And then, as I understand it,
7 Mr. Wetmore, you said you are not calling anymore
8 witnesses. You're going to rest in the morning.

9 MR. WETMORE: That is my intention,
10 Judge. I just want to make sure that we have
11 everything in evidence. That's my intention.

12 EXAMINATION

13 BY THE COURT:

14 Q. Sir, if you would stand for me, please.
15 I would remind that you are still under oath. At
16 this time I'm going to explain certain of your
17 rights. If you do not understand something that I
18 say, let me know. If you need me to repeat
19 something, please let me know.

20 Shortly, we're going to approach the
21 stage of the trial where you can present any
22 defenses that you may have, which means that
23 includes your right to testify. Before you make
24 that decision, I need to advise you of your rights
25 concerning your right to testify.

TYRONE BENN - EXAM BY THE COURT

1 You have the right to claim the
2 protections given to you by the Fifth Amendment to
3 the Constitution of the United States, and that
4 Amendment states in part that no person shall be
5 compelled in any criminal case to be a witness
6 against himself. This means that you cannot be
7 required to testify.

8 You have the right to testify; however,
9 no one can make you testify. This is a personal
10 right and no one can waive this right except you.
11 If you decide to testify, you will be subject to
12 the same rules that govern other witnesses and you
13 may be examined and cross-examined on any relevant
14 issue in this case.

15 In addition, if you have any
16 convictions involving dishonesty or false statement
17 or for crimes punishable by imprisonment for more
18 than one year and the Court determines that the
19 probative value of admitting this evidence
20 outweighs its prejudicial effect to you, the
21 Solicitor will be able to introduce your record to
22 attack your credibility.

23 If you decide to testify, this decision
24 on your part must be freely and voluntarily and
25 intelligently made with knowledge of the

TYRONE BENN - EXAM BY THE COURT

1 protections given to you by the Fifth Amendment and
2 the consequences of your decision to testify. If
3 you decide not to testify, I will instruct the jury
4 they cannot hold this fact against you in any
5 manner whatsoever, that you have the constitutional
6 right to remain silent, and that the assertion of
7 that right cannot be used against you and that it
8 is not to be discussed in any manner whatsoever
9 during jury deliberations.

10 It is left entirely up to you whether
11 or not you testify. You may speak to your
12 attorney, family members, friends, or anyone else,
13 but the final decision is yours.

14 Sir, do you understand your rights as I
15 have explained them to you?

16 A. Yes, ma'am.

17 Q. Do you need to ask me any questions
18 about what I have explained to you?

19 A. No, ma'am.

20 Q. And, sir, I'm going to give you the
21 evening recess to discuss with your attorney
22 whether or not you want to testify. Do you
23 understand?

24 A. Yes.

25 Q. And we will resume that discussion in

1 the morning. Do you understand?

2 A. Yes.

3 THE COURT: Thank you very much. You
4 may take your seat.

5 Is there anything else from the defense
6 before we adjourn?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. We will see you in
9 the morning at 9:30.

10 (State's Exhibit Number 35 was
11 withdrawn.)

12 (State's Exhibit 34 was marked Court's
13 Exhibit 4.)

14 (State's Exhibit 37 was marked State's
15 40.)

16 (These proceedings were recessed at
17 5:08 p.m. to be continued at a later time.)

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1 (The following proceedings were had in
2 re State v. Benn, April 13, 2016, Charleston County
3 Circuit Court, 9:47 a.m.)

4 THE COURT: Let me ask a quick
5 question, Mr. Smith. Do you anticipate having any
6 witnesses?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. So then why don't we
9 -- how long does the State anticipate its closing
10 argument will be?

11 MR. WETMORE: Judge, I would say 20, no
12 longer than 30 minutes.

13 THE COURT: How long do you think yours
14 will be, Mr. Smith?

15 MR. SMITH: Probably about 20 minutes.

16 THE COURT: So my charge is about
17 30 minutes, that takes us to -- why don't we go
18 ahead and order lunch, but I'll let you do that
19 after. What we're going to do is, we will bring
20 the jury in, let you rest in their presence, and
21 I'll excuse them. We'll hear motions, and then
22 I'll complete the questioning of Mr. Benn and go
23 ahead and allow the defense to rest and hear
24 anything else we need to and then bring the jury
25 back.

1 Well, we'll go ahead and do charge
2 conference and then let Mr. Smith rest in the
3 presence of the jury and then proceed -- if you
4 need to, I will give you a quick break to prepare
5 for closing and then proceed with closing
6 arguments. Is that acceptable to the State?

7 MR. WETMORE: Yes, Your Honor.

8 THE COURT: To the defense?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: Please get the jury.

11 Mr. Smith, you likewise checked to make
12 sure that all the exhibits were accounted for?

13 MR. SMITH: Your Honor, I didn't
14 realize they were doing that yesterday.

15 THE COURT: I will give you an
16 opportunity to do that.

17 MR. SMITH: I will double-check.

18 (Jury in, 9:45 a.m.)

19 THE BAILIFF: All jurors are present.

20 THE COURT: Good morning, ladies and
21 gentlemen. I hope that everyone had a pleasant
22 evening. We are now going to resume with the
23 trial.

24 The State may proceed.

25 MR. WETMORE: Judge, at this time the

1 State rests its case.

2 THE COURT: Ladies and gentlemen, the
3 State has rested their case. There are some
4 matters of law that I need to take up with the
5 attorneys that should be -- might take us
6 20 minutes.

7 During this break, do not discuss the
8 case, please leave your notepads in your seats, and
9 during this break the clerk will take your lunch
10 orders. We anticipate that we will have arguments
11 and instruction after we deal with the matters of
12 law we need to dispose of.

13 We appreciate your patience. If you
14 will go with the bailiff.

15 (Jury out, 9:47 a.m.)

16 THE COURT: You can take your seats.
17 The State has rested. Are there any motions?

18 MR. SMITH: Your Honor, at this time we
19 would renew all previous motions and objections,
20 and we would ask for the Court to grant a motion of
21 directed verdict. We believe that, even viewing
22 the evidence in the light most favorable to the
23 State, the State has failed to prove on direct or
24 substantial circumstantial evidence that Mr. Benn
25 has committed the crime and ask the Court for a

1 directed verdict.

2 THE COURT: Would the State like to
3 respond?

4 MR. WETMORE: Thank you, Judge. Judge,
5 I believe there is sufficient evidence in the video
6 similarities, circumstantial evidence of the smell
7 of bleach on the defendant, and certainly the jail
8 call arguably admitting the murder, washing up,
9 changing clothes. Judge, there's evidence that
10 exists if this Court were not weighing it in the
11 light most favorable to the State. We'd ask that
12 you deny the motion.

13 THE COURT: Anything further from the
14 defense?

15 MR. SMITH: No, Your Honor.

16 THE COURT: When considering a motion
17 for directed verdict, the Court is concerned with
18 the existence or nonexistence of evidence and not
19 its weight. The Court, of course, is not the
20 finder of fact. I must determine whether there is
21 direct or substantial circumstantial evidence
22 competent in its nature tending to prove the guilt
23 of the accused.

24 I'm not required to find that the
25 evidence infers guilt to the exclusion of any other

1 reasonable hypothesis. Again, the Court is
2 concerned with the existence or nonexistence of
3 evidence and not its weight.

4 I would find that there is direct and
5 substantial circumstantial evidence which
6 reasonably tends to prove the guilt of the accused
7 and from which his guilt may be fairly and
8 logically deduced, that being in the nature --
9 without going and taking the time go through the
10 elements of murder, which I think are fairly
11 straightforward and we are well familiar with, as
12 well as the possession of a firearm during the
13 commission of a violent crime.

14 There is direct evidence in the nature
15 of a video of the event that reasonably tends to
16 prove the defendant's guilt. It becomes a
17 credibility issue and one of identification as to
18 whether the State has proven that beyond a
19 reasonable doubt. And in my limited estimation,
20 that evidence in and of itself is enough to convict
21 the defendant and, therefore, the State has met
22 their burden and the motion is denied.

23 EXAMINATION

24 BY THE COURT:

25 Q. Now, sir, if you would stand for me

1 please, I will remind you that you are still under
2 oath.

3 Have you had an opportunity over the
4 evening recess -- well, first, let me ask, on
5 yesterday I explained your rights to you regarding
6 your right to testify; is that correct?

7 A. Yes.

8 Q. And do you remember that conversation?

9 A. Yes, ma'am.

10 Q. And do you need to ask me anything more
11 about what I went over with you?

12 A. No, ma'am.

13 Q. And have you had an opportunity to
14 discuss with your lawyer whether you should or
15 should not testify?

16 A. Yes, ma'am.

17 THE COURT: And just for clarity sake,
18 the State mentioned that they would want to admit
19 to impeach your credibility certain -- certain
20 offenses. The Supreme Court more recently in State
21 v. Broadmack, which is a 2015 Supreme Court
22 Decision, held definitively that violation of
23 narcotic laws are generality not probative of
24 truthfulness, so the distribution of marijuana
25 charge would not be admissible.

1 They also found that gun charges are
2 not -- likewise, are not dispositive or probative
3 of truthfulness, and that those would be
4 inadmissible to impeach someone's credibility or to
5 prove dishonesty on their part. So those two
6 offenses would not be admissible to impeach her
7 credibility.

8 Also, in Broadmack they held that for
9 impeachment purposes, crimes of dishonesty or false
10 statement, or crimes in the nature of basically --
11 they use the Latin term *crimen falsi*, that
12 thereupon the witness's propensity to testify
13 truthfully.

14 In its broadest sense, that term has
15 encompassed only those crimes characterized by an
16 element of deceit or deliberate inference with the
17 Court's ascertainment of truth. Armed robbery,
18 therefore, is not *per se* probative of truthfulness,
19 which goes hand in hand with the other case, which
20 we would have to have a separate hearing and you
21 would have to tell me what the facts and
22 circumstances were of the strong-armed robbery to
23 prove by clear and convincing evidence that it
24 involved some false statement, or that it involves
25 some activity that was characterized by an element

1 of deceit or deliberate inference to not tell the
2 truth.

3 And I think a theft in and of itself --
4 they have basically overruled the Al-Amin precedent
5 that says it comes in. So in the broadest sense
6 that would not be admissible against him either.

7 BY THE COURT:

8 Q. Sir, have you had a full opportunity to
9 discuss whether you should or should not testify
10 with your lawyers?

11 A. Yes.

12 Q. Do you need to speak with them anymore
13 at this time?

14 A. No, ma'am.

15 Q. And, sir, do you wish to testify?

16 A. No, ma'am.

17 Q. You may take your seat.

18 THE COURT: Does the defense plan to
19 call any other witnesses, Mr. Smith?

20 MR. SMITH: No, Your Honor.

21 THE COURT: So would the defense be
22 resting as well?

23 MR. SMITH: We would be, Your Honor.

24 THE COURT: I will let you rest in the
25 presence of the jury, but for expedience sake I'm

1 going to go ahead and do it now so I can dispose of
2 any motions.

3 The defense has rested. Are there any
4 motions?

5 MR. SMITH: Your Honor, we would just
6 renew again all previous motions and objections
7 and, again, ask the Court to direct a verdict based
8 on the same grounds argued just a few moments ago.

9 THE COURT: Would the State like to
10 respond?

11 MR. WETMORE: Judge, just the same
12 grounds.

13 THE COURT: Okay. The Court will deny
14 the motion based on its previous ruling and
15 incorporate that ruling in this portion of the
16 record, in that there is direct and substantial
17 circumstantial evidence reasonably tending to prove
18 the defendant's guilt, and the motion is denied.

19 I will give the jury a general
20 instruction regarding their responsibility and my
21 responsibility, how they are to judge witness
22 credibility and believability. I will give them a
23 general instruction regarding expert witness
24 testimony, as well as the statements made by or
25 alleged to have been made by the defendant.

1 I will give them a general instruction
2 on direct and circumstantial evidence, as well as
3 the charge, the arrest, and the indictment not
4 being evidence and the presumption of innocence.

5 I will charge Victor v. Nebraska
6 regarding reasonable doubt. And, actually, before
7 I instruct on reasonable doubt -- well, no, I'll
8 leave it where it is. I'll give a general
9 instruction on the defendant not testifying.

10 I will then instruct on the elements of
11 murder. Under these circumstances, the inferred
12 malice instruction is appropriate as there is no
13 allegation of self-defense or no assertion of the
14 defense of self-defense. I will instruct them that
15 that is merely an evidentiary fact for them to
16 consider and to take it the way they find it and
17 give it the weight, value and effect they believe
18 it should have.

19 I will then instruct on the elements of
20 possession of a weapon during the commission of --
21 or attempt to commit a violent crime, which is
22 16-23-490, and we know that murder is defined as a
23 violent crime.

24 Further up in the instruction after
25 reasonable doubt and before murder -- well,

1 actually, after I instruct on murder and the
2 possession of a weapon during the commission of a
3 violent crime, I will give a general instruction on
4 identity. And then I will give a general
5 instruction on multiple charges, which is the
6 standard language that there are separate
7 Indictments with separate elements and they have to
8 consider each separately with the evidence
9 applicable to it. And I will instruct on the form
10 of the verdict.

11 Any exception from the State?

12 MR. WETMORE: No, Your Honor.

13 THE COURT: Or request for instructions
14 from the State?

15 MR. WETMORE: No, Your Honor.

16 THE COURT: Any exceptions or requests
17 from the defense?

18 MR. SMITH: Your Honor, the only
19 question I have, there was a question about whether
20 or not the transcript was going to be admitted.

21 THE COURT: I think we're beyond that
22 point; nobody moved to admit it and you both have
23 rested. So I think it's a moot issue. I ruled at
24 that time that it was not coming in. If you all
25 want to consent to it coming in, it's not too late,

1 but at this point since nobody moved it in before
2 they rested, it's a done deal.

3 MR. SMITH: Thank you, Your Honor.

4 THE COURT: Uh-huh. I assume there are
5 no requests for any lesser included offenses?

6 MR. SMITH: No, Your Honor.

7 THE COURT: So what we will do then is
8 bring the jury in -- actually, we can do it this
9 way. We can let you all take a moment to collect
10 yourselves for closing argument and we can then
11 bring the jury in and let Mr. Smith rest and then
12 proceed with closing argument. That might be
13 better instead of taking them up and down.

14 I have ordered their lunch and it will
15 arrive by noon. I anticipate they will be well
16 into their deliberations by then. It's going to
17 take you all about an hour, my instruction about 20
18 minutes, so that takes us right to about 11:30. So
19 I gauged it to come at 12.

20 All right. Is there anything else we
21 need to take up before we break to allow you all to
22 reflect before closing argument?

23 MR. WETMORE: Not from the state, Your
24 Honor.

25 MR. SMITH: None from the defense.

1 THE COURT: How long do you need to
2 prepare? Do you need to use any technology that
3 needs to be set up?

4 MR. WETMORE: Judge, I do want to put a
5 few pictures on the ELMO and we've cued up the jail
6 call to play.

7 THE COURT: Do you need anything, Mr.
8 Smith?

9 MR. SMITH: It will be just a picture
10 or two on the ELMO.

11 THE COURT: All right. Ten minutes, is
12 that sufficient?

13 MR. WETMORE: That's fine, Judge.

14 MR. SMITH: Yes, Your Honor.

15 (A recess transpired.)

16 THE COURT: Approach for me and look at
17 the verdict forms.

18 Any exceptions from the State?

19 MR. WETMORE: No.

20 THE COURT: From the defense?

21 MR. SMITH: No, Your Honor.

22 THE COURT: Mr. Smith, do you need a
23 moment to look at the evidence and make sure it's
24 all there before we get started?

25 MR. SMITH: Yes, ma'am.

CLOSING ARGUMENT BY THE STATE

1 THE COURT: State ready to proceed?

2 MR. WETMORE: Yes.

3 THE COURT: Defense ready to proceed?

4 MR. SMITH: Yes.

5 THE COURT: We can get the jury.

6 (Jury in, 10:21 a.m.)

7 THE BAILIFF: Jurors are all present.

8 THE COURT: Thank you. You may be
9 seated. The defense may proceed.

10 MR. SMITH: Your Honor, at this time
11 the defense rests.

12 THE COURT: Madame Forelady, ladies and
13 gentlemen, both the State and the defense have
14 rested their cases. We have now reached the stage
15 of the trial where we will have closing argument
16 and instruction. I would ask that you give the
17 attorneys your undivided attention.

18 State may proceed.

19 MR. WETMORE: Thank you, Judge. May it
20 please the Court.

21 THE COURT: Yes, sir.

22 MR. WETMORE: Counsel.

23 I want to thank you again for your
24 service this week. Jury service means something
25 and this is an important case, a very serious case.

CLOSING ARGUMENT BY THE STATE

1 This is the defendant's day in court. It's also
2 the victim's day in court. This is his family
3 right here (Indicating) and they have been here all
4 week and this is their day in court. And I
5 appreciate you being here to give them -- give all
6 of us that opportunity.

7 It's also an important case for the
8 State. Not just me. Obviously, I take my job
9 seriously, I do a good job, but you have seen this
10 video. This happened in broad daylight in front of
11 a public store. This kind of behavior can't be
12 tolerated in our community, so it's an important
13 case for the State.

14 As I've said, you've seen the video so
15 you know what happened. A natural question is, why
16 did this happen? And to be honest with you, I
17 don't know for sure. The State doesn't have to
18 prove his motive. The only question that you have
19 to decide is, who did it? And I'm convinced, and I
20 hope I'm at least in the process of convincing you,
21 that it's him on the video. It's him that did the
22 murder.

23 And to that end I have four points.
24 The first point is obviously the video itself.
25 You've seen it a few times; you can tell that that

CLOSING ARGUMENT BY THE STATE

1 victim had no idea he was about to be shot in the
2 back of the head. It was in the morning in front
3 of a store, people coming in and out. They arrived
4 together, they hung out together for about two
5 minutes.

6 And at one point the victim turned his
7 back, and the defendant shot him in the back of the
8 head. Then he took off down the side of the
9 building, continued to shoot, and the crime scene
10 officer obviously followed that trail and found the
11 shell casings.

12 We played the video a few times, and I
13 really want you to go back in there and take a
14 close look at it and watch it as many times as you
15 can. And when you watch it, I want you to have it
16 -- with this in mind. This is State's Number 24.
17 Okay. I want you to watch that video and when you
18 do, I want you to have this in your mind
19 (Indicating) because that is what he looked like
20 when it happened. He doesn't look like that now.

21 You are going to recognize his thin
22 build, especially his thin legs, in the video,
23 distinctive face, the hairstyle, and the unique
24 shoes and socks that he was still wearing when he
25 was arrested. That's what I tried to do for you

CLOSING ARGUMENT BY THE STATE

1 with these comparisons. And I know that they're
2 not perfect, but these comparisons are what I
3 passed out and showed yesterday.

4 These are obviously snapshots taken
5 from the video, basically still images pulled out
6 of the video, not changed or anything, still --
7 put right next to the defendant's picture. And I
8 want you to take a look at this -- these pictures
9 of his face and his hair. You will see, you know,
10 the high forehead, you know, the side of his nose,
11 the nostril, the lips, the receding hairline, the
12 dreadlocks, or braids, are medium thickness, the
13 exact same length as you're going to see in the
14 video. And I hope that these will aid you as you
15 deliberate. That's why I had them prepared for
16 you.

17 I would argue that's a pretty good
18 match. This is the same image that's turned the
19 same way so that you can continue your analysis,
20 your comparison. Same here with this one. Please
21 take a look at these in more detail when you get
22 back there.

23 Also, you know, it's obvious that he
24 changed his clothing after the murder. He left on
25 the same shoes and the same socks, and this is very

CLOSING ARGUMENT BY THE STATE

1 important. I don't know if you guys got a good
2 look at these yesterday, but these are the shoes
3 that the defendant was arrested in, and these are
4 the shoes that you will notice in that video.
5 There are some markings that the lab put on them,
6 but these are basically the shoes.

7 And as you will notice, he had short
8 socks, white socks, that you don't see a lot with
9 black shoes, but short white socks, and the high
10 tops with the high tongue, the Velcro, the black
11 laces. They're down in here now, but they were in
12 the holes.

13 And this right here is so distinctive.
14 I honestly haven't seen one of these, the little
15 silver tabs. Those are really important; you will
16 notice them in the video. And, again, these are my
17 comparisons that I had made and I want you to look
18 at them please.

19 These are, again, stills taken from the
20 video put next to the defendant wearing his own
21 shoes. Still wearing them when he was arrested.
22 You can look and see the little shiny tab, you can
23 see the high tops and Velcro and short white socks.
24 Here's another angle extracted from the video
25 compared to the defendant's shoes as he's wearing

CLOSING ARGUMENT BY THE STATE

1 them in the police department. Again, you see the
2 shiny tab and the socks and the tongue.

3 There's another angle for you. The sun
4 is shining towards his feet. I would argue if you
5 look closely you can see the tab and you see the
6 socks and everything. There's another one. Again,
7 the different view as he's walking on the video,
8 next to his own shoes. Another view, walking
9 towards the curb.

10 And here's a final view from the back
11 where you can see the different view of the shoes
12 in the video next to his shoes on his feet. Please
13 take a look at these. I think you can see them
14 better if they are in your hands or up close.

15 Now, the video, obviously, is not
16 perfect quality. I told you not to expect that,
17 but it's good enough for you to be firmly
18 convinced. One thing that you can certainly see on
19 the video are the defendant's mannerisms. He's
20 kind of active, kind of animated with his hands.
21 And that was a very key way that the police
22 identified him is because of his distinctive active
23 mannerisms. You'll see it on that surveillance
24 video and then you will see it again in the
25 interview with the detective.

CLOSING ARGUMENT BY THE STATE

1 Mannerisms are often the best way to
2 identify someone, and they match up very well with
3 the defendant. I want you to consider that.

4 Based on, you know, whatever police
5 knew from being in the area, as soon as they saw
6 that video, they recognized the defendant. They
7 recognized his face, his hair, his mannerisms, his
8 shoes, everything. They continued their
9 investigation, they didn't just stop there. They
10 continued to investigate and confirmed it was the
11 defendant.

12 So they go out to pick him up later
13 that day. There was one detective that expressed
14 it a little differently, Detective Repman. He
15 said, I didn't immediately recognize him from that
16 video. He was very honest about it. What he said
17 is, the moment he walked into that police station,
18 I was 100 percent sure it was him doing that murder
19 on that video. There was no doubt in his mind from
20 that point on.

21 That brings me to my second point, the
22 smell of bleach on the defendant. The officer
23 picked him up on the street and the detective that
24 later interviewed him in the interview room
25 described -- they both described the strong smell

CLOSING ARGUMENT BY THE STATE

1 of bleach, and it was coming from the defendant.
2 They didn't see any bleach spots on his clothes,
3 and you have the photograph in evidence of his
4 clothes. He has on a black shirt, khaki shorts,
5 there's no bleach spots on there.

6 He, obviously, bleached his body. And
7 they said they had never smelled that before. He
8 obviously washed himself up in what I will
9 describe, a pretty desperate attempt to cover up
10 any blood, any gunshot residue; basically, get rid
11 of the evidence. So he bleached himself, changed
12 his clothing, but left on the same shoes and socks
13 and you have them in evidence.

14 After noticing the smell of bleach
15 coming from the defendant, the detectives went on
16 to take his statement. And the defendant
17 voluntarily waived his rights and freely gave a
18 statement to the police.

19 And the way that you know he did that
20 is he put it down in writing. And this is State's
21 38. He waives all his rights by initial and he
22 talks to the detectives and he puts it all down in
23 writing, so you don't need to feel that he was
24 pressured or coerced but voluntarily gave a
25 statement.

CLOSING ARGUMENT BY THE STATE

1 And the process of the statement was
2 kind of a progression. At first, they made
3 generalized kind of small talk about different
4 things happening in the area, then they focused
5 more on the murder in question that we're here for
6 today.

7 At that point, the detective throws
8 something out that is false. It's not true. It's
9 a tool he said that he sometimes uses, he's learned
10 to use. And what he said is, he said, well, the
11 killer had on a green shirt. The detective threw
12 it out there; it's not true. He threw it out there
13 and the defendant later seizes on that in his phone
14 call from the jail. I'll talk about that more
15 later.

16 But what the detective says in that
17 interview process is, he says, good thing about
18 cases that happen at stores is there is
19 surveillance video. And he left the room and he
20 let the defendant think about that for a little
21 bit. The detective comes back into the room and at
22 that point, let's be honest, the small talk is
23 pretty much over. You've seen that part, the
24 ending of the interview.

25 And what he says is -- basically, he

CLOSING ARGUMENT BY THE STATE

1 confronts him that he's on the video. He said,
2 we've got you on the video. And the defendant's
3 words are, just take me to jail.

4 I want you to listen to that several
5 times, the end of the interview. I want you to
6 listen for that, just take me to jail. I'm arguing
7 to you, if this was me and I was innocent, the last
8 thing I would say is take me to that jail. But
9 that's what he says. These are not the words of an
10 innocent man. These are the words of somebody
11 that's caught.

12 So the police did take him to jail and
13 they charged him with murder. I'm sure everybody
14 has a good understanding of what murder is. It's
15 the killing of another person with malice, or evil,
16 aforethought, or beforehand. You-all have seen
17 this video; this is obviously evil premeditated.
18 This is the very definition of malice aforethought;
19 evil planned beforehand.

20 The police charged him with the second
21 charge, possession of a firearm during the
22 commission of a violent crime. That's an extra
23 charge. You see on the video that he's armed with
24 a firearm, a weapon; he shoots the victim during
25 the commission of murder; the murder is a violent

CLOSING ARGUMENT BY THE STATE

1 crime. So he possessed the firearm during the
2 commission of a violent crime.

3 He was taken to jail and charged with
4 those two charges, and this brings me to my fourth
5 and final point, the defendant's own words in his
6 phone call from the jail. All of the phone calls
7 at the jail are recorded and the defendant was
8 warned about this, but still the night he was
9 arrested he calls someone, and I want you to
10 especially note this. Okay?

11 The defendant is not challenging that
12 it's him on the jail phone call, and I don't want
13 you to challenge that either. It's made using his
14 PIN, his ID number. Everybody agrees it's him on
15 the phone call, so don't even worry about that.

16 In that phone call, the defendant
17 confesses to the murder, confesses to washing up
18 and describes how he changed his clothes before he
19 was arrested. And I've listened to that call a
20 bunch of times. I would ask you to please do the
21 same. It's not immediately easy to understand, but
22 if you listen to it a few times, you will
23 understand exactly what he's saying.

24 Tyrone Benn in his own words, no doubt
25 it's him, no question it's him, he says, man,

CLOSING ARGUMENT BY THE STATE

1 listen -- and he's interrupted by the person
2 talking. And he says, man, I killed that boy. And
3 he's interrupted by the person he's talking to
4 again. So he says it again, man I, killed that
5 boy. Twice, he says it twice.

6 Then he goes on and says, but they say
7 green shirt. They say green shirt. Man, be like
8 you changed clothes, didn't you? Officer say they
9 know you from around, say you had on green. I
10 didn't have on no Fing green.

11 This is the trick that the detective
12 threw out there. The defendant is fixating on a
13 meaningless detail while confessing to the larger
14 crime.

15 He goes on, he says, I had on all
16 black. Well, he's right. You've seen the video,
17 he did have on all black. He goes on, when I leave
18 to go home this morning, when I leave my home boy's
19 granny's house, I go to my momma's house, I wash
20 up. This is where the bleach comes in, hence the
21 smell of the bleach.

22 He goes on, and I put on khakis and
23 black. He's right. He describes to you exactly
24 what he changed into, khaki and black. And he ends
25 the portion of the call and says, why is anybody

CLOSING ARGUMENT BY THE STATE

1 putting on green and khaki for? Green and
2 anything, period, you know.

3 Again, fixating on this meaningless
4 detail thrown out by the detective that's not true
5 while confessing to the larger crime.

6 Without my interruptions, this is what
7 you're going to hear: Man, listen. Man, I killed
8 that boy. Man, I killed that boy, but they say
9 green shirt. They say green shirt. Man, it be
10 like you changed clothes, didn't you? Officers say
11 they know you from around. Said you had on green.
12 I didn't have on Fing green. I had on all black.
13 When I leave to go home this morning, when I leave
14 my home boy's granny's house, I go to my momma's
15 house and I wash up and I put on khaki and black.
16 Why is anybody putting on green and khaki for?
17 Green and anything, period, you know?

18 Play that for me one time, please.

19 (Audio played.)

20 Please listen to that over and over.

21 It's hard to hear. I didn't necessarily hear it
22 all the first time. The more you listen to it,
23 that's what he says. And you have it in his own
24 words and it's not contested that it's him. I want
25 you to understand and I want you to believe what

CLOSING ARGUMENT BY THE STATE

1 he's saying because he tells the exact story of
2 what happened.

3 Now, I have to prove my case beyond a
4 reasonable doubt. That's a legal term that Judge
5 Jefferson is going to do a good job of defining for
6 you. What I'm going to tell you now is reasonable
7 doubt does not mean beyond any doubt, beyond all
8 doubt. You know, the law doesn't require that in
9 this case. There are very few things in this world
10 that we can know beyond any doubt, beyond all
11 doubt. And you don't have to have that in this
12 case. If you're firmly convinced this man is
13 guilty, it's your duty to find him guilty and you
14 must find him guilty.

15 Please, like I said, remember my four
16 points. Number one, you'll see him on the video;
17 number two, bleached himself to get rid of the
18 evidence; number three, when the police confront
19 him with the video, just take me to video is what
20 he says; and number four was that jail call where
21 he admits the murder and admits washing up and
22 describes how he changed clothes.

23 Ladies and gentlemen, again, thank you.
24 After I sit down, you are the only ones that can
25 hold him accountable for it, and I ask that you not

CLOSING ARGUMENT BY THE DEFENSE

1 let him come in here and literally get away with
2 murder. I ask you to find him guilty of the murder
3 and, also, the other charge of possession of a
4 firearm during the commission of a violent crime.
5 Thank you.

6 THE COURT: Mr. Smith. You may proceed
7 when you're ready.

8 MR. SMITH: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. SMITH: May it please the Court.

11 Ladies and gentlemen, this case is a
12 tragedy. We are not here to argue about whether a
13 murder was committed. We know one was committed;
14 we've seen a video about that. What we're here
15 about is to determine who committed that murder,
16 and I think when you review all the evidence that
17 you will learn that it was not Tyrone Benn, my
18 client, who committed the murder.

19 In order to get to that conclusion
20 though we have to talk about three important things
21 in this case, misidentification, misinformation,
22 and missing evidence.

23 At the very outset and when I talked to
24 you a day or so ago about this case, I said the
25 objective evidence is the key in this case. My

CLOSING ARGUMENT BY THE DEFENSE

1 stance on that has not changed one bit. That is
2 what is going to be most important for you to look
3 at and to evaluate in this case.

4 I want you to pay particular attention
5 to all of these comparisons that you're going to
6 see involving the shoes, involving the side-by-side
7 views and the booking photo of Mr. Benn because I
8 think there are important physical differences in
9 the two. Take a look at the hair -- and you're
10 going to have an opportunity to look at this in the
11 back and, again, see them up close. The hair that
12 you see in the video is more compact, it's in the
13 back and it's straighter.

14 If you remember, the booking officer
15 said, when we take that side profile, we have the
16 person sweep back their hair. That's the way it is
17 here. If his was forward, it would not be nearly
18 as full as what you see in this video.

19 Now, this particular shot, and that's
20 going to be State's Exhibit 26, is of particular
21 importance. If you look at the head -- and it's
22 very important. If you look at the top of the head
23 on the far side of this view, you're going to see a
24 lump on that persons's head. Look at the booking
25 photo taken of Mr. Benn the same day this occurred,

CLOSING ARGUMENT BY THE DEFENSE

1 no lump there. I don't know what had happened to
2 that person, I can't tell you that, but that lump
3 exists, it's on the still that the Solicitor had
4 made.

5 Mr. Rosen told you those photos haven't
6 been doctored in any way. They have been adjusted
7 for contrast, brightness, saturation. Not a lot of
8 saturation because there's not a lot of color in
9 the video.

10 The Solicitor showed you some pictures
11 about the shoes. The shoes are important too.
12 They are common shoes, Nike Air shoes. Go to any
13 mall, look around, not only are you going to see
14 this particular shoe, you're going to see this
15 particular tag. But I think when you look at the
16 photos of those shoes, this is not going to
17 particularly match up. There are photos that
18 appear that there's something much larger there
19 than a little tiny silver tag.

20 But what I think is most distinctive in
21 this picture and the next picture I'm going to show
22 you is the nose, the nose, the nose. I know it
23 sounds silly, but pay particular attention to it.
24 The bridge of Mr. Benn's nose is straight; you can
25 see it. That's his booking photo. When you look

CLOSING ARGUMENT BY THE DEFENSE

1 at these video comparisons, it's a different nose
2 from the side. It looks crooked, like it's been
3 broken or it looks like a deformity of some type.
4 You see it in State's 26, and you're going to see
5 it even better in State's 25. And you will have
6 those to look at and see it. Why are those so
7 important? Because these pictures were taken just
8 hours apart.

9 Now we need to talk about the
10 mysterious misidentification of Tyrone Benn. What
11 I would say to you and what I would suggest to you
12 about that identification is this: He's the easy
13 choice, he's the convenient choice, and he's the
14 only choice because he's the person that was in
15 custody.

16 So what did we hear from the stand? We
17 certainly get the impression that every officer
18 that testified knew Tyrone Benn and knew it was him
19 when they saw the video. It's pretty unusual that
20 every person that comes in can identify him and
21 every person just happened to be a police officer.

22 So you're going to be able to look at
23 the video. You're going to see a little bit of his
24 interview as the Solicitor told you, you're going
25 to be able to evaluate his mannerisms. You're

CLOSING ARGUMENT BY THE DEFENSE

1 going to be able to talk -- and see if he talks
2 with his hands. A lot of people talk with their
3 hands, I'm guilty of it, but what you're not going
4 to be able to do is become an expert about anyone's
5 mannerisms in seeing the video of the store and the
6 short video of Mr. Benn when he's questioned.

7 Now, let's talk about the specifics of
8 the ID. We had the magical ID officer, Officer
9 Niemiec. He kept it to himself. He absolutely
10 knew who had committed this crime. He is the
11 person who said, I knew it was him, I didn't want
12 to bother anybody else with -- I didn't want to
13 taint the investigation in any way by telling them.
14 That's what he said.

15 There had been a shooting in North
16 Charleston, middle of the day, middle of the
17 morning, the shooter's still on the loose and he
18 knows who the shooter is, but he doesn't bother to
19 tell anyone? Implausible, impossible.

20 What really was the story? The story
21 was that they had heard from words on the street
22 who they thought the shooter might be, they just
23 happened to arrest Mr. Benn and so they tied it to
24 him. It was a rush to ID him.

25 Now, he was so sure when he testified

CLOSING ARGUMENT BY THE DEFENSE

1 about mannerisms, about prior encounters, about Mr.
2 Benn's face and dreads, he was so sure about that
3 identification that he didn't put it in his report.
4 He didn't put it in his report more than two weeks
5 after this shooting occurred. And the reason for
6 that is he wasn't sure of the identification. What
7 -- if he had been, it would be there, and he told
8 you he didn't do it.

9 Now, how about Officer Martin? I'll
10 know him when I see him. And so what does that
11 mean? When Officer Martin's out patrolling the
12 area, the only person walking down the street that
13 even remotely meets the description of the shooter
14 in the video is Tyrone Benn. And we will talk more
15 about that encounter in just a minute.

16 At that point, it's the second break in
17 the case, the second part of the case, the second
18 person that they've identified as a possible
19 suspect, and we begin to hear more about this funny
20 run or funny gait. I ask you all to watch the
21 video of the store, I ask you all to watch the
22 video of the interview. You can't determine
23 anything within that two minutes, but everybody in
24 North Charleston seems to think you can.

25 Finally, with regard to identification

CLOSING ARGUMENT BY THE DEFENSE

1 of the officers, we hear from Officer Repman.
2 Repman says, I'm not sure until he gets into
3 custody. Once he does, I'm 100 percent sure. That
4 becomes even more unbelievable when he says, I had
5 him handcuffed to the chair and I could tell by
6 what he was doing with the one arm that it had to
7 be him on the video. Of course it's the person
8 that they think is on the video, because he's the
9 only person they have in custody.

10 Let's talk for a second about who
11 doesn't identify Tyrone Benn. Strangely enough,
12 anybody that doesn't identify him is not part of
13 North Charleston police force. There are two
14 witnesses that you will see on the video that walk
15 into that store. Neither one of them can ID Tyrone
16 Benn, and they don't. And that's why you didn't
17 hear from them. There is a third witness outside
18 the store that they had to go hunt down. That
19 person also couldn't identify Tyrone Benn.

20 What I take are two common things from
21 the identification. Number one, North Charleston
22 Police Officers are certainly experts about
23 determining mannerisms, especially when it comes
24 down to a two-minute video. It's also easy to
25 determine that the only people that can identify

CLOSING ARGUMENT BY THE DEFENSE

1 Tyrone Benn are the same people that work for North
2 Charleston.

3 I want you all to spend your time
4 evaluating those two things and just tell me if you
5 think it is possible that -- implausible that they
6 can determine from that video his mannerisms in
7 that short -- very short video that you're going to
8 see.

9 Let's talk about the jail call. The
10 Solicitor told you what he thinks he said on the
11 jail call. I want you to listen to it, because
12 what I think he says, and what I want you to think
13 about is, instead of I killed that boy, I think he
14 says, I tell that boy, I tell that boy. And who is
15 he referring to? The police officers. The police
16 officers that questioned him about the green shirt,
17 the police officers that questioned him about the
18 clothing that he had on. You're going to have
19 that, you're going to be able to listen to it, and
20 I want you to think about that very closely.

21 The other thing about that call is
22 this: You're talking about a person that they're
23 accusing of being brazen enough to go out in the
24 middle of the morning and shoot someone. If that
25 were the case, there wouldn't be one 30-second jail

CLOSING ARGUMENT BY THE DEFENSE

1 call that talks about that. That person would be
2 so brazen they would brag about it to everybody,
3 they would tell others, and they would give details
4 about where the clothes are, where the firearm is,
5 and everything else that occurred, but you don't
6 get that in this case.

7 To move on, let's talk for a moment
8 about the actions of Mr. Benn on this day because I
9 think they're very important. You heard from
10 Officer Martin that when he was approached, he
11 didn't run, he didn't hide. He walked over to him,
12 he gave him his name, he gave him his information,
13 he allowed him to handcuff him without further
14 fault, without any type of further incident.

15 But really it's much simpler than that.
16 Think about Mr. Benn's actions that day. There had
17 been a shooting in North Charleston. There was a
18 heavy police presence in the neighborhood. Where
19 is he? He's not hiding in the house, he hasn't
20 left North Charleston, he hasn't gone elsewhere.
21 He is out on the street walking down the street.
22 What would have been easy? Easiest thing to do is
23 to stay in your house, stay hunkered down, leave
24 town. He didn't do that.

25 What else would Mr. Benn not have done

CLOSING ARGUMENT BY THE DEFENSE

1 if he had done this? He wouldn't have gone to the
2 station -- well, he had to go to the station, but
3 he wouldn't have talked to them willingly. The
4 Solicitor told you he sat and signed and initialed
5 in every spot and he talked to officers for a long
6 time. When they didn't like what he said, they
7 said, well, we don't believe you, we're going to
8 take you to jail.

9 He said in response to being
10 confronted, take me to jail. The Solicitor made a
11 big deal about that. What does that mean? It
12 means -- and you will hear that video clip, Mr.
13 Benn saying you're not believing what I'm saying,
14 so just take me on to jail. That's exactly what
15 he's talking about. It's not an admission. What
16 he's saying is, interview over, you're not going to
17 listen to me, no longer do I need to be here.

18 Let's briefly just talk about the
19 evidence that the State does not have. DNA; no DNA
20 in this case. State attempted to get DNA from the
21 dreads of Mr. Benn. They had his shoes, they had
22 his socks, nothing. There was no DNA found in any
23 of those places.

24 They made a big deal about the bleach.
25 Anybody that uses bleach knows a little bit goes a

CLOSING ARGUMENT BY THE DEFENSE

1 long way and you will be able to smell that. What
2 is interesting if you look, State's Number 19, pay
3 particular attention to the shoes and pay
4 particular attention to the strings of the shoes.
5 I'm going to show you State's 33, and you will have
6 this photo as well. Because if there was bleach on
7 those shoes in any form or fashion, it may or may
8 not affect the leather of this shoe. It was
9 certainly going to affect the fabric of this shoe
10 and very much going to affect these cloth laces in
11 the shoes.

12 We didn't hear anything about the
13 gunshot residue. The State's witness tried to
14 minimize that by saying, it was later in time. If
15 they didn't think they were going to get it, why
16 did they bag his hands? Why did they take his
17 shoes and socks? It just doesn't exist.

18 There's no gun in this case. It's more
19 than that, they can't even tie a 380-caliber weapon
20 to Mr. Benn in any instance; and, especially, there
21 was no gun found in this case, not on him. They
22 had the ability to search any place that he had
23 been, they had the ability to talk to anyone they
24 wanted to talk to, and you heard no evidence about
25 the gun.

CLOSING ARGUMENT BY THE DEFENSE

1 That also applies to the clothes from
2 that day. If they wanted the clothes -- they
3 wanted to be able to test those clothes for DNA,
4 test those clothes for GSR, they had the ability to
5 present a search warrant and go where he had been
6 and get the clothes, but they didn't. The reason
7 is, those clothes don't exist because Mr. Benn
8 didn't do this.

9 Same thing about text messages and the
10 phones. You heard -- you'll hear the detective
11 say, we're going to search your phone and search
12 your text messages. If there had been anything
13 there, you better believe that detective would have
14 talked about exactly what it was.

15 Last thing is you heard the detective
16 talk about the testimony of two people that --
17 heard the detective talk about two people that were
18 with Mr. Benn on this day. State didn't call those
19 witnesses. I can't tell you why. My guess is that
20 their story didn't fit in the perfect little box
21 the State has presented. It was easy. They were
22 missing the evidence, but, hey, they had a video,
23 they had magical ID. And so what did they do?
24 They went ahead and charged Mr. Benn with the
25 crime.

JURY CHARGE

1 You're going to have all the evidence
2 with you in the back that you need to decide this
3 case. Like the Solicitor, I ask you to take every
4 bit of time that you need to review every piece of
5 it. I want you to pay attention to the objective
6 evidence, particular attention to each and everyone
7 of these comparison pictures; and what I think that
8 that will reveal to you is Tyrone Benn was an easy
9 suspect, a convenient suspect, but not the right
10 suspect. I'm going to ask you to find him not
11 guilty.

12 THE COURT: Ladies and gentlemen, stand
13 up and stretch for me.

14 (Jury complies)

15 While the jury is doing that, I'm
16 instructing the gallery that while -- the Court is
17 instructing the gallery there is to be no movement
18 in the gallery. If you leave, you will not be able
19 to come back in.

20 You all can sit down when you're ready.

21 During this trial, ladies and
22 gentlemen, you and I have certain duties to
23 perform. As the trial judge, it is my
24 responsibility to preside over the trial of this
25 case, and I also have the duty to pass upon or rule

JURY CHARGE

1 upon the admissibility of evidence that has been
2 offered during this trial.

3 You are to consider only competent
4 evidence that is before you. You are to consider
5 only the testimony which has been presented to you
6 from the witness stand together with any exhibits
7 which have been made a part of the record in this
8 case.

9 I have the additional duty to charge or
10 instruct you on the law applicable to this case.
11 As the presiding judge, I am the sole judge of the
12 law of this case, and it is your duty as jurors to
13 accept and apply the law as I now state it to you.

14 If you have a preconceived idea as to
15 what the law is or what the law ought to be in a
16 case, or in this case, and it should not agree with
17 what I now tell you the law is, you are obligated
18 under your oath to abandon this preconception on
19 your part, because you are sworn to accept the law
20 and apply the law precisely as I now state it to
21 you.

22 In every case tried in this court
23 before a jury, the jury becomes the sole and
24 exclusive judges of the facts. You, the jury, are
25 the judges of the facts in this case. The

JURY CHARGE

1 Constitution of our state has declared that a trial
2 judge shall not intimate, state, comment upon, or
3 make any statement to a trial jury about the facts
4 in a case.

5 Since you, the jury, are the sole
6 judges of the facts in this case, you are not to
7 infer anything from what I've said to you during
8 the progress of this trial in ruling upon the
9 admissibility of evidence or otherwise, or anything
10 that I say to you now during the course of this
11 instruction that I have any opinion about the
12 facts. The law does not allow me to have an
13 opinion about the facts. This is a matter solely
14 for you, the jury, to determine.

15 As jurors then, it is your duty as I
16 have instructed to determine the effect, the value,
17 and the weight and truth of the evidence that's
18 been presented during the trial. Necessarily, you
19 must assess the credibility of witnesses who have
20 testified in this case. Credibility is simply a
21 legalistic term meaning believability. It becomes
22 your duty as jurors to analyze and evaluate the
23 evidence and determine that evidence which
24 convinces you of its truth.

25 Some of the things you may consider as

JURY CHARGE

1 you decide whether or not to believe a witness's
2 testimony about a particular matter include, what
3 was the manner and appearance of the witness who
4 testified? Was he or she straightforward or
5 hesitant in answering? Was the testimony of a
6 witness consistent or inconsistent? How did the
7 witness come to know the facts that he or she
8 testified to and what was his or her ability to
9 know these facts? Is there some reason a witness
10 would want to give testimony that would help or
11 hurt one side or the other? Was the witness biased
12 or prejudiced and was the testimony of a witness
13 strengthened or weakened by other testimony or
14 evidence?

15 I further instruct you that in
16 determining the question of the credibility or
17 believability of witnesses who have testified, you
18 may believe one witness as against several
19 witnesses or several witnesses as against one
20 witness. You may believe a part of the testimony
21 of a witness and reject the remaining part of the
22 testimony of that same witness.

23 If you have a good and sound reason,
24 you may believe the testimony of a witness in its
25 entirety or reject the testimony of a witness in

JURY CHARGE

1 its entirety. You may consider the demeanor of a
2 witness, that is the manner and appearance of the
3 witness from the witness stand.

4 Ladies and gentlemen, you can believe
5 as much or as little of each witness's testimony as
6 you think proper. Throughout this process you have
7 but one objective, to seek the truth regardless of
8 its source.

9 Our Rules of Evidence ordinarily do not
10 permit us to allow witnesses to testify to opinions
11 or conclusions. An exception for this Rule exists
12 for witnesses we call an expert witness; a witness
13 who by their education, training and experience has
14 become an expert in some art, science, profession
15 or calling may state an opinion as to relevant and
16 material matters in which the witness claims to be
17 an expert and may also state the reasons for that
18 opinion.

19 You should consider any expert opinion
20 received in this case like any other evidence.
21 Give it the weight that you think it deserves. If
22 you decide that the opinion of an expert witness is
23 not based on sufficient education and experience,
24 or you conclude that the reasons given in support
25 of the opinion are not sound, or that the opinion

JURY CHARGE

1 is outweighed by other evidence, you may disregard
2 the opinion entirely.

3 An expert witness's testimony is to be
4 given no greater weight than that of other
5 witnesses simply because the witness is an expert.
6 Further, you are not required to accept an expert's
7 opinion even though it is not contradicted.

8 Ladies and gentlemen, there are
9 statements alleged to have been made by the
10 defendant which have been admitted into evidence in
11 this case. While this Court has determined that
12 the statement is admissible, I instruct you that
13 you make the ultimate decision of whether or not
14 the defendant made the statement.

15 If the defendant did make the
16 statement, you must determine whether or not the
17 statement was made by the defendant voluntarily and
18 of his own free will. This means that the
19 statement was not caused by pressure, force, fear,
20 threats, coercion, or intimidation, or by hope or
21 promise of leniency, or reward of any kind.

22 In determining whether the statement
23 was voluntary, you should consider both the
24 characteristics of the defendant and the details of
25 the questioning.

JURY CHARGE

1 Some of the factors you must consider
2 are the age of the defendant, the defendant's
3 education or lack of education, the defendant's
4 mental ability or capacity, his IQ or intelligence,
5 his background and environment, the place and
6 length of detention, the nature of the questioning,
7 and the advice or lack thereof to the defendant of
8 his constitutional rights, including, but not
9 limited to, the right to remain silent, that any
10 statement could be used against him in a court of
11 law, the right to have a lawyer present, that if he
12 could not afford a lawyer, a lawyer would be
13 appointed to represent him without any cost, and
14 that he can stop making a statement at any time.
15 You must carefully consider all of the surrounding
16 circumstances before you give any weight to an
17 alleged statement.

18 The State has the burden of proving
19 beyond a reasonable doubt that the alleged
20 statement was voluntary. If you determine it was,
21 you may give the statement any further
22 consideration that you deem proper. You must
23 decide what weight, if any, should be given to the
24 alleged statement. If you determine the alleged
25 statement was not the free and voluntary statement

JURY CHARGE

1 of the defendant, you should not consider the
2 statement at all.

3 Ladies and gentlemen, there are two
4 types of evidence which are generally presented
5 during a trial, direct evidence and circumstantial
6 evidence. Direct evidence is the testimony of a
7 witness who asserts or claims to have actual
8 knowledge of a fact, such as an eye witness.
9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of
11 a fact.

12 The law makes absolutely no distinction
13 between the weight or value to be given to either
14 direct evidence or circumstantial evidence, nor is
15 a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 Crimes may be proven by circumstantial
18 evidence and, again, the law makes no distinction
19 between the weight or value to be given to either
20 direct or circumstantial evidence; however, to the
21 extent the State relies on circumstantial evidence,
22 all of the circumstances must be consistent with
23 each other, and when taken together, point
24 conclusively to the guilt of the accused beyond a
25 reasonable doubt. If these circumstances merely

JURY CHARGE

1 portray the defendant as suspicious, the proof has
2 failed.

3 The State has the burden of proving the
4 defendant guilty beyond a reasonable doubt. This
5 burden rests with the State regardless of whether
6 the State relies on direct evidence, circumstantial
7 evidence, or some combination of the two.

8 Ladies and gentlemen, you should weigh
9 all the evidence in this case. After weighing all
10 of the evidence, if you are not convinced of the
11 guilt of the defendant beyond a reasonable doubt,
12 you must find the defendant not guilty.

13 Conversely, if you are convinced of the guilt of
14 the defendant beyond a reasonable doubt, then you
15 must find him guilty.

16 I instruct you, ladies and gentlemen,
17 the fact that the defendant was arrested, charged,
18 and indicted is not evidence in this case and it
19 cannot be considered by you as evidence of guilt in
20 this case, nor does it create any presumption or
21 inference of guilt. This documentation is simply
22 the formal written instrument, or instruments,
23 which contain the charge, or charges, made against
24 the defendant. They simply serve as the formal
25 documentation by which the case is processed or

JURY CHARGE

1 brought into the court.

2 The defendant has pled not guilty to
3 the indictment and that casts the burden on the
4 State to prove the defendant guilty, because a
5 person charged with committing a criminal offense
6 in South Carolina is never required to prove
7 himself innocent.

8 I instruct you, Madame Forelady, ladies
9 and gentlemen, it is a cardinal and important Rule
10 of the Law of Evidence, that the defendant in a
11 criminal trial, no matter what the seriousness of
12 the charges, or charges, made against him may be,
13 will always be presumed to be innocent of the crime
14 for which he's indicted unless his guilt has been
15 proven by evidence satisfying you of that guilt
16 beyond a reasonable doubt.

17 The presumption of innocence does not
18 cease when you retire to deliberate, but it
19 accompanies the defendant from the time of his
20 appearance throughout the trial until you reach a
21 verdict in this case. Our Supreme Court has said
22 the presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the
24 defendant, and it remains with him and assigns him
25 to that class of the innocent until that

JURY CHARGE

1 presumptive robe of righteousness has been stripped
2 of that person by evidence satisfying you of that
3 guilt beyond a reasonable doubt.

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

10 Ladies and gentlemen, the State has the
11 burden of proving the defendant guilty beyond a
12 reasonable doubt. Some of you may have served as
13 jurors in civil cases where you were told it is
14 only necessary to prove that a fact is more likely
15 true than not true, such as by the greater weight
16 or the preponderance of the evidence. In criminal
17 cases, the State's proof must be more powerful than
18 that. It must be beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is
20 proof that leaves you firmly convinced of the
21 defendant's guilt. There are very few things in
22 this world that we know with absolute certainty,
23 and in criminal cases the law does not require
24 proof that overcomes every possible doubt. If,
25 based on your consideration of the evidence, you

JURY CHARGE

1 are firmly convinced that the defendant is guilty
2 of the crime charged, you must find the defendant
3 guilty. If, on the other hand, you think there is
4 a real possibility that the defendant is not
5 guilty, you must give the defendant the benefit of
6 that doubt and find him not guilty.

7 I instruct you and emphasize that the
8 fact that the defendant did not testify is not a
9 factor to be considered by you in any manner
10 whatsoever in your deliberations and in your
11 consideration on the question of the guilt or
12 innocence of the defendant. It must not be
13 considered by you in any manner whatsoever.

14 A defendant has the constitutional
15 right to remain silent, and the assertion of this
16 right must not be considered by you in your
17 deliberation. I repeat, under your oath, you are
18 to draw no conclusion whatsoever from the fact that
19 the defendant in this case did not testify. The
20 fact that this defendant did not testify should not
21 be discussed in any manner whatsoever in the jury
22 room during your deliberations.

23 The burden of proof, as I have stated
24 to you, is on the State. The defendant is not
25 required to prove his innocence. The burden of

JURY CHARGE

1 proof remains on the State to prove guilt beyond a
2 reasonable doubt.

3 The defendant is charged with murder.
4 The State must prove beyond a reasonable doubt that
5 the defendant killed another person with malice
6 aforethought. Malice is hatred, ill will or
7 hostility towards another person. It is the
8 intentional doing of a wrongful act without just
9 cause or excuse and with an intent to inflict an
10 injury or under circumstances that the law will
11 infer an evil intent.

12 Malice aforethought does not require
13 that it exists for any particular time before the
14 act is committed, but malice must have existed in
15 the mind of the defendant just before and at the
16 time the act is committed; therefore, there must be
17 a combination of the previous evil intent and the
18 act.

19 Malice aforethought may be expressed or
20 inferred. These terms, expressed and inferred, do
21 not mean a different kind of malice, but merely the
22 manner in which malice may be shown to exist, that
23 is either by direct evidence or by inference from
24 the facts and circumstances which are proven.

25 Express malice is shown when a person

JURY CHARGE

1 speaks words that express hatred or ill will for
2 another, or when the person prepared beforehand to
3 do the act which was later accomplished. For
4 example, lying in wait for a person or any other
5 acts of preparation going to show that the deed was
6 within the defendant's mind would be express
7 malice.

8 Malice may be inferred from conduct
9 showing a total disregard for human life. Inferred
10 malice may also arise when the deed is done with a
11 deadly weapon. A deadly weapon is any article,
12 instrument, or substance which is likely to cause
13 death or great bodily harm. Whether an instrument
14 has been used as a deadly weapon depends on the
15 facts and circumstances of each case.

16 The following are examples of
17 instruments that may be a deadly weapon: A pistol,
18 a shotgun, a rifle, a dirk, a dagger, knife,
19 slingshot, metal buckle, a razor, gasoline, a
20 firearm, or Molotov cocktail and lighter fluid.

21 A gun may be a deadly weapon even if
22 it's not operating.

23 Ladies and gentlemen, I instruct you
24 that these are simply evidentiary facts to be taken
25 into consideration by you, along with all the other

JURY CHARGE

1 evidence in the case, and to be given the weight,
2 value, and effect you decide it should receive.

3 The defendant is also charged with
4 possession of a weapon during the -- is charged
5 with possession of a firearm during the commission
6 of or attempt to commit a violent crime. The State
7 must prove beyond a reasonable doubt that the
8 defendant was in possession of a firearm or visibly
9 displayed what appeared to be a firearm during the
10 commission of a violent crime.

11 A firearm means any machine gun,
12 automatic rifle, revolver, pistol, or any weapon
13 which will, is designed to, or may be readily
14 converted to expel a projectile.

15 In order to find the defendant guilty
16 of possession of a firearm during the commission of
17 a violent crime, you must first find the defendant
18 guilty of either committing a violent crime or
19 attempting to commit a violent crime. I instruct
20 you, ladies and gentlemen, that murder is defined
21 as a violent crime pursuant to South Carolina Code
22 Section 16-1-60.

23 An issue in this case, ladies and
24 gentlemen, is identification of the defendant as
25 the person who committed the crime charged. The

JURY CHARGE

1 State has the burden of proving identity beyond a
2 reasonable doubt. You must be satisfied beyond a
3 reasonable doubt of the accuracy of the
4 identification of the defendant before you may
5 convict the defendant.

6 Identification testimony is an
7 expression of belief or impression by a witness.
8 You must determine the accuracy of the
9 identification of the defendant. You must consider
10 the believability of each identification witness in
11 the same way as any other witness. You may
12 consider whether the witness had an adequate
13 opportunity to observe the offender at the time of
14 the offense. This will be affected by how long or
15 how short of time was available, how far or close
16 the witness was, the lighting conditions and
17 whether the witness had the chance to see or know
18 the person in the past.

19 Once again, I instruct you the burden
20 of proof on the State extends to every element of
21 the offense and the crime charged, and this
22 specifically includes the burden of proving beyond
23 a reasonable doubt the identity of the defendant as
24 the person who committed the crime.

25 If, after examining the testimony, you

JURY CHARGE

1 have a reasonable doubt as to the accuracy of the
2 identification, you must find the defendant not
3 guilty.

4 There are two Indictments in this case,
5 ladies and gentlemen, each alleges a different
6 offense against the defendant. They are Indictment
7 2014-GS-10-5844, murder, and 5846, possession of a
8 firearm during the commission of a violent crime.
9 Each indictment alleges a separate and distinct
10 offense. You must decide each indictment
11 separately on the evidence and the law applicable
12 to it uninfluenced by your decision as to any other
13 indictment.

14 The defendant may be convicted or
15 acquitted on any or all of the offenses charged.
16 You will be asked to write a separate verdict for
17 each offense.

18 There are two possible verdicts for
19 each of the offenses that the defendant is charged
20 with, and I will go over these options with you.
21 You don't have to try to write them down; they are
22 on a verdict form which will go into the jury room
23 with you. Before I go over those, I will tell you
24 and instruct you there is no significance
25 whatsoever to the order in which I state the

JURY CHARGE

1 possible verdicts. It is simply that one must be
2 stated first.

3 And the options are as follows: As to
4 Indictment 2015-GS-10-5844, which is the offense of
5 murder, we, the jury, by unanimous consent, find
6 the defendant guilty of murder, or not guilty. And
7 as to Indictment 5846, we, the jury, by unanimous
8 consent, find the defendant guilty of possession of
9 a firearm during the commission of a violent crime,
10 or not guilty.

11 Again, there is no significance
12 whatsoever to the order that I have stated the
13 potential verdict.

14 Ladies and gentlemen, your verdict must
15 be a unanimous one, which means that all 12 of you
16 must agree in order to reach a verdict.

17 Madame Forelady, when the jury has
18 reached a verdict, it is your responsibility to
19 fill out each verdict form, to sign and date the
20 form, and knock on the door and advise the bailiff
21 that the jury has reached a unanimous verdict.

22 Also, if the jury has any questions
23 during your deliberations, it is your
24 responsibility to write those out, sign and date
25 the note and follow the same process by knocking on

JURY CHARGE

1 the door and advising the bailiff that the jury has
2 a question.

3 Ladies and gentlemen, I will advise you
4 in advance that if you have a question, please note
5 that there will be a delay in us responding to you
6 and that is because we have to follow a process in
7 answering your questions. So know if you have a
8 question, there will be a delay, we're not ignoring
9 you, we have to follow that process before we can
10 answer you.

11 Also, Madame Forelady, in any notes
12 that are provided to the Court, or any questions,
13 there should not be any indication of the numerical
14 breakdown of the jury or voting process of the jury
15 as jury deliberations are totally confidential and
16 should not be disclosed outside of your jury room.

17 Again, ladies and gentlemen, the
18 verdict must be a unanimous one, which means that
19 all 12 of you must agree in order to reach a
20 verdict.

21 I'm going to ask that you return to
22 your jury room, but do not begin deliberations. I
23 have some very brief matters of law that I need to
24 take up with the attorneys that may require further
25 instruction or clarification of an instruction. If

1 there is no further instruction, we will send in
2 the evidence, your notepads, and excuse the
3 alternates, and at that time you will be allowed to
4 begin your deliberations.

5 And for your planning purposes, your
6 lunch should arrive by 12:00.

7 Again, if you would, stack your
8 notepads on the bannister as you're leaving.
9 Alternates, please leave your notepads in your
10 seats. Once I take up these matters of law, I will
11 let you know when you can begin your deliberations.
12 Thank you for your patience.

13 If you will go with the bailiffs
14 please.

15 (Jury out, 11:24 a.m.)

16 THE COURT: You may be seated.

17 Any exception from the State?

18 MR. WETMORE: No, Your Honor.

19 THE COURT: Any exception from the
20 defense?

21 MR. SMITH: No, Your Honor.

22 THE COURT: Can you just double-check
23 and make sure that all that evidence is in place.
24 We will need gloves for the jury. And the laptop
25 is in their room, correct?

1 THE CLERK: It is, Your Honor.

2 THE COURT: And then once we have
3 gotten all that collected and put on a cart, we are
4 going to need a cart for all that, you can bring
5 the alternates in so I can excuse them so they can
6 begin their deliberations.

7 THE COURT: All evidence in place?

8 MR. WETMORE: Yes, ma'am.

9 THE COURT: All right. I need the
10 alternate. He needs to stay in here. I have to
11 excuse the alternates.

12 (Alternated in, 11:35 a.m.)

13 THE COURT: Gentlemen, we wanted to
14 thank you for your time and your attention to this
15 case. We know that being an alternate can almost
16 seem thankless, but it's such a valuable service
17 that you provide to the court in the event that
18 another juror is not able to continue with the
19 proceedings.

20 We have ordered your lunch. It should
21 be here by 12. We would ask that you hang tight
22 with us. We'll put you in a room where you will be
23 comfortable. If you would like to remain with us,
24 you're welcome to do so, but if not, you're excused
25 for the remainder of the week. I think you've

1 fulfilled your service.

2 You are welcome to discuss this case if
3 you would like, but I would ask that you not do it
4 until the entire panel is excused. Sometimes
5 lawyers will contact you, they just want feedback,
6 some common sense or perspective on a case. So you
7 are welcome to discuss the case after the panel is
8 excused if you would like to.

9 I hope that you've learned that real
10 court is nothing like what you see on television
11 and I hope that it's been educational for you. We
12 profoundly appreciate your service and hope you
13 have a wonderful rest of the day.

14 Sam will take good care of you. Thank
15 you so much.

16 All right. The record should reflect
17 the jury began its deliberations at 11:28. We will
18 await further instructions. When their lunch
19 arrives, I will let you all know so you can take a
20 lunch break as well. We asked that it be here by
21 noon. The provider we're using is pretty timely.
22 If it's not right at noon, it should be shortly
23 after. It might even get here a little earlier, so
24 if you will just hang tight with me in case we have
25 any questions, and I will let you know when their

1 lunch arrives so I can give you a lunch break as
2 well.

3 If you can leave your cell numbers with
4 my clerk, so in the event we need to call you when
5 we take a lunch break we will have those.

6 We will be at ease until I let you know
7 that lunch is here. Thank you so much.

8 (A recess transpired.)

9 THE COURT: We have a note from the
10 jury. I'm sorry, they wrote it on a little scrap
11 of paper. I don't know why they didn't utilize the
12 whole pad, but it says, State's Evidence Number 39,
13 T. Benn Extracted -- I don't know what that is --
14 clip is playing as an audio clip only, no video.
15 Please provide assistance.

16 So what I did in response to that note,
17 I had Sam go into the jury room to make sure there
18 was no issue with our equipment. Of course, I
19 instructed that he was observed by the bailiff to
20 make sure there was no deliberation going on during
21 that process, and, in fact, it was an audio only
22 clip.

23 I also had my law clerk outside of the
24 jury's presence, had them bring the laptop outside
25 the jury room because she had had to do it a

1 certain way to get it to play and wanted to make
2 sure that that method was not available. We then
3 determined that it was, in fact, an audio only
4 clip.

5 And so what we were in the process of
6 doing was trying to -- and why we called you all
7 over was to then get permission to get the original
8 disk, which is in evidence as a Court's Exhibit,
9 and have the State burn another clip with audio and
10 video and the program that is used to play the
11 video.

12 In the meantime, before you all could
13 get over here, the jury indicated that they no
14 longer needed to view it and they had a verdict.
15 So their note will be marked as a Court's Exhibit.

16 Is there anything before we proceed
17 with receiving the verdict? From the State?

18 MR. WETMORE: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SMITH: No, Your Honor.

21 THE COURT: All right. Please bring in
22 the jury.

23 (COURT EXH. 5, Jury note, marked for
24 identification.)

25 (Jury in, 11:22 a.m.)

VERDICT

1 THE COURT: Madame Forelady, has the
2 jury reached a verdict?

3 FORELADY: We have, Your Honor.

4 THE COURT: If you would give the
5 verdict form to the bailiff, please.

6 Thank you. Sir, stand for publication
7 of the verdict.

8 THE CLERK: In the State of South
9 Carolina, in the County of Charleston, in the Court
10 of General Sessions for the Ninth Judicial Circuit,
11 Indictment 2015-GS-10-05844, State of South
12 Carolina v. Tyrone Malcolm Benn.

13 As to Indictment Number
14 2015-GS-10-05844, we, the jury, by unanimous
15 consent, find the defendant guilty of murder.

16 Signed, Madame Forelady, April 13,
17 2016.

18 As to Indictment Number
19 2015-GS-10-05846, we, the jury, by unanimous
20 consent, find the defendant guilty of possession of
21 a firearm during the commission of a violent crime.

22 Signed, Madame Forelady, April 13th,
23 2016.

24 Madame Forelady, ladies and gentlemen
25 of the jury, if this is your verdict, please

VERDICT

1 indicate so by raising your right hand.

2 THE JURY: (Raised hands)

3 THE CLERK: Please let the record
4 reflect that all jurors have raised their right
5 hands.

6 THE COURT: Everybody in the gallery
7 needs to be seated.

8 Is there any request to poll the jury?
9 From the State?

10 MR. WETMORE: No, Your Honor.

11 THE COURT: Any request to poll the
12 jury? From the defense?

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: Please proceed with polling
15 the jury.

16 Ladies and gentlemen, the clerk is
17 going to ask you two questions. I would ask that
18 you give him your attention.

19 You may proceed.

20 THE CLERK: Madame Forelady, is this
21 your verdict?

22 FORELADY: Yes.

23 THE CLERK: Is this still your verdict?

24 FORELADY: Yes.

25 THE CLERK: Thank you.

VERDICT

1 Juror 379, is this your verdict?
2 JUROR 379: Yes, sir.
3 THE CLERK: Is this still your verdict?
4 JUROR 379: Yes, sir.
5 THE CLERK: Juror 277, is this your
6 verdict?
7 JUROR 277: Yes, sir.
8 THE CLERK: Is this still your verdict?
9 JUROR 277: Yes, sir.
10 THE CLERK: Thank you.
11 Juror 200, is this your verdict?
12 JUROR 200: Yes, sir.
13 THE CLERK: Is this still your verdict?
14 JUROR 200: Yes, sir.
15 THE CLERK: Thank you.
16 Juror 136, is this your verdict?
17 JUROR 136: Yes, sir.
18 THE CLERK: Is this still your verdict?
19 JUROR 136: Yes, sir.
20 THE CLERK: Thank you.
21 Juror 217, is this your verdict?
22 JUROR 217: Yes, sir.
23 THE CLERK: Is this still your verdict?
24 JUROR 217: Yes.
25 THE CLERK: Thank you.

VERDICT

1 Juror 36, is this your verdict?
2 JUROR 36: Yes, sir.
3 THE CLERK: Is this still your verdict?
4 JUROR 36: Yes, sir.
5 THE CLERK: Thank you.
6 Juror 375, is this your verdict?
7 JUROR 375: Yes, sir.
8 THE CLERK: Is it still your verdict?
9 JUROR 375: Yes, sir.
10 THE CLERK: Thank you.
11 Juror 160, is this your verdict?
12 JUROR 160: Yes, sir.
13 THE CLERK: Is this still your verdict?
14 JUROR 160: Yes, sir.
15 THE CLERK: Thank you.
16 Juror 140, is this your verdict?
17 JUROR 140: Yes, sir.
18 THE CLERK: Is it still your verdict?
19 JUROR 140: Yes, sir.
20 THE CLERK: Thank you.
21 Juror 27, is this your verdict?
22 JUROR 27: Yes, sir.
23 THE CLERK: Is this still your verdict?
24 JUROR 27: Yes, sir.
25 THE CLERK: Thank you.

VERDICT

1 Juror 77, is this your verdict?

2 JUROR 77: Yes, sir.

3 THE CLERK: Is it still your verdict?

4 JUROR 77: Yes.

5 THE CLERK: Thank you.

6 Your Honor, the jury has been polled
7 and the verdict stands.

8 THE COURT: Madame Forelady, ladies and
9 gentlemen, we want to thank you for your time and
10 attention to this case. I hope that jury service
11 has been educational for you. I hope that you've
12 learned it's nothing like what you see on
13 television.

14 Our system is the only system that
15 allows 12 ordinary citizens to listen to the facts
16 of a case, determine what the facts are, apply a
17 complicated set of rules or laws to those facts and
18 render verdicts.

19 You are welcome to stay with us if you
20 would like for sentencing. Is there anyone that
21 wishes to stay for sentencing, if you'd raise your
22 right hand?

23 We have tried all of the cases, and if
24 we hadn't, I was going to excuse you for the week.
25 I think that you have more than fulfilled your

1 service to us. If you need a work excuse you can
2 get those on the first floor on the circuit court
3 side of the courthouse. Any of the deputy clerks
4 at the window can give you a work excuse;
5 otherwise, we will mail those to you along with
6 your checks.

7 You are welcome to discuss this case if
8 you would like, but I would ask that you not do
9 that until after Friday when the entire panel has
10 been released. Oftentimes lawyers will contact you
11 for feedback just to get a commonsense perspective
12 on the case.

13 Just so that you know how very valuable
14 your service is to us, South Carolina has one of
15 the largest case loads per capita in the nation at
16 over 5,000 cases per judge. Circuit judges in
17 South Carolina hear both civil and criminal courts,
18 as well as non-jury court, which means there are
19 times when we act as the finders of fact or the
20 jury.

21 We have about 50 judges who rotate
22 throughout the State and hear cases. So I hope
23 that you know how very valuable you are to us. Out
24 of 52 weeks a year, we probably hold jury trials in
25 Charleston, at least anywhere from three to four

1 courts, I would probably estimate about 45 weeks
2 out of the year. So if you all were not willing to
3 give your service to us, we would not be able to
4 move as efficiently as we do, because even with
5 that caseload, we still dispose of cases much more
6 quickly than most states in the nation.

7 So, again, you are excused with the
8 Court's profound thanks. We hope that you have a
9 wonderful rest of the week and you're excused.

10 And Madame Forelady, if you could stop
11 outside this door, we need you to sign the actual
12 Indictment. I will hear sentencing and post-trial
13 motions in a moment.

14 (Jury out, 12:31 p.m.)

15 Do we have sentence sheets?

16 MR. WETMORE: Yes, Your Honor. Do you
17 want him to sign them.

18 THE COURT: He doesn't need to sign
19 them. He's been convicted by a jury of his peers.

20 Sir, please don't have any
21 communication with anybody in the gallery. Okay?

22 I know that this is -- I will preface
23 this, and I usually say this before we get a jury
24 verdict, I know this is very emotional for both --
25 for everybody in the courtroom, both the victim's

1 family as well as the family of the defendant;
2 however, we operate by a court of laws, which
3 requires a certain amount of decorum, and I expect
4 the proces to be respected. I expect this
5 courtroom to be respected.

6 I don't expect anyone to disrespect
7 anyone, at least not in my presence, and not in the
8 presence of the deputies. If you do it in the
9 presence of the deputies, I'm just going to give
10 you fair notice that they are going to arrest you
11 and you are going to be charged.

12 If you do it in my presence, I'm going
13 to find you in direct contempt, which is going to
14 cost you a whole lot of money and six months in
15 jail. So I expect everybody to comport themselves
16 appropriately. We have a process. If you're
17 disgruntled with it or you don't feel it's operated
18 as it should, that's why we have something that's
19 called an appeal, and I have great respect for the
20 entire process. I think it works as it should and,
21 certainly, you should avail yourself of it.

22 But, sir, refrain from making any
23 comments to anyone in the gallery. Again, I would
24 not want out of emotion any member of your family
25 to find themselves in lockup. Okay?

1 All right. Anything further from the
2 State? Does he have any other record, other than
3 what I've been told about, which is the 2006
4 strong-armed robbery, the 2011 distribution of
5 marijuana, and the 2012 possession of a weapon.

6 MR. WETMORE: Judge, he has that
7 strong-armed that was convicted in 2006. He had a
8 YOA, which was revoked, a parole revocation, then
9 we have on further in 2008, another parole
10 revocation, 2010 is when he got the distribution of
11 marijuana charge, and then looks like 2012 is when
12 he got the unlawful possession of a firearm, 2012,
13 possession of marijuana, DUS and that is -- that's
14 the extent of his convictions, Judge.

15 At this time, do you want to be heard
16 on the sentence?

17 THE COURT: Yes, uh-huh.

18 MR. WETMORE: Judge, as you know from
19 -- just from our conversations, you know he was
20 made a pretty reasonable offer.

21 THE COURT: When you say conversations,
22 I need you to clarify that. I don't want there to
23 be any misapprehension that you and I had
24 conversations that were not on the record.

25 MR. WETMORE: I'm sorry. The

1 conversation we had on the record detailing the
2 offer. He was offered from 20 years to 30 years on
3 a voluntary manslaughter, because there is
4 obviously the ID issue, and he turned that down.

5 So we honestly think that you should
6 sentence very high on this one. And, certainly,
7 you've seen the case and you know what a
8 premeditated thing this was. This is clearly as
9 bad of a murder as we see.

10 Obviously, we don't have to prove the
11 motive. You know, the police informed me that this
12 was a hit. You know, quite frankly drug related,
13 but it was a hit. And the defendant used his
14 closeness with the victim to catch him off guard
15 and kill him, and that sort of thing is the worst
16 of the worst. I know the family probably does want
17 to be heard when the time is right.

18 THE COURT: Anyone wish to be heard for
19 the record regarding the State's presentation
20 regarding sentence?

21 MS. CORDS: Good afternoon.

22 THE COURT: Good afternoon, ma'am.

23 MS. CORDS: My name is Jacqueline
24 Cords. I am the mother of the deceased and I thank
25 you for hearing the case today. Mr. Wetmore, job

1 well done. Defense Attorney, you did your job, but
2 I'm going to do mine right now as his mother.

3 This young man, yes, he befriended my
4 son. He walked with him to the store, he led him
5 to believe everything was straight. Looking at the
6 video, he never knew what happened. Okay? And
7 given the opportunity right, now he has no remorse.
8 Take that into consideration, Judge. Please, to
9 the extent of me and my family, we are asking you
10 to extend the outmost sentence, life.

11 Guess what? Mine isn't coming back.
12 But guess what? He's resting, no looking behind to
13 worry. Mr. Benn has to do that now. He got the
14 job done for those, time to serve the time for
15 those. If he can get the job done for them, he can
16 serve the time for them.

17 I'm going to be respectful because
18 Mr. Wetmore asked me to. That I will do. My son
19 left behind a four-year-old-daughter that has to be
20 continuously taken care of by the family, which we
21 do. No pun intended, but (inaudible) taken care
22 of.

23 But, Your Honor, we're asking for life.
24 Thank you for hearing me. Thank my family for
25 being here showing our support. Job well done,

1 Mr. Wetmore.

2 THE COURT: Thank you, ma'am. Is there
3 any other member of the family that wishes to be
4 heard?

5 MR. WETMORE: Judge, we certainly
6 concur with the family's recommendation of life and
7 hope you will consider that.

8 THE COURT: Be glad to hear from you,
9 Mr. Smith.

10 MR. SMITH: Thank you, Your Honor. May
11 it please the Court.

12 Your Honor, it's obviously the case --
13 I talked to Mr. Benn and indicated to him it's
14 probably not wise to address the Court until any
15 and all appeals we make a decision about whether
16 that's appropriate in this case.

17 THE COURT: Well, I think you need to
18 also advise him this is his only opportunity. In
19 the appeals process, he doesn't address anyone in
20 it and -- and I won't say that's poor advice
21 because I don't have a feeling one way or the
22 other, but I think there's some misapprehension
23 that what somebody says after a conviction makes a
24 difference, it doesn't.

25 If there's some error, it's going to be

1 reversed. The Supreme Court doesn't care if you
2 admitted your guilt or not. If there's some error,
3 they are going to send it back to be retried so I
4 don't think it can hurt him one way or the other.
5 I don't want him coming back later and saying that
6 you told him not to speak and that it gave -- that
7 it affected his sentence in some way.

8 So it's of no importance to the Court
9 whether he speaks or doesn't, but if he has some
10 desire to, I don't think it would hurt him in the
11 appellate process.

12 MR. SMITH: Yes, ma'am. My intention
13 was never to stop him from speaking if he had
14 something he wanted to say.

15 THE COURT: I assumed you were merely
16 repeating what he indicated his desire was, which
17 was not to be heard.

18 MR. SMITH: Yes, Your Honor.

19 Your Honor, just to give you a little
20 bit of background. Mr. Benn grew up here in
21 Charleston. He lived predominantly with his
22 grandmother up in North Charleston. He's worked
23 several temp jobs, one of the last ones over at the
24 Mills House when they were in the middle of the
25 remodel. He's also worked for some cleaning

1 services, worked with some churches. He did get
2 his GED back in 2007. Before that, he went to
3 North Charleston High School and has worked on his
4 brick mason's certificate.

5 Your Honor, there is a host of his
6 family here, some brothers and other family members
7 as well, his girlfriend. His mother was not able
8 to attend due to work commitments, but otherwise
9 she would have been here.

10 Your Honor, if you would give me one
11 moment just to double-check with Mr. Benn, I
12 believe that's all we have.

13 THE COURT: Certainly.

14 How old is your client?

15 MR. SMITH: He is 29 years old. And
16 that is all we have.

17 THE COURT: Thank you, sir.

18 Anything further from the State?

19 How old was the victim?

20 MR. WETMORE: Judge, I'm not entirely
21 sure. Ms. Cords?

22 MS. CORDS: 27.

23 THE COURT: At the time of his death?

24 MR. WETMORE: Yes, ma'am.

25 MS. CORDS: 25.

1 THE COURT: 25 at the time of his
2 death.

3 MR. WETMORE: So 27 now.

4 THE COURT: Were there any post-trial
5 motions?

6 MR. SMITH: Your Honor, we would just
7 renew all of our previous motions and objections.
8 We would move for a new trial based on the
9 previously ruled-upon objections and motions.

10 THE COURT: Would the State like to
11 respond?

12 MR. WETMORE: Just the things we said
13 before.

14 THE COURT: The Court would stand by
15 the previous ruling. There is direct, as well as
16 substantial circumstantial evidence reasonably
17 tending to prove the defendant's guilt. What was
18 dispositive in this case was the video. It came
19 down to whether the jury believed it was Mr. Benn
20 on the video or it was not. I really don't think
21 either the recording or the other items that were
22 introduced into evidence really made that much of a
23 difference.

24 I really think it came down to whether
25 they believed it was him in the video, and --

SENTENCE

1 because it's rare that you have a video of a crime
2 being committed. And in this instance, it was one
3 of those rarities where you had a video, and even
4 more rare, a fairly clear video. Most videos at
5 convenience stores are so grainy you can't see
6 anything. And for all intents and purposes, this
7 was a fairly clear video.

8 And based on what is very clearly some
9 physical -- and a majority of physical resemblance
10 to the defendant, there is more than substantial
11 circumstantial evidence, but there is direct
12 evidence that the jury could have more than
13 reasonably, which goes beyond the inference of
14 guilt, to prove the defendant's guilt from which
15 his guilt could be fairly and logically deduced.

16 And so there is more than adequate and
17 sufficient evidence in the record to support the
18 jury's verdict. There is no basis for the granting
19 of a new trial or to reverse the verdict based on
20 the previous objections which have been renewed and
21 denied as well as the motion for new trial.

22 Sir, if you would stand for sentencing.
23 Based on the heinous nature of this crime, as well
24 as what appeared to be an execution-type event
25 portrayed on the video, sir, I find it appropriate

SENTENCE

1 that you be sentenced to a period of life in the
2 State Department of Corrections, and five years,
3 which is concurrent, on possession of a weapon
4 during the commission of a violent crime.

5 These sentences, again, are concurrent.
6 You'll get credit pursuant to 24-13-40 to be
7 calculated and applied by the Department of
8 Corrections.

9 Does he need any treatment in the ATU?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Thank you very much. Have
12 a good day.

13 (These proceedings were concluded at
14 1:45 p.m.)

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25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 18th day of June, 2016 at
13 Charleston, Charleston County, South Carolina.

14

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25

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

FORM 5

STATE OF SOUTH CAROLINA

County of CharlestonTyrone Malcom Benn #306805

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2018-CP-10-813
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFFILED
2018 FEB 15 PM 2:30
JULIA CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention S.C. Dept. of Corrections; Lieber Cove Inst. P.O.
Box 205 Ridgerville, SC 29472-0205
2. Name and location of Court which imposed sentence Charleston Co. Court of
General Sessions; Hon. Deandra L. Jefferson, Judge and a jury; Charles-
ton, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-1005844 murder
 - (b) 2014-GS-1005846 Poss. of a Firearm during the
commission of a violent crime

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) APR 11-13, 2016 Life
- (b) APR 11-13, 2016 5 Years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed pursuant to Anders review
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 22, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2017-UP-435
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: The Applicant received ineffective assistance of

(a) counsel prior to and during his trial in violation of his 6th & 14th
 (b) Amendment rights and Article I, §§ 3 & 14 of the South
 (c) Carolina Constitution.

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to provide Applicant effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed

(b) to recognize errors which occurred during trial, and therefore failed
 (c) to make appropriate objections, and supporting legal arguments. Had ob-
 (d) jections been made, the outcome may have been different. Counsel's failure
 12. Prior to this application have you filed with respect to this conviction:

(a) to object deprived Applicant of appellate review on direct appeal.

(b) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

Trial counsel was ineffective for failing to investigate second suspect and third-party guilt, and potential alibi witnesses and exculpatory witnesses

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Must raise ineffective assistance

(a) of trial counsel in collateral proceedings in South

(b) Caroline

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? no

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

no

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

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

i. _____

ii. Robert M. Dudek, Chief Appellate Defender, SCIO
Division of Appellate Defense

iii. _____

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

i. trial & sentencing

ii. Direct appeal

iii. _____

19. State clearly the relief you seek in filing this application:

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

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Tyhone Malcolm Benn #306805, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tyhone Benn

SWORN to and subscribed before me this 13th
day of FEBRUARY, 2018.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

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

I, Tyrone Malcolm Benn #306805, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Tyrone Benn
Applicant

SWORN or affirmed to and subscribed before me this

13th day of February, 2018.

L. K. B.
Notary Public

My Commission Expires: 6-20-26

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Tyrone Malcom Benn, #306805,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-813

RETURN

BY

JULIE J. AMSTRONG
CLERK OF COURT

2018 JUN -8 PM 12:13

FILED

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on February 15, 2018, would respectfully show this Court:

I. Procedural History

Tyrone Malcom Benn (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In October 2014, the Charleston County Grand Jury indicted Applicant for possession of a firearm during the commission of a violent crime (2014-GS-10-5846) and murder (2014-GS-10-5844). Assistant Public Defenders W. Ted Smith and Shirene Hansotia of the Charleston County Public Defender's office represented Applicant. Assistant Solicitor Burns Wetmore of the Ninth Circuit Solicitor's Office prosecuted the case.

On April 11, 2016, Applicant proceeded to a jury trial before the Honorable Deadra L. Jefferson, circuit court judge. The jury convicted Applicant as indicted. Judge Jefferson sentenced Applicant to imprisonment for concurrent terms of life without the possibility of parole and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of The South Carolina Commission on Indigent Defense-Division of Appellate Defense filed a brief

and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on November 22, 2017. The remittitur was returned to the circuit court on December 9, 2017.

II. Allegations Raised and Relief Sought

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

1. "The Applicant received ineffective assistance of counsel prior to and during his trial in violation of his 6th and 14th amendment rights and Article I, Section 3 & 14 of the South Carolina Constitution"
2. "Counsel failed to provide Applicant effective assistance of counsel prior to and during his trial proceeding. In as much as counsel failed to recognize errors which occurred during trial and therefore failed to make appropriate objections and supporting legal arguments. Had objections been made, the outcome may have been different. Counsel's failure to object deprived Applicant of appellate review on direct appeal."
3. "Trial counsel was ineffective for failing to investigate second suspect and third party guilt, and potential alibi witnesses and exculpatory witnesses"

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

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing

to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V. Response to All Other Allegations

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

VI. Request for An Evidentiary Hearing

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 7th, 2018

394
State Of South Carolina
Charleston County Courthouse

Tyrene Benn,
Applicant,

vs.

State Of South Carolina,
Respondent.

Court Of Common Pleas
Ninth Judicial Circuit

Motion To Amend Application

2018-CP-10-813

FILED
2019 JUL 17 PM 3:37
JULIE J. ARMSTRONG
CLERK OF COURT

Applicant by and through counsel, hereby files this motion to amend to add following issues:

Issue One:

Counsel abandoned applicant at a critical stage under United States v. Cronk, by failing to investigate and make timely objections

Issue Two:

Counsel abandoned applicant at critical stage, when he failed to object to the Police Lay Opinion testimony

Issue Three:

Counsel abandoned applicant at critical stage, when he failed to object to the authenticity of voice identification.

Issue Four:

Counsel abandoned applicant at critical stage, when counsel failed to object to Judge trial court charge on identification.

Issue Five:

Counsel failed to object to Judge charge on admissibility of statement when the charge on admissibility of statement is based on Miranda.

Issue Six:

Counsel abandoned applicant at a critical stage, when counsel failed to investigate who state sought the phone call made on certain days, to determine if this information was provided by confidential informant, and counsel failed to determine this on cross-examination.

Tyrone Benn #306805
 Lieber Correction Institution
 136 Willborn Drive / AA 62
 Post Office Box 205
 Ridgewood, S.C. 29472

July 9th, 2019

Honorable Julie Armstrong, Chief Clerk
 c/o Chief Administrative Judge
 100 Broad Street
 Charleston, South Carolina 29401

Re: Tyrone Benn v. State, # 2018-CP-10-813
 Subject: Motion To Be Filed by Counsel

Hon. Chief Administrative Judge

Please find enclosed motion to amend, a copy of which has been sent to Attorney General and Counsel. Applicant is asking that original be filed in court, to protect his right to one full bite of the apple, by having these claims amended and denying applicant right to do so, would deny applicant to full bite of the apple. Or in the alternative applicant be allowed to do so at hearing.

With kind regards,
 s/ Tyrone Benn
 Tyrone Benn / Applicant

cc: file
 PCR Counsel
 Attorney General

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-CP-10-0813
	)	
	)	
TYRONE M. BENN	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

October 2, 2019
Charleston, South Carolina

B E F O R E:

THE HONORABLE BENTLEY PRICE, JUDGE

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

JAMES K. FALK, ESQ.
Attorney for the Applicant

BENJAMIN H. LIMBAUGH, ESQ.
Attorney for the State

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Copy of Transcript Provided to: SCCID]

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Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 PROCEEDINGS

2 THE COURT: We are now on the record with Mr.

3 Tyrone Benn.

4 [Whereupon, Mr. Benn enters the courtroom]

5 THE COURT: Good morning, Mr. Benn. How are you?

6 MR. BENN: How you doing?

7 THE COURT: I'm doing well, thanks. All right. We

8 had to get some things that you wanted us to get so we

9 have now gotten everything that we needed to get so we're

10 ready to proceed.

11 MR. LIMBAUGH: Can I approach, Your Honor?

12 THE COURT: Yes, sir.

13 [Whereupon, Mr. Limbaugh proffers documents to the

14 Court]

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

16 THE COURT: Alrighty. Yes, sir.

17 MR. LIMBAUGH: Benjamin Limbaugh for the State.

18 This is the case of Tyrone Benn, case number 2018-CP-10-

19 813. Tyrone Benn is presently confined in the South

20 Carolina Department of Corrections pursuant to orders of

21 commitment from the Charleston County Clerk of Court.

22 In October 2014 Charleston County Grand Jury

23 indicted Applicant for possession of a firearm during the

24 commission of a violent crime and murder. Assistant

25 Public Defenders W. Ted Smith and Shirene Hansotia of the

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 Charleston County Public Defender's Office represented
2 Applicant. Assistant Solicitor Burns Wetmore of the 9th
3 Circuit Solicitor's office prosecuted the case.

4 On April 11, 2016 Applicant proceeded to a jury
5 trial before the Honorable Deadra L. Jefferson. The jury
6 convicted Applicant as indicted. Judge Jefferson
7 sentenced Applicant to imprisonment for concurrent terms
8 of life without the possibility of parole and five years
9 for possession of a firearm.

10 Applicant filed a timely notice of appeal. Chief
11 Appellate defender Robert M. Dudek of the South Carolina
12 Commission on Indigent Defense, division of Appellate
13 Defense filed a brief and motion to be relieved pursuant
14 to Anders. The South Carolina Court of Appeals granted
15 counsel's motion to be relieved and dismissed the appeal
16 on November 22, 2017. The remittitur was returned to the
17 Circuit Court on December 9th, 2017.

18 Applicant filed an initial application for post-
19 conviction relief. In his initial allegations he alleged
20 the Applicant received ineffective assistance of counsel
21 prior to and during his trial in violation of the 6th and
22 14th Amendment Rights under Article 1, Section 3 and 14
23 of the South Carolina Constitution. Counsel failed to
24 provide Applicant effective assistance of counsel prior
25 to and during his trial proceedings. Inasmuch as counsel

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 failed to recognize errors which occurred during the
2 trial and therefore failed to make appropriate objections
3 and supporting legal arguments. Had objections been made
4 the outcome may have been different.

5 Counsel's failure to object deprived Applicant of
6 appellate review under appeal. Trial counsel was
7 ineffective for failing to investigate a second suspect
8 and third party guilt and potential alibi witnesses and
9 exculpatory witnesses.

10 I believe, and my apologies Your Honor that this is
11 not in your packet, but Applicant did file a subsequent
12 amended application pro se. We received it July 17th,
13 2019. In this amended application Applicant alleged
14 counsel abandoned Applicant at a critical stage under
15 United States v Cronin by failing to investigate and make
16 timely objections.

17 Counsel abandoned Applicant in a critical stage when
18 he failed to object to the police waive opinion
19 testimony. Counsel abandoned Applicant in a critical
20 stage when he failed to object to the authentication or
21 authenticity of voice identification.

22 Counsel abandoned Applicant in critical state when
23 counsel failed to object to Judge's trial court Charge on
24 identification. Counsel failed to object to Judge's
25 Charge on admissibility of statement when the Charge on

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 admissibility of statement is based on Miranda. Counsel
2 abandoned Applicant in a critical state when counsel
3 failed to investigate why the State sought the phone
4 calls made on certain days to attorney. This information
5 was provided by confidential informants and counsel
6 failed to determine this on cross-examination.

7 Applicant is represented by Mr. Jim Falk and I will
8 hand it over to him at this time, Your Honor.

9 THE COURT: All right. Thank you very much. I'll
10 be happy to hear from you, Mr. Falk.

11 MR. FALK: Your Honor, I just want to put one thing
12 on the record before we start.

13 THE COURT: Okay.

14 MR. FALK: This matter was continued from a prior
15 term because there was a missing witness and that was a
16 Zaquan [phonetic] Watson. So I went -- he was, at the
17 time he was at the detention center. He was being housed
18 and I was preparing to draft an order for him to be
19 transported for this hearing.

20 However, I found out that he was going to be
21 released from the detention center the 25th. So I went
22 there and I served him a subpoena for his attendance. I
23 spoke with him on Monday and he said he did not plan to
24 attend. I have no way to locate him as he is homeless
25 right now. And I wanted to put on the record that ---

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 THE COURT: --- and who was that?

2 MR. FALK: His name was Zaquan [phonetic] Joshua
3 Watson.

4 THE COURT: Okay.

5 MR. FALK: He was housed at the detention center on
6 the -- let me get the date.

7 [Whereupon, Mr. Falk confers with Mr. Benn]

8 THE COURT: Mr. Benn, if I take those handcuffs off
9 you going to give me a problem?

10 MR. BENN: No, sir.

11 THE COURT: Take them off.

12 [Whereupon, the deputy removes Mr. Benn's handcuffs]

13 THE COURT REPORTER: Mr. Falk, spell Zaquan
14 [phonetic] for me, please?

15 MR. BENN: Z-A-Q-U-A-N.

16 MR. FALK: Z-A-Q-U-A-N.

17 THE COURT REPORTER: Thank you.

18 THE COURT: All right.

19 [Whereupon, Mr. Falk confers with his client]

20 MR. FALK: We would like to call Mr. Watson -- I'd
21 like to call Mr. Watson but we'd like to call Mr. Benn to
22 the stand.

23 THE COURT: All right. Mr. Benn, if you will just
24 go ahead and come up here please.

25

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1 [Whereupon, Mr. Benn comes forward to the witness
2 stand]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please have a seat and for the
6 record state your full name and spell your last name.

7 [Whereupon, the witness is seated]

8 THE WITNESS: Tyrone Malcolm Benn, Benn B-E-N-N.

9 - - - - -

10 TYRONE BENN,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q. Mr. Benn, you heard me talking to the Court about my
16 efforts to subpoena Mr. Watson, is that correct?

17 A. Yes, sir.

18 Q. Now, did you have any information in your Rule 5
19 that you thought where he had made a prior statement?

20 A. Yes, I got the exhibit ---

21 Q. --- if I could approach you?

22 MR. FALK: May I approach the witness?

23 THE COURT: Absolutely.

24 [Whereupon, the witness is shown document]

25 A. That's ---

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1 Q. --- and so would you -- so what do you have in your
2 hand?

3 A. A copy of my Rule 5, a statement ---

4 Q. --- is there a page number on the bottom of that?

5 A. Page 24.

6 Q. Okay. And what section of that did you want?

7 A. Where the police is questioning Mr. Zaquan's
8 girlfriend who was with us on the day of the crime, her
9 statement.

10 Her statement I think is still in there I can get
11 out there too. Both gave statements to a detective ---

12 Q. --- there is also page 20 up there. Is that the one
13 you were looking for?

14 A. Oh, yes, yes I've got it, on page 20. On page 20
15 according to Officer Martin he questioned Zaquan on the
16 scene and asked him where he was coming from. Zaquan
17 stated he left his grandmother's house with two of his
18 friends still there.

19 He was coming to buy a beer. They approached him as
20 a suspect. They determined later that he wasn't a
21 suspect where he returned to me. If I'm the suspect how
22 did he leave me?

23 Q. Well, what exactly did he say? What sections of
24 that do you want?

25 A. I would have to see the notes where they said what

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1 line that he states that he was with me.

2 [Whereupon, Mr. Falk reviews documents]

3 A. Bring that right there [indicates].

4 Q. Is that what you're looking for?

5 [Whereupon, the witness is shown document]

6 A. Uh Huh.

7 Q. And what are you reading from now?

8 A. Rule 5, page 18.

9 Q. Okay.

10 A. Zaquan states in his words he left his grandmother's
11 house with a Charles Armstrong, me Tyrone Benn or left.
12 He was, he went to the -- he drove to the Circle K where
13 he was going to get a beer, walks in and advised that he
14 observed a body on the ground, police on the scene.

15 He left the store and went to another store on
16 Rivers Avenue, walks in and was confronted by the fact
17 that Benn was seen on video committing a crime. Watson
18 was showed him and said it looks like; it doesn't say it
19 is Tyrone.

20 They asked again were you with him. I said I left
21 him for five minutes to go wash my face and gather up in
22 my grandmother's house and then I left them to go get a
23 beer from the Circle 8.

24 Q. So what do you think that says?

25 A. That he was as my alibi. I was nowhere on the scene

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1 of this crime because if he left me in a car I will not
2 be able to get there before him on foot. There is no way
3 for me to get to Circle 8 without leaving him or him
4 seeing me.

5 Q. How far away was the locations?

6 A. On foot it's at least 30 minutes walk.

7 Q. Okay. So whether the two, what are the two areas
8 where you're talking about?

9 A. Riverview is known as Charleston Heights.

10 Q. Okay.

11 A. And the circle 8 is known as the Chicora and
12 Cherokee area.

13 Q. Okay. And Charleston Heights is Rivers and what?

14 A. Riverview -- I don't know exactly all streets but
15 its inbetween where the Interstate comes off of Spruill
16 Avenue at ---

17 Q. --- okay ---

18 A. --- to Clements Avenue.

19 Q. Okay. And then the Chicora area is farther up?

20 A. Yes, from Clements to McMillan.

21 Q. Okay. And so what you're saying is that you were at
22 what location?

23 A. 2224 Riverview Drive.

24 Q. Okay. Did you -- do you have any information why
25 Mr. Watson wasn't called as a witness in your trial?

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1 A. No, sir. No idea. I gave his name to my attorney
2 at the time and even the State officers when they
3 questioned him. No one brought him in.

4 MR. FALK: Your Honor, just to preserve the record I
5 do have a subpoena that was served. It doesn't have an
6 address. I don't know if I need to go through the
7 motions to ask the sheriff to go pick him up or? I mean
8 they're not going to be able to. I just want to make --
9 I just want to preserve the record that I...

10 THE COURT: Well, as you indicated earlier if you
11 just want to try to put as much testimony on the record
12 today and if you feel or you and your client feel as
13 though his presence is paramount to this hearing we'll
14 just keep the hearing open and I'll send somebody to go
15 get him.

16 MR. FALK: Fair enough.

17 THE COURT: All right. Any other ideas?

18 MR. LIMBAUGH: Well, just that I believe he is
19 homeless, Your Honor and no one really knows where he is.
20 So I don't know if we'd be able to get him as far as I'm
21 aware but...

22 THE COURT: Why don't we just put a time limit on
23 it?

24 MR. FALK: And I'm just -- I just want to do my
25 piece of this.

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1 THE COURT: I agree with you.

2 MR. FALK: You know what you're saying.

3 THE COURT: We've got to afford Mr. Benn every
4 opportunity to be heard on what he wants to be heard on.
5 And we'll put a time cap on it. I mean if we can't find
6 him in a certain amount of time unfortunately we'll have
7 to just close the hearing. But we'll try to go find him,
8 okay?

9 THE WITNESS: Okay.

10 THE COURT: All right.

11 MR. LIMBAUGH: Thank you.

12 MR. FALK: And Your Honor may I approach?

13 THE COURT: Absolutely.

14 MR. FALK: This I'd like to -- this is my subpoena
15 that I served on him.

16 THE COURT: Do you want to make that a part of the
17 record ---

18 MR. FALK: --- I'll make this our -- petitioner's
19 exhibit number 1.

20 [Whereupon, Applicant's exhibit number 1 is marked
21 by the court reporter]

22 MR. FALK: There was a witness with me when it was
23 served. If you want me to bring that person in to verify
24 but I'm saying I put it in his hands.

25 THE COURT: No. As an officer of the Court I

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1 believe you.

2 MR. FALK: Thank you.

3 Q. [Mr. Falk] Another issue that you raised in your PCR
4 was that you believe that the part of the jail call from
5 June 13th, 2014 did not completely reflect your
6 conversation that day.

7 A. Yes, sir.

8 Q. Okay. I'm going to show you what I've been handed
9 from your attorney, Mr. Smith, and this is a transcript
10 of that call that was -- and so this is a transcript of
11 the redacted portion.

12 [Whereupon, the witness is shown document]

13 Q. Can you look over that?

14 [Whereupon, the witness reviews document]

15 A. Yes, sir.

16 Q. Okay. And so there is that one line in there where
17 it says I shot him.

18 A. Yes, sir.

19 Q. Okay. And you believe that was taken out of the
20 full context of the call, is that correct?

21 A. Yes sir, it is.

22 Q. Can you sort of explain the call? And I'm going to,
23 and I have a copy of the entire call that we're going to
24 enter as an exhibit later.

25 A. On that day I called Mr. Watson again who was my

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1 alibi from day one because we was planning a trip to
2 Louisiana and I asked him to help me pay for my lawyer
3 and what I needed him to tell my lawyer what I was
4 charged with and why I was charged with it.

5 I asked my trial lawyer to play the whole tape so
6 they can hear that because I told him in confidence to
7 tell my lawyer.

8 Once I said that no calls should have been monitored
9 after that, but they never played that part of the tape.
10 They just jumped to where it says man listening and then
11 what they interpret to say why I said I killed someone.

12 Q. Okay. And you think that's an accurate transcript
13 of what the jail call was?

14 A. Inaccurate.

15 Q. But what was played in the Court, what you're
16 reading, what you're seeing in front of you that
17 transcript, do you think that is an accurate transcript
18 of what was actually played in Court?

19 A. Yes. But that was not what I said.

20 Q. I understand that. I'm just saying that; I'm just
21 trying to make a record here because we're going to play
22 it ---

23 A. --- yes, that's what was played.

24 Q. All right.

25 MR. FALK: Your Honor, if you need Mr. Smith to

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1 verify this but this is going to ultimately be our
2 exhibit number 2.

3 THE COURT: Okay.

4 Q. [Mr. Falk] So this was used at the -- the State
5 introduced that to sort of show in fact that you admitted
6 to the call? They said ---

7 A. --- yes. They said that's my way of admitting
8 guilt.

9 Q. Okay. And again, what did you mean when you were
10 saying about ---

11 A. --- I basically told Mr. Watson what the detectives
12 told me after I requested an attorney when they were
13 interviewing me because they said I did it and I was like
14 how could I did it if I have an alibi to prove I wasn't
15 nowhere on the scene.

16 No one identified me to be on the scene and I was
17 telling him what to tell the lawyer when he go to took
18 the money because he had the money I left home, it was
19 2,500.

20 Q. Okay. And this was because the two of you were
21 going to drive to New Orleans?

22 A. Yes.

23 Q. And this was for some dental work?

24 A. Yes. We was going to get gold teeth.

25 Q. Okay. And so that's why you remember how much money

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1 it was right?

2 A. Yes, exactly ---

3 Q. --- and how much money was it?

4 A. Exact date and everything.

5 Q. Okay. So you had 2,500 dollars that you had given
6 to Zaquan Watson, is that correct?

7 A. Yes, sir.

8 Q. You had some other concerns about your
9 representation from Mr. Smith. Can you go through those?

10 A. Just the fact that he didn't object to the fact that
11 the police lay upon the testimony none of them was on the
12 scene. That was prejudice of them to bring up, past
13 dealings with me when that ---

14 Q. --- because this shooting was on a video, is that
15 correct?

16 A. Yes.

17 Q. Okay. And it's your understanding and you were at
18 the trial and so a police officer said yeah, that's him,
19 right?

20 A. Yes, sir.

21 Q. I know this guy, is that correct?

22 A. Yes, sir.

23 Q. And one of the things you had a concern about was
24 that you saw the video and the person clearly had
25 dreadlocks in the video, is that correct?

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1 A. Yes, sir.

2 Q. Now, did you have dreadlocks at that time?

3 A. Yes, sir.

4 Q. When did you have dreadlocks?

5 A. I started growing dreadlocks 2012.

6 Q. Okay. Did you have dreadlocks at the time of the
7 shooting?

8 A. Yes, sir.

9 Q. I'm going to show you a booking photo from 2008.

10 A. Yes, sir.

11 [Whereupon, the witness is shown photograph]

12 Q. So, that's how you looked in 2008?

13 A. Yes, sir.

14 Q. Okay. And when were you arrested on these charges?

15 A. November 15, 2008.

16 Q. Okay. But you just told me before you had
17 dreadlocks at the time or you didn't start growing
18 dreadlocks until 2012?

19 A. I didn't start growing dreadlocks until 2012.

20 Q. Okay. But in 2008 did you have dreadlocks?

21 A. No, sir.

22 Q. Okay. When did the shooting occur?

23 A. 2014.

24 Q. Okay. What were you arrested for in 2008?

25 A. A YOA conviction, parole violation. I was sentenced

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1 back to finish my one year I had left on parole.
2 Q. Okay. And your concern is that the police officer
3 identified you saying that...
4 A. Saying from his past dealings that he know me
5 specifically by my last name and my dreadlocks from 2008.
6 Q. Okay. And so that was 2008. What is the police
7 officer who arrested you or who testified?
8 A. Joseph Neimic [phonetic].
9 Q. Okay. So ---
10 THE COURT REPORTER: --- Joseph?
11 THE WITNESS: Neimic.
12 Q. [Mr. Falk] N-E-I-M-I-C I think?
13 A. Yes, sir.
14 Q. Okay. And so Officer Neimic said yeah, I recognized
15 him from the video because I knew him; I recognized him
16 from my prior dealings and he had dreadlocks, is that
17 correct?
18 A. Yes, sir.
19 Q. And your prior dealings with Mr. Neimic would have
20 been you got arrested on this YOA probation, is that
21 right?
22 A. Yes, sir.
23 Q. And so prior to that on the YOA were you able to
24 have dreadlocks ---
25 A. --- no sir ---

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1 Q. --- prior to 2008?

2 A. No, sir.

3 Q. Okay. So in 2012 you started growing dreadlocks.

4 A. Yes, sir.

5 Q. Okay. Now, did you think that there might be
6 somebody else that Officer Neimic might have been
7 confusing you with?

8 A. Yes, sir. I know that for a fact. They arrested
9 someone else once under my name with dreadlocks and
10 eventually arrested me under a warrant for that same
11 person.

12 Q. And is that Desmond Benn?

13 A. Yes, sir.

14 Q. Okay. I'm going to show you two photographs that we
15 pulled off, actually the Court helped me pull these off
16 from the Sheriff's Department when he was booked.

17 [Whereupon, the witness is shown photographs]

18 Q. So what you are looking at there you -- for the
19 court reporter I guess we're going to make the picture of
20 him, the booking photo from 2008 that will be our exhibit
21 number 3.

22 [Whereupon, Applicant's exhibit numbers 2 through 5
23 are marked by the court reporter]

24 Q. I'm going to just ask you a couple of questions and
25 clear the record up. So that photograph that is marked

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1 exhibit 3 that's your booking photo from 2008?
2 A. Yes, sir.
3 Q. Okay. And then there is the booking photo -- the
4 exhibit that we had marked as exhibit 4.
5 A. Yes, sir.
6 Q. Okay. That's a booking photo for whom?
7 A. Desmond Benn.
8 Q. And what's the date on that one?
9 A. March 28th, 2008.
10 Q. Okay. We'll mark that as our exhibit?
11 A. Four; it's already marked.
12 Q. Four, okay. And then number 5 is another one for?
13 A. Desmond Benn.
14 Q. Okay. And that is, what's the date on that one?
15 A. June 19th, 2008.
16 Q. Okay. Did you have a conversation with Mr. Smith
17 about the possibility that Officer Neimic who testified
18 at your trial was actually confusing you with Desmond?
19 A. Yes, sir.
20 Q. Okay. And what was that conversation about? What's
21 your understanding of the conversation?
22 A. When Officer Neimic said he knew me specifically for
23 dreadlocks and my last name I told Mr. Smith that's
24 impossible. I didn't start growing hair until 2012.
25 Since I was ever arrested in Charleston County I never

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1 had hair into 2012, so there is no way he can say he had
2 past dealings in knowing me for my name and hair from
3 2008 because I didn't grow my hair until 2012 when I was
4 released from prison.

5 Q. Did you I mean this is a similar last name ---

6 A. --- yes sir ---

7 Q. --- are there a lot of Benn's, B-E-N-N in Charleston
8 County?

9 A. No, sir. As of right now six of us.

10 Q. Okay. Do you know this guy's address or did you
11 know it in 2008 or did...

12 A. At the time in 2008 yes I did.

13 Q. Okay. Did you give that information to Mr. Smith?

14 A. No sir, because he moved from there.

15 Q. Okay.

16 A. At the time of 2014 I didn't know where he lived.

17 Q. Okay. Did you think he was still in the Charleston
18 area?

19 A. Yes, sir.

20 Q. Okay. What else did you want to address?

21 A. I wanted to know how they subpoenaed that phone
22 record when like I said it was supposed to be between me
23 and a lawyer.

24 When you're arrested there is only one way you can
25 obtain a lawyer and that's calling a third party through

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1 your family. And on the call like I said if they was to
2 play the tape when I asked him to play the whole tape in
3 trial you're going to hear me clearly tell Mr. Watson I
4 need him to take the money to a lawyer and obtain me a
5 lawyer so I could have myself represented in trial.

6 Q. And you want me to play the entire tape?

7 A. Yes, sir.

8 Q. Okay. And we'll do that shortly. You had some
9 concerns about a confidential informant?

10 A. I asked that because I wanted to know like what made
11 them pick that specific date and time of that phone call
12 to know exactly how you know exactly what I said already
13 before you listened to it.

14 Q. And just so I can understand your argument is that
15 you are saying that you didn't believe that the Sheriff's
16 Department had the right to just sit there and listen to
17 all your calls, is that correct?

18 A. No, sir.

19 Q. And it was your belief that in order for them to
20 know which call to be looking at somebody must have told
21 them something?

22 A. Yes, sir.

23 Q. And that the identify of that person ---

24 A. --- never was ---

25 Q. --- was never identified to tell you they listened

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1 to the jail call tape from July 13th?

2 A. Yes, July 13th.

3 Q. Okay. Now that is an issue that your trial counsel
4 raised at the trial is that not right?

5 A. Yes, sir.

6 Q. He objected to the introduction of that?

7 A. No, sir.

8 Q. Because it's your argument that when you were in
9 jail you had no way to contact an attorney directly, is
10 that correct?

11 A. Yes, sir.

12 Q. Why could you not call an attorney? What is your --
13 why did you feel like you're in a predicament that you
14 had to go through somebody else to contact an attorney?

15 A. Because my understanding in order to reach an
16 attorney someone has to make an agreement with them to
17 even come see you from jump which means you have to
18 retain them by either giving them whatever they want to
19 come visit you.

20 In order for that to happen you would have to pay
21 them and tell them what you're arrested for, why you was
22 arrested, and where you're arrested at.

23 That was the reason I gave the call to Zaquan
24 because he had my money at the time and he was going to
25 put with me to get my lawyer.

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1 Q. So the only way for you, so you felt that the only
2 way for you to contact a lawyer was to have some third
3 party?

4 A. Call Zaquan.

5 Q. And have that person act as an intermediary.

6 A. Yes, sir.

7 Q. To hand him, to hand that lawyer some money.

8 A. Yes, sir. And to ---

9 Q. --- and to sort of say this is what he's charged
10 with.

11 A. Yes, sir.

12 Q. You would have preferred to have just called a
13 lawyer directly, is that correct?

14 A. If I could have, yes sir.

15 Q. So one of your, just kind of to summarize your
16 concerns are that your lawyer certainly had access, had
17 some kind of notice about the fact that Mr. Neimic
18 couldn't have been or Officer Neimic couldn't have been
19 confusing you with Desmond Benn, is that correct?

20 A. Yes, sir.

21 Q. And your lawyer could have gone and gotten these
22 booking photos from the Charleston County website, the
23 jail website and shown him the booking photo of how you
24 were booked in in 2008 with no dreadlocks, is that
25 correct?

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1 A. Yes, sir.

2 Q. And he could have challenged him on the stand, is
3 that correct?

4 A. Yes, sir.

5 Q. Okay. You also are concerned that your alibi
6 witness wasn't at trial.

7 A. No, sir.

8 Q. And it wasn't just you talking about this; there was
9 actually information in your Rule 5 that you thought
10 supported your alibi, is that correct?

11 A. Yes, sir.

12 Q. Because Zaquan actually gave a statement to the
13 police officer saying he was with me here and in order
14 for him to have gotten there there just is not enough
15 time between the two events, is that correct?

16 A. Yes, sir.

17 Q. You couldn't have gotten from Riverview to Chicora
18 circle, is that correct?

19 A. Cherokee and Chicora neighborhood in time; there is
20 no way possible.

21 Q. Okay. And then you think that the tape that was
22 played which the prosecution is, what the State was
23 arguing was it amounted to your confession that that
24 portion of the tape was taken out of context, is that
25 correct?

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1 A. Yes, sir.

2 Q. And you wanted him to play the entire tape, is that
3 correct?

4 A. Yes, sir.

5 Q. Okay. Is there anything else that you think your
6 lawyer should have done?

7 A. No, sir.

8 Q. Did you have a concern about the inferred malice
9 instruction?

10 A. Yes, sir.

11 MR. FALK: He just raised this with me.

12 MR. LIMBAUGH: Objection, Your Honor.

13 MR. FALK: It's new.

14 MR. LIMBAUGH: It's brand new. It wasn't alleged
15 in his original application or his amended application
16 that he supplemented to the State, Your Honor. So the
17 State would object to him amending his application during
18 the hearing.

19 THE COURT: And his concern is about a jury Charge?

20 MR. FALK: It's the inferred malice jury Charge.
21 Your Honor, I think, I'm not sure that there was -- under
22 Belcher I'm not sure that you could really have made a
23 Belcher argument because my client's defense was I wasn't
24 there. I was never there. So, I'm not sure that Mr.
25 Smith had a valid argument to the inferred malice Charge

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1 when you're saying it's not me.

2 THE COURT: Right.

3 MR. FALK: You know somebody was shot, you know I'm
4 saying there was no indication, there is no evidence to
5 support an objection. But my client whether or not the
6 inferred malice Charge is ever permissible which I think
7 some defense counsel think might be suspect. But I think
8 at the time it was not.

9 THE COURT: It's just a jury Charge as to?

10 MR. FALK: That you can infer malice from the use
11 of a deadly weapon ---

12 THE COURT: --- I was about to say the inference of
13 malice, okay.

14 MR. FALK: By using a deadly weapon.

15 THE COURT: Alrighty. I'll give that what weight
16 it needs to be given, okay?

17 THE WITNESS: Okay.

18 THE COURT: Okay.

19 MR. FALK: I know I sat through a seminar that
20 Brock Wise [phonetic] was testifying he thinks that, you
21 know, it should never come into evidence; it should
22 always be objected to regardless of the circumstances.
23 So there is a...

24 THE COURT: A disconnect amongst the bar ---

25 MR. FALK: --- a difference of opinion in the bar,

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1 exactly.

2 MR. FALK: Your Honor, I believe I have no further
3 questions for Mr. Benn.

4 THE COURT: All right. Mr. Limbaugh?

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

6 THE COURT: Absolutely.

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1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. Good morning, Mr. Benn.

4 A. Good morning.

5 Q. So Mr. Zaquan Watson you said that you told Mr.
6 Smith about him?

7 A. Yes, sir.

8 Q. Okay. And tell me again why you think he was going
9 to be a good alibi witness for you at trial?

10 A. He was questioned twice on the day of the crime
11 happening, he was questioned on the scene at the Circle
12 8.

13 It was later determined he wasn't a suspect and then
14 later was arrested before me on Osceola and again it was
15 determined he wasn't the suspect.

16 Q. What did his statement say again that we should
17 believe you couldn't have been there?

18 [Whereupon, the witness reviews document]

19 A. It says at the time provided Watson that he was
20 advised of his rights and Watson waived his rights and
21 again agreed to speak without an attorney present.

22 Watson stated his story and advised that him and
23 the two males were together all morning, that the only
24 time they separated is when he went inside his
25 grandmother's residence to use the restroom to wash up.

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1 Watson then returned and says he drove to the Circle 8 to
2 get a beer where he was advised and he saw a body laying
3 on the ground and the police approached him and
4 questioned him on the scene.

5 Q. Do you know at all if Mr. Smith went out to
6 investigate Mr. Watson as a potential witness for you?

7 A. No, sir.

8 Q. Okay, so you don't know. So about your jail calls,
9 the transcript that was at trial it said that you said I
10 shot him, is that correct?

11 A. Yes.

12 Q. Okay. And you're testifying that that was taken out
13 of context?

14 A. Yes, sir.

15 Q. Okay. What context was that in then?

16 A. That they said I said I killed someone. I said the
17 police if you play the entire tape you're going to hear
18 me tell Mr. Watson the detective was questioning me he
19 said the reason they charged me is because I shot someone
20 and I had on a green shirt, clearly.

21 Q. And so you believe that the jail wouldn't have known
22 about your phone calls if there wasn't somebody that told
23 them about them?

24 A. Yes, sir.

25 Q. Okay.

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1 A. It's not the county responsibility to overturn that
2 tape to the State. The State has to subpoena for that
3 call.

4 Q. And did you sign a form when you entered the
5 detention center stating that all your calls were going
6 to be recorded and things of that nature?

7 A. Yes -- no, I didn't sign. I was given a paper that
8 says that when you first enter the jail you make your
9 initial first call.

10 Q. Okay.

11 A. And it says subject to being monitored. It doesn't
12 said it's all going to be monitored.

13 Q. So you were aware they were going to be monitoring
14 you?

15 A. Yes, sir.

16 Q. Okay. And run me through why you didn't just call a
17 lawyer directly from jail?

18 A. I didn't have a direct lawyer at the time. I was
19 searching for the one I could afford.

20 Q. Okay. So those -- about the dreadlocks and the
21 identification stuff and I might have misheard you but I
22 believe you said at first you did have dreadlocks at the
23 time and then you didn't ---

24 A. --- no, sir. I had dreadlocks at the time of my
25 arrest in 2014. Officer Joseph Neimic stated he knew me

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1 from 2008 preferably because of my last name and my hair
2 style of dreadlocks. I never had dreadlocks until 2012.
3 How could you know me from 2008 if I never did? I was
4 arrested in 2008 and never got out of prison until the
5 end of 2009.

6 Q. But that wasn't all the officer said he recognized
7 you or identified you by was it?

8 A. Yes, it was.

9 Q. I believe he also testified he identified you, he
10 recognized your face, your many mannerisms, a very
11 distinct walk.

12 A. Not Officer Neimic. That was Reperman [phonetic] --
13 -

14 Q. --- Officer Reperman [phonetic]? There was another
15 officer who identified you from that video, is that
16 correct?

17 A. He said when I came into City Hall he knew my
18 mannerisms. How could you know my mannerism if my hands
19 are behind my back? In order to bring me to City Hall my
20 hands were cuffed backwards; my hands were placed behind
21 my back.

22 I never was free handed. I was shackled, placed in,
23 sat down in the chair handcuffed to the chair. My hands
24 and my body were never able to move regular; just like
25 right now I can't move regular.

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1 Q. I understand that. But he did say he had prior
2 interactions with you and that those mannerisms and the
3 face were what he recognized from that video is that
4 correct?

5 A. He said mannerisms. He didn't say my face.

6 MR. LIMBAUGH: The record will so reflect, Your
7 Honor.

8 THE COURT: All right.

9 MR. LIMBAUGH: Moment's indulgence.

10 [Whereupon, Mr. Limbaugh reviews documents]

11 Q. [Mr. Limbaugh] So you testified that you told Mr.
12 Smith about Zaquan Benn, is that correct?

13 A. Who?

14 Q. Oh sorry, Benn; the other Benn.

15 A. Yes, sir. I told him that North Charleston arrested
16 another Benn with dreadlocks from that area at the time
17 and the known associate of Chicora and Cherokee
18 neighborhood.

19 MR. LIMBAUGH: That's all I have for this witness,
20 Your Honor.

21 THE COURT: Alrighty. Anything as a follow-up?

22 MR. FALK: No redirect.

23 THE COURT: Alrighty. You may step down, Mr.
24 Benn.

25 [Whereupon, the witness is excused and exits the

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1 witness stand]

2 [Whereupon, the court reporter retrieves the
3 exhibits from the witness]

4 THE COURT: All right. Mr. Falk, call your next
5 witness.

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1 MR. FALK: I'll call Mr. Smith.

2 THE COURT: Mr. Smith, if you will come on up,
3 please.

4 [Whereupon, Mr. Smith comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: Thank you, sir. If you would
8 please have a seat and for the record please state your
9 full name and spell your last name.

10 [Whereupon, the witness is seated]

11 THE WITNESS: Ted Smith, S-M-I-T-H.

12 THE COURT: Good afternoon, Mr. Smith.

13 THE WITNESS: Good morning, Judge.

14 MR. FALK: Your Honor, may I approach?

15 THE COURT: Absolutely.

16 - - - - -

17 TED SMITH,

18 Having been first duly sworn,

19 Was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FALK:

22 Q. Mr. Smith, earlier this morning you handed me a
23 disk. I'm going to show you one of the disks that you
24 handed to me.

25 [Whereupon, the witness is shown disk]

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1 A. Okay.

2 Q. And that disk and you've got this disk marked as
3 Tyrone Benn jail call 7-12-14 to 1-12-15 is that correct?

4 A. That's correct.

5 Q. And was this provided to you as part of the
6 discovery?

7 A. It was.

8 Q. Okay. And this is actually what you actually
9 received from the State, is that correct?

10 A. It is.

11 Q. Okay. And you obviously listened to it, is that
12 correct?

13 A. That's correct.

14 Q. Okay.

15 MR. FALK: Your Honor, this is going to be our next
16 exhibit. So which number am I at?

17 THE COURT REPORTER: Six.

18 MR. FALK: Six? This will be our exhibit 6 and I'm
19 ultimately going to play it later.

20 THE COURT: Alrighty.

21 [Whereupon, Applicant's exhibit numbers 6 and 7 are
22 marked by the court reporter]

23 Q. [Mr. Falk] And I'm going to show you what my client
24 was reading from earlier and is what page of discovery
25 that was marked.

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1 [Whereupon, the witness is shown documents]

2 Q. 18, 20, and 24. Could you just look over them?

3 [Whereupon, the witness reviews documents]

4 Q. Do you think they -- is that the discovery that you
5 received from the State?

6 A. It is.

7 Q. And it's got a Bate code on the bottom, is that
8 right? Or it's marked somehow?

9 A. It's marked by page number.

10 Q. Okay. And those page numbers are?

11 A. 18, 20, and 24.

12 Q. Okay. Are any of those written on the back? Are
13 they all one sided?

14 A. On number 18 there is some further stuff on the
15 back.

16 Q. So is that page 19?

17 A. It is.

18 Q. Okay. So collectively those three pages, well it's
19 actually 18, 19, 20, and 24 are going to be our exhibit
20 7.

21 A. Okay.

22 Q. Now so let's talk about Zaquan Watson. What efforts
23 were y'all able to make to find him and have him called
24 as a witness? Or was there a discussion about whether or
25 not he would be an alibi witness?

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1 A. Well, there was a discussion about that. And it was
2 one of the reasons that I did not wish to call him as an
3 alibi witness was that he did make a tentative I.D. of
4 Mr. Benn on the video from the actual shooting.

5 So, we did ultimately talk to him in this case along
6 with his girlfriend and both were uncooperative other
7 than initially giving us a statement that was different
8 than the statements they had given to police.

9 Q. But they had given police statements that -- I mean
10 you understand why Mr. Benn thinks that Zaquan Watson
11 statement set up his alibi is that...

12 A. I understand why he believes that ---

13 Q. --- those two areas are pretty far apart.

14 A. They are. Although Mr. Watson's interview with
15 police he also indicated at one point that he didn't know
16 what Mr. -- that Mr. Benn was going to do anything which
17 seemed to suggest that he knew more about what had
18 happened than what he initially let on.

19 Q. Okay. And the transcript that we had earlier --
20 I'll come back to that. So, again what was the part of
21 Mr. Watson's statement that concerned you?

22 A. So there were a couple of portions and if you give
23 me just a minute ---

24 Q. --- sure ---

25 A. --- I can tell you exactly what I was concerned

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1 about.

2 [Whereupon, the witness reviews documents]

3 A. When he was initially interviewed by Mark Evans he
4 initially told Detective Evans that he was alone the
5 entire day. Then he changed his story to say that he was
6 with Mr. Benn and Charles Armstrong.

7 And at some point during that he told Detective
8 Evans when confronted about Mr. Benn being on the video
9 that he had no idea what Mr. Benn was going to do. So, I
10 was concerned about calling him for that reason.

11 Q. Did that come off to you as a menacing comment? I
12 mean what Mr. Benn was going to do; I don't understand.

13 A. Well, it was when he was confronted and said we have
14 this on video. We know what Tyrone Benn did.

15 And then his story changed to I didn't know what he
16 was going to do; suggesting that he didn't know he was
17 going there for the shooting.

18 Q. I see. Let me grab those discovery pages from you.

19 [Whereupon, Mr. Falk retrieves documents from the
20 witness and provides them to the court reporter]

21 Q. Was there a conversation about you would agree that
22 Officer Neimic's testimony was prejudicial to your
23 client, is that right?

24 A. It was certainly hurtful to him.

25 Q. Hurtful, yes. His comment that he knew him from the

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1 past did you have a conversation with your client about
2 the possibility that Officer Neimic was confusing him
3 with Desmond Benn?

4 A. I do not remember that conversation. I remember us
5 discussing if there could have been confusion. There
6 were also two other people the police initially talked
7 about; one was Myron Brown and the other Rashad or
8 Rashard Scott.

9 And so I remember having a discussion about perhaps
10 it was confusion about one of those people. I don't
11 remember the name that he referenced to that.

12 Q. Okay. But certainly you would agree that Officer
13 Neimic's testimony about the dreadlocks was a significant
14 part of his ability to identify or -- it corroborated his
15 statement that yes, that's him. I recognize him because
16 of the dreadlocks.

17 A. I suppose -- I don't know -- I honestly don't know
18 what he was thinking or what he knew about the
19 dreadlocks. He seemed to indicate that he knew Mr. Benn.

20 Q. Okay. What is your understanding about the jail
21 calls as far as the police having, the Solicitor's office
22 having access to them? Did you try to object to the
23 admission of the jail calls?

24 A. We initially had a pretrial motion with regard to
25 that. However, we were arguing against precedent. It's

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1 been fairly settled that jail calls come in; especially
2 in situations where a warning was given. The jail calls
3 were obtained from the Solicitor's office.

4 They routinely get those as the course of business
5 in any case and they have investigators that sat and
6 listened to them over and over and end up giving us what
7 they think are ones that are prejudicial or ones that are
8 hurtful to our ---

9 Q. --- but you understand his argument that it's very
10 difficult for somebody in the jail to contact a lawyer.

11 A. Yes.

12 Q. There was an inferred malice instruction in this
13 case was there not?

14 A. I believe there was, yes.

15 Q. And this was when did this case go to trial?

16 A. 2016.

17 Q. Yes, so that was after Belcher.

18 A. It was.

19 Q. Did you object, did you consider making a challenge
20 to the ---

21 A. --- I did not. I did not think that -- I guess I'm
22 of the other school from Mr. Wise [phonetic] but I did
23 not consider objecting to that.

24 Q. But this doesn't fit the specific Belcher facts.

25 A. That's correct.

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1 Q. Because there was no other evidence of prior ill
2 will.

3 A. That's correct.

4 Q. That could justify the exclusion of the inferred
5 malice.

6 A. That's correct.

7 Q. So how long had you -- how long did it take this
8 case to go to trial?

9 A. I'm going to have to review my file.

10 [Whereupon, the witness reviews documents]

11 A. He was arrested in -- the file was open to me on
12 July 15th, 2014. And I don't think I have the trial date
13 in front of me.

14 [Whereupon, the witness reviews documents]

15 A. It was April 11th through the 13th of 2016.

16 Q. And he was in custody that whole time?

17 A. He was.

18 Q. You had listened to the jail calls, I mean you had
19 listened to that July 13th jail call had you not?

20 A. I had.

21 Q. And what was, what went into the discussion about
22 how it was going to be redacted?

23 A. Well, there were certainly considerations about
24 money being paid and those kinds of things that were
25 potentially on the call. I thought the call was going to

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1 come in one way or another. So Mr. Benn had an
2 explanation about really what he was saying on those
3 calls and so we just elected to go with the redaction and
4 to kind of confront it head-on.

5 Q. Did you consider letting the whole call in?

6 A. I did not. I didn't think there was a need to add
7 anything else. I didn't think the context changed
8 things; especially with the part that the Solicitor keyed
9 in on.

10 Q. But you would admit that you had the right to?

11 A. I could have asked.

12 Q. Yeah. And your decision not to do it was a trial
13 strategy decision?

14 A. It was.

15 Q. Okay. I'm going to show you what is marked as our
16 exhibit 2.

17 [Whereupon, the witness is shown exhibit]

18 A. Okay.

19 Q. I just want to make sure -- who created that
20 transcript?

21 A. This was created by the Solicitor's office.

22 Q. Okay. You think that fairly represented what the
23 jury heard?

24 A. Yes, I do.

25 Q. So there is no need to play the redacted tape.

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1 A. Not in my opinion. I think Mr. Benn has obviously
2 some differences especially when it talks about the part
3 where he says man, I killed that boy.

4 Q. Right.

5 A. We obviously had a different take on what was said.
6 But you know this is what potentially the jury heard ---

7 Q. --- okay ---

8 A. --- they were given the redacted calls as well. I
9 asked them to listen to the tapes specifically; to listen
10 to the differences that I thought existed.

11 [Whereupon, Mr. Falk confers with his client]

12 MR. FALK: Your Honor, we have no further
13 questions.

14 THE COURT: All right. Thank you very much. Mr.
15 Limbaugh?

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

17 THE COURT: Yes, sir.
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1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. So, good morning Mr. Smith.

4 A. Good morning.

5 Q. With Mr. Watson you said that he made a tentative
6 I.D. of Mr. Benn on the video, is that correct?

7 A. He, both he and his girlfriend did, yes.

8 Q. Okay. And you spoke with him and he was not going
9 to be cooperative, is that correct?

10 A. That's correct. We attempted, we initially got a
11 statement from him. We initially tried to contact him
12 for trial as well as his girlfriend and both became very
13 uncooperative at that point.

14 We made the decision at that point we would not want
15 to put either of them up.

16 Q. So, you also had the part of his statement where he
17 said he didn't know what Benn was going to do at that
18 time. How did you interpret that statement?

19 A. My interpretation was that once he had been
20 confronted with the fact that the shooting was on video
21 that I interpreted that to mean that he didn't know Mr.
22 Benn was going to shoot someone at the store.

23 Q. I believe you also testified earlier that he and
24 maybe just now that he changed his story to officers
25 multiple times or at least ---

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1 A. --- couple ---

2 Q. --- changed it from his original, is that correct?

3 A. That's correct.

4 Q. Okay. And that along with -- did he have a criminal
5 history do you know, do you recall?

6 A. If you give me just a minute I can look.

7 [Whereupon, the witness reviews documents]

8 A. I believe that he did but I'm not positive about
9 that.

10 Q. That's fine; I can just move on.

11 A. Okay.

12 Q. There was evidence that the State could have used to
13 impeach him if you had called him at trial, is that
14 correct?

15 A. Definitively his statements to police.

16 Q. There is conversation about this Desmond Benn and I
17 believe you testified earlier you don't remember his name
18 specifically coming up pretrial.

19 A. I don't remember him specifically. I was centered
20 on; there were two other people that were looked at as
21 potential suspects in this case. One was Rashad or
22 Rashard Scott and the other was Myron Brown.

23 Mr. Scott really ultimately did not fit the kind of
24 physical description. Myron Brown was closer as far as a
25 match goes. But there was never any evidence that I

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1 could develop that he was in any way involved.

2 Q. Okay. So in any of your conversations with -- what
3 is your understanding of this dreadlock issue with Mr.
4 Benn as far as you're aware in terms of the person on the
5 video having dreadlocks and he may or may not having
6 dreadlocks?

7 A. The booking photos of the time for Mr. Benn appear
8 that he had dreadlocks. The picture that appeared in the
9 Post and Courier as a result of his arrest appear that he
10 had dreadlocks at the time.

11 The video certainly the person involved in the
12 shooting had dreadlocks. My contention was always that
13 there were different facial features that did not match
14 Mr. Benn.

15 But I think it was fairly clear that on the video
16 the person that committed this did have dreadlocks or
17 something similar to dreadlocks.

18 Q. And I believe from my understanding of us reading
19 the trial transcript that rarely for once the video in
20 this case was actually fairly clear, is that correct?

21 A. It was very clear for especially as far as the
22 convenience for video goes.

23 Q. And I believe Judge Jefferson even noted that in one
24 of the, I believe it was maybe a bench conference?

25 A. She did.

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1 Q. Okay. But it would have been clear enough for
2 someone familiar with Mr. Benn to recognize his face, is
3 that correct?

4 A. I assume so. I mean depending on how well they knew
5 him and that type of thing.

6 Q. It wasn't some typical hyper-blurry type of
7 convenience store video was it?

8 A. It was not. And it was at the time of the incident
9 it was sunny out or bright out so it was not at night or
10 anything like that.

11 Q. Okay. So there have been conversations about
12 Officer Neimic but Officer Repman I believe it is
13 testified at trial ---

14 THE COURT REPORTER: --- Officer?

15 MR. LIMBAUGH: I believe its Repman.

16 THE WITNESS: R-E-P-M-A-N.

17 MR. LIMBAUGH: Thank you.

18 Q. [Mr. Limbaugh] Testified at trial as well, is that
19 correct?

20 A. That's correct.

21 Q. Okay. And his identification was not solely based
22 off of the defendant having dreadlocks, is that correct?

23 A. That's correct.

24 Q. Okay. And do you recall him testifying from his
25 prior interactions with Mr. Benn he recognized his face,

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1 his specific mannerisms including a prolonged testimony
2 about his specific walk?

3 A. Yes. He talked about a funny gait or a way of
4 walking that Mr. Benn had at the time.

5 Q. Okay. And I believe it was Mr. Repman he testified
6 that it was his opinion however strong that the person on
7 that videotape was Mr. Benn, is that correct?

8 A. That's correct.

9 Q. Okay. But I mean to be fair he did say that he was
10 not 100 percent sure and I believe he testified that's
11 why he did not include it in his official report, is that
12 correct?

13 A. That was my understanding from his testimony.

14 Q. Okay. And you were able to cross-examine both
15 officers as to the identification, is that correct?

16 A. I did.

17 Q. And do you believe you were able to sufficiently
18 challenge them as to their opinions on Mr. Benn and
19 whether or not he was in that videotape or not?

20 A. I think ultimately I was able to do what I could do
21 with cross-examination and then to address that more
22 fully in my closing argument.

23 Q. So I believe you testified that you listened to the
24 jail calls, is that correct?

25 A. That's correct.

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1 Q. Okay. And is it your understanding that Judge
2 Jefferson also listened to the entirety of those phone
3 calls?

4 A. To be honest I don't remember that.

5 Q. Okay.

6 A. I don't remember if she did or not. Generally
7 judges do but I don't remember specifically.

8 Q. And if you're listening to those phone calls and you
9 hear Mr. Benn say was it man I killed that kid, is that
10 correct?

11 A. So there was, that was one of the I guess chief
12 points that we had. I think Mr. Benn as I suggested in
13 my closing said man, I tell that boy, I tell that boy and
14 I think he repeated that.

15 And I was able to talk about that in my closing.
16 But certainly what the Solicitor suggested was that is
17 said I killed that boy.

18 Q. Okay. And was that part played for the jury?

19 A. It was.

20 Q. Okay. And so the jury could have come to their own
21 conclusions as to what Mr. Benn said in that phone call,
22 is that correct?

23 A. That's correct. And they had the calls to take to
24 the back and listen to them if they had chosen to.

25 Q. So they could have played it any number of times and

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1 gone over that part if they wanted.

2 A. That's correct.

3 Q. And I believe you testified that you also had case
4 law that they could get those jail calls from inmates, is
5 that correct?

6 A. It is. We have challenged that from time to time.
7 But as I said it's always arguing against precedent in
8 those cases.

9 Q. And as far as you're aware every person that is
10 entered into the detention center is at least advised if
11 not signs the form that advises them that their phone
12 calls will be monitored, is that correct?

13 A. That's correct.

14 Q. Okay. And to the best of your knowledge in your
15 conversations with Mr. Benn was he advised that his calls
16 were going to be monitored?

17 A. He was and they have the further recording on each
18 jail call that reminds people that this could be
19 recorded.

20 Q. Okay.

21 MR. LIMBAUGH: Moment's indulgence, Your Honor.

22 [Whereupon, Mr. Limbaugh reviews documents]

23 Q. [Mr. Limbaugh] And what was the reason again for not
24 objecting to the inferred malice Charge in this case?

25 A. I did not think under these specific facts that the

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1 objections raised in Belcher were appropriate so I did
2 not object to that Charge.

3 Q. Okay. So there was no evidence presented that it
4 was self-defense or anything of that nature, correct?

5 A. It was not.

6 Q. Okay.

7 [Whereupon, Mr. Limbaugh reviews documents]

8 MR. LIMBAUGH: That's all I have for this witness,
9 Your Honor.

10 THE COURT: All right. Any follow-up Mr. Falk?

11 MR. FALK: Briefly.

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1 REDIRECT EXAMINATION

2 BY MR. FALK:

3 Q. Just as far as the video I mean your testimony was
4 that you thought there were facial characteristics that
5 differed from your client and what appeared on the image,
6 is that right?

7 A. That's correct.

8 Q. I mean so although it was good for a convenience
9 store video it wasn't -- there was doubt.

10 A. There was -- what I had in my closing was that there
11 was some type of bump on the person's face and then in
12 the nose there was a difference I viewed in the nose.

13 Q. Okay.

14 A. Which I thought was different from Mr. Benn.

15 Q. And there was no forensic evidence, is that correct?

16 A. That's correct.

17 Q. So there was no DNA, no fingerprints, no gunshot
18 residue on anybody's hands or anything, is that correct?

19 A. That's correct.

20 Q. This really meant either it was him in the video or
21 it was somebody else in the video, is that correct?

22 A. That's correct. They did go as far as to do gunshot
23 residue testing on Myron Brown and Rashad Scott or
24 Rashard Scott and those were negative.

25 Q. Okay.

Tyrone M. Benn v State of South Carolina
Post Conviction Relief-Ted Smith-Redirect Examination by Mr. Falk
October 2, 2019

1 MR. FALK: That's all I have. I'll have a rebuttal
2 witness.

3 THE COURT: Alrighty. Mr. Smith, thank you so
4 very much.

5 THE WITNESS: You're welcome.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Madame Court Reporter, do you have all
9 the exhibits? Make sure he doesn't take one with him.

10 THE COURT REPORTER: Just give me one second if you
11 would to make sure.

12 [Whereupon, the court reporter reviews the exhibits]

13 THE COURT REPORTER: I do except for the CD.

14 THE COURT: All right. Yes sir, Mr. Falk?
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Tyrone M. Benn v State of South Carolina
Post Conviction Relief-Tyrone Benn (recalled)-Direct Examination by Mr. Falk
October 2, 2019

1 MR. FALK: I call Mr. Benn back up to the stand.

2 THE COURT: All right. Mr. Benn, if you'll come
3 back up please.

4 [Whereupon, Mr. Benn comes forward]

5 THE COURT: All right. Mr. Benn, you're still
6 under oath, okay.

7 THE WITNESS: Okay.

8 THE COURT: All right. Yes sir, Mr. Falk.

9 - - - - -

10 TYRONE BENN,

11 Having been previously duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q. Mr. Benn, you did, you were obviously were just in
16 the Court when Mr. Smith testified. He said that he
17 doesn't recall any conversation with you about Desmond
18 Benn.

19 A. I told him from day one after I found out that the
20 officer said they knew me from past dealings from 2008
21 that that's impossible because North Charleston arrested
22 Desmond once under my name with his dreadlocks when I
23 never had dreadlocks at the time.

24 Q. And where did Desmond Benn live at the time?

25 A. [REDACTED] Osceola.

Tyrone M. Benn v State of South Carolina
Post Conviction Relief-Tyrone Benn (recalled)-Direct Examination by Mr. Falk
October 2, 2019

1 Q. And where is that?
2 A. The Cherokee and Chicora neighborhood.
3 Q. And is that the neighborhood where the ---
4 A. --- yes sir ---
5 Q. --- shooting took place?
6 A. Yes, sir.
7 Q. Okay. And you heard Mr. Smith characterize the
8 statements made by your girlfriend and Zaquan Watson
9 about watching you on the video, is that correct?
10 A. Yes, sir.
11 Q. What is your, what do you think their statements
12 were?
13 A. None of them identified. They said looked like. I
14 could say someone looked like you; that doesn't make it
15 you.
16 Q. You think Desmond Watson looks like you?
17 A. Yes.
18 Q. I mean, excuse me; that Desmond Benn looks like you?
19 A. Yes.
20 Q. Okay.
21 MR. FALK: Nothing further, Your Honor.
22 THE COURT: Okay. Any follow-up on that? All
23 right. You may step down Mr. Benn.
24 [Whereupon, the witness is excused and exits the
25 witness stand]

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 THE COURT: Anything further, Mr. Falk?

2 MR. FALK: Your Honor, if we could have a
3 biological break while I figure out how to load this
4 disk.

5 THE COURT: How long is the video? I mean how long
6 is the jail call?

7 MR. FALK: Its fifteen minutes. I've just got to
8 make sure I got the CODEX working and all. If I just --
9 if I had Mr. Smith maybe who could help me we could get
10 it ready.

11 THE COURT: Okay. Give me one second. Y'all go
12 ahead and do that and we'll just be in recess for one
13 minute.

14 [Whereupon, Mr. Falk and Mr. Smith collaborate to
15 get the video to play]

16 [Whereupon, Court is in recess from 11:25 a.m. until
17 11:32 a.m.]

18 THE COURT: Thank you very much. Mr. Smith, you
19 got it figured out?

20 [Off the record momentarily]

21 MR. FALK: Your Honor, we're obviously having
22 issues.

23 THE COURT: All right. What do you want to try to
24 do?

25 MR. FALK: Well, I think what we established what

Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 we would want to make part of the record would be the
2 entire -- let me see the transcript again...

3 THE COURT: I'm fine with making the CD obviously
4 an exhibit for the record. That's not a problem.

5 MR. FALK: Right. And just so that we're
6 identifying the particular telephone calls, the one that
7 this transcript, that the redacted transcript was made a
8 part of and then maybe sometime in the next two days or
9 whatever I can figure out how to get it to play. Or
10 maybe I can get it to play later this afternoon. That
11 way I can hear it and we can get it to you whenever.

12 THE COURT: Okay. That's not a problem. And I'll
13 take it into consideration okay Mr. Benn.

14 MR. BENN: Okay.

15 MR. FALK: But I'm going to then make this
16 introduce this then as the exhibit.

17 THE COURT: All right.

18 [Whereupon, Applicant's exhibit number 6 is entered
19 into evidence by the Court]

20 THE COURT: Anything further, Mr. Falk?

21 MR. FALK: No, just a summary.

22 THE COURT: All right. Mr. Limbaugh?

23 MR. LIMBAUGH: No witnesses, Your Honor. But if I
24 could approach just to take a look at those booking
25 pictures?

Tyrone M. Benn v State of South Carolina
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October 2, 2019

1 THE COURT: Sure.

2 [Whereupon, Mr. Limbaugh reviews photos]

3 THE COURT: All right Mr. Falk, I'll be happy to
4 hear from you.

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Tyrone M. Benn v State of South Carolina
Post Conviction Relief-Closing statements by Mr. Falk
October 2, 2019

CLOSING STATEMENTS

BY MR. FALK:

Your Honor, my client his testimony was from the beginning that he thought that this person in this video was this Desmond Benn. And he obviously knows Desmond Benn. He knows the neighborhood he lives in. We saw the booking photographs. We can see the facial similarity between the two people.

Also, the fact that, and the record will reflect what Officer Neimic's testimony was. But my reading of the testimony was he remembered Desmond Benn from his dreadlocks back in his encountering him back in 2008 when he was arrested. So we saw the booking photo from 2008 that shows that he did not have dreadlocks at that time. And he was on YOA probation prior to that time and he wouldn't have been able to have the dreadlocks then.

So I mean we believe that would have been a fertile area in which to have challenged Officer Neimic's identification testimony because this is a case, and I think pretty clear from the testimony, and this is all about what the video shows.

There was no other forensic evidence and it's just about whether or not the person on the video was in fact Mr. Benn. And we believe that once the Court is able to hear the entire context of the telephone call, that Mr.

Tyrone M. Benn v State of South Carolina
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October 2, 2019

1 Smith testified to that although he thought he would not
2 have wanted it all put in, he certainly had the, it was
3 certainly something that the Court would have done, the
4 rule of completeness, it would have taken had he asked
5 for it the Court would have had to play the entire video
6 -- I mean the entire telephone call.

7 And the Court can make its own determination from
8 the context because you can certainly see I shot that
9 boy, or they're saying I shot that boy I mean it doesn't
10 necessarily -- my client has always said that was not a
11 confession; he was not admitting to it. And he tried to
12 explain why he was talking that way to Mr. Watson.

13 And then we had the problem with Mr. Watson. If he
14 was in here to testify as he testified while the
15 statements that are in -- the statements that he gave to
16 law enforcement about Mr. Benn's whereabouts and the fact
17 that it would have been almost impossible for him to be
18 in two places at one time. We believe that Mr. Zaquan
19 Watson's alibi testimony would have been helpful.

20 So the jury would have been able to raise more
21 doubts because this is not a case, if you look at the
22 whole transcript this is not a case where it was
23 otherwise overwhelming evidence of guilt. If you see the
24 most recent PCR case where they discuss that, this is not
25 a case with any forensic evidence, no DNA, no

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October 2, 2019

1 fingerprints, no nothing. It's just whether or not this
2 photograph was him and it was a store video cam. And we
3 believe that my client is entitled to a new trial. Thank
4 you.

5 THE COURT: All right. Anything Mr. Limbaugh?

6 MR. LIMBAUGH: May it please the Court, Your Honor?
7 Briefly.

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Tyrone M. Benn v State of South Carolina
Post Conviction Relief-Closing statements by Mr. Limbaugh
October 2, 2019

CLOSING STATEMENTS

BY MR. LIMBAUGH:

Mr. Smith testified as to why he would not have wanted to call Mr. Watson as an alibi witness at trial. He gave different statements to police officers. He could have identified Mr. Benn on the videotape. And he also when they investigated him he was uncooperative.

Mr. Smith did object to those jail calls coming in. The State contends and Mr. Benn testified that he was aware that those calls were going to be monitored. The jury was played the redacted version of the phone call where the contested portion is there and were allowed to make their own inferences or assumptions as to what Mr. Benn may or may not have said on that phone call.

The State would also contend that the booking photos simply show what Mr. Benn looked like at the time that he was booked into the detention center and not necessarily what he looked like at the time of the incident, Your Honor. And candidly I would describe Mr. Desmond Benn's hair more as twists and not dreadlocks which there is a difference, Your Honor.

And as it was raised during the hearing I don't believe there was any basis in the law for Mr. Smith to make an objection to the inference or the inference of malice Charge as there was no evidence presented of self-

Tyrone M. Benn v State of South Carolina
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October 2, 2019

1 defense or any facts that related to Belcher. The
2 identification of Mr. Benn on the videotape pertains to
3 the officer's testimony. Mr. Smith and Judge Jefferson
4 at trial in the trial transcript remarked that the video
5 was clear.

6 The officer testified that they had had multiple
7 interactions with Mr. Benn. Mr. Repman in particular did
8 not rely solely on his hair; that still was an issue Your
9 Honor. He testified he recognized him from his face.
10 And went extensively into the specific mannerisms he
11 witnessed on the video that he recognized from Mr. Benn
12 and his dealings with him in the past.

13 In conclusion the State contends that Mr. Benn has
14 not met his burden of proof in showing that Mr. Smith was
15 ineffective in any way and we would ask that Your Honor
16 dismiss his allegation with prejudice.

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Tyrone M. Benn v State of South Carolina
Post Conviction Relief
October 2, 2019

1 THE COURT: All right. Mr. Benn, what I'm going to
2 do is I'm going to allow your attorney ten days to locate
3 the witness. And if he can locate him, I'm not going to
4 force him to bring him into court. He can simply get an
5 affidavit and submit it to the court for my review.

6 And also I am going to take that opportunity and
7 time to review the jail call it its entirety okay. So
8 I'm going to keep this open for ten days, all right?

9 MR. BENN: Okay.

10 THE COURT: All right. Anything further?

11 MR. FALK: Thank you, Your Honor.

12 MR. LIMBAUGH: Thank you, Your Honor.

13 THE COURT: All right.

14 *****END OF TRANSCRIPT OF RECORD*****
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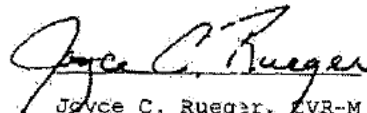
Tyrone M. Benn v State of South Carolina
Certificate of the Court Reporter
October 2, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 2nd day of October, 2019.

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

March 31, 2021


Joyce C. Rueger, CRR-M
Court Reporter

 COPY

STATE OF SOUTH CAROLINA

465

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF CHARLESTON

TYRONE BENN, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

STATE OF SOUTH CAROLINA, Defendant

Case Number: 2018-CP-10-813

Pending in CHARLESTON County

TO: ZAQUAN JOSHUA WATSON

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY
CHARLESTON COUNTY COURTHOUSE
100 BROAD STREET, CHARLESTON 29401

COURTROOM TBA

DATE AND TIME OCTOBER 2, 2019, 9:30 AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE

DATE AND TIME , AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
Attorney for Plaintiff

10/02/2019
Date

James Falk

Print Name

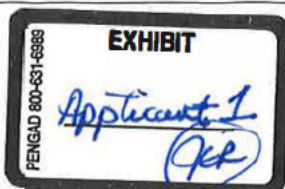
38 Broad Street Suite 350, Charleston 29401 (843) 606 6007

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and Telephone Number :

Date

Print Name

SCCA 254 (05/2015)



(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

7/13/14

00:45:27

TYRONE BENN

RECORDED JAIL PHONE CALL TO

ZAQUAN WATSON

TYRONE BENN:

Man, listen (interrupted).

Man, I kill that boy (interrupted).

Man, I kill that boy,

But they say green shirt.

They say green shirt.

Man be like "you changed clothes didn't you?"

(inaudible)

Officers say they know you from around.

Say you had on green.

I didn't have on no F-ing green.

(inaudible)

I had on all black.

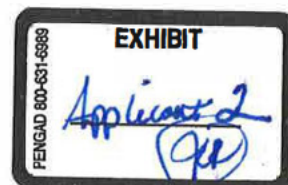
When I leave to go home this morning,

When I leave my homeboy's granny's house,

I go to my momma's house,

I wash up,

And I put on khaki and black.



Why is anybody putting on green and khaki for?

Green and anything period.

You know?

during the morning of the incident. During the initial account of the events he advised that he was alone. Later in the interview I again obtained the account of the mornings events and again Watson provided a consistent account. I then made contact with Watson girlfriend Vesha Pusha. Pusha advised that when Watson picked her up he had two other subjects with him. They were Charles Armstrong and Tyrone Benn. Due to the fact that Benn resembled the suspect in the crime and the fact that Watson had lied about the events of the day. I again entered the interview room. At this time I provided Watson with his advisement of rights and Watson waived his rights and agreed to speak with me without an attorney present. Watson then changed his story and advised that the three males were together all morning and that the only time they separated was when he went inside his grandmothers residence to use the restroom and wash up. Watson advised that he laid down for five minutes and then went back outside with the other two males. Watson advised that he again left the males and drove to the Circle A where he was going to get a beer. Watson advised that he observed a body on the ground and police on scene so he left that store and went to another one on Rivers Ave. Watson was confronted on the fact that Benn was seen on video committing the crime and advised that he did not know he was going to do anything. Watson refused to say that the two males had been apart. A still image from the scene was placed on a computer just outside the interview room. Watson was asked to look at the image. Upon looking at the image Watson immediately advised that the party in the picture was Tyrone Benn. It should be noted that the picture was not printed due to poor printer quality however I did speak with Watson about the image on recorded video. During the interview Watson also provided information in regards to the incident indirectly. I would provide a series of events and Watson would advise yes but when asked to put it in his own words he would not. The interview was captured on video and audio recording, for a complete record of the interview please review the video.

During the course of my interview suspect Benn had requested an attorney. Detective made contact with Pusha who responded to NCPD. A search of her vehicle, a red Dodge Charger, was conducted with no evidence being located. Pusha also observed a clip from the video during which she identified the shooter as Benn.

Search warrants for Benn's DNA along with a search warrant for DNA collection from his person were obtained and served.

Suspect Benn was placed under arrest for Murder.

Upon reviewing the documents which I completed during the course of the investigation I noted that the advisement of rights sheet which was completed with Zaquan Watson has the incorrect case number at the top. It states that the case number for the incident is 2014023371.



Entered By: CHARLES J MARTIN, On 7/13/2014 11:17:15 AM
Edited By: CHARLES J MARTIN, On 7/14/2014 11:46:13 AM

Title: NRO NOTES

11/12/2014

-1100 hrs

I responded to the crime scene at 2739 Spruill Avenue to assist other responding officers. I assisted with crowd control and other issues. At some point I was directed by Capt. Smith to respond to 1819 Clements Avenue apt [REDACTED] in reference to a possible suspect stashing a gun in that apartment. I stood by the apartment until K9 and detectives responded. No persons entered or exited the apartment while I was on scene. After being there approximately 30 minutes the resident of apt [REDACTED] walked up to me on the street and asked if he could talk to me. We spoke for several minutes about his residence, any people who may live with him, etc... I also asked him about the victim, who he had stated was his homeboy.

The resident (Rashard Scott) advised that he had been with the victim approximately 5 minutes before the shooting. He and the victim were standing at the corner of Spruill and Clements "chillin". The victim walked toward the Circle A to get a drink, and Scott walked toward his residence to get \$2 for a cigarette and juice. He began walking back toward the Circle A to meet back up with the victim and he heard what he describes as "pop pop pop pop", and he didn't know where the shots were coming from, so he ran back to his apartment. This is most likely when the concerned citizen saw him running from the area of the shooting and into his apartment and called to advise of this suspicious activity.

Det. Sgt. Evans and PFC Rebecca Bailey arrived on scene, along with two K9 units. We gained consent to search the apartment via a consent form from the resident of the apartment (Scott). The entire apartment was searched with nothing of interest being located.

Once we cleared this scene I began searching the Chicora area and calling informants to let me know if they knew or heard anything about the shooting. After some time, I was called about a subject matching the description of the shooter walking on Kraft Avenue. I called for an assisting unit and started looking for the suspect, Benn. I located him on Kraft Avenue walking towards Osceola Street. By the time I turned around and made contact with him he was directly adjacent to the apartment building located at 3361 Osceola. I motioned for him to come over to me, which he did. I asked the subject his last name to which he responded Benn. I then asked him his first name to which he responded Tyrone. At this time Sgt. McGauvran was walking toward me and the subject. I announced his name so that Sgt. M. could hear me and we immediately went hands on with the suspect, placed him against the side of my vehicle and placed him in handcuffs. He was cuffed behind his back and the cuffs were locked and checked for tightness. He was searched for weapons and contraband, nothing was found. At this time, Capt. Smith and PFC J. Foster arrived on scene to assist. I placed the suspect in the rear of my patrol vehicle and his hands were bagged with paper evidence bags so that his hands could have a GSR kit performed on them. Capt Smith advised me that the detectives were requesting the suspect be brought to city hall. I transported the suspect to city hall and he was turned over to the custody of the detectives.

I remained on scene with the detectives. Once Det. Repman had conducted the GSR kit on the suspect, he asked me to uncuff the suspect's hands and cuff one hand to the chair in the interview room. While I was in the interview room uncuffing the suspect, I smelled what appeared to be bleach or a cleaning product which contained bleach coming from the suspect's person. I notified Det. Repman of this once I exited the interview room.

End of Notes

8:30am. Zaquan then dropped off their child at daycare (Discovery School located on McMillan Avenue). Zaquan drives a red Charger, which he's owned for approximately one year. Ms. Pusha advised she didn't see Zaquan again until he picked her up from work at approximately 5:30pm. From there she stated they drove to TD Bank in Mount Pleasant and then to Hertz Rental to rent a car, but they were closed. She advised they wanted to rent a vehicle because they are planning a trip to Louisiana and didn't want to put the miles from the trip on their vehicle (the red Charger). After discovering Hertz was closed, Zaquan dropped her off at her mother's residence located at 8596 Chloe Lane, North Charleston. She didn't see Zaquan again until the following day, which is the day of the incident.

On July 12, 2014, Ms. Pusha advised she called Zaquan at approximately 10:00am and advised him she needed the key to their residence on Dogwood, as Zaquan had both his and her key. She advised he arrived at her mother's residence at approximately 10:25am. She stated he arrived in the red Charger with Tyrone, who she refers to as "T" and another black male she only knows as "Mojo." I asked her to describe what everyone was wearing and she stated the following:

Zaquan: black t-shirt and black pants
 Tyrone: White tank top and maybe blue pants
 "Mojo": white t-shirt and possibly plaid pants

Ms. Pusha advised she's known Tyrone ("T") for approximately 3 years and "Mojo" for approximately 2 years. As previously stated, she's been dating Zaquan for 7 1/2 years.

She advised Zaquan was driving the vehicle upon his arrival to pick her up, but she drove from there. They all left her mother's residence (her, Zaquan, "T" and "Mojo") and drove to TD Bank in Mount Pleasant. Zaquan made a \$120.00 deposit. Ms. Pusha provided a receipt showing the deposit was made at 10:57am. This receipt was lodged in evidence. They all drove to Hertz Rental, also in Mount Pleasant, and she advised it only took them approximately five to ten minutes to get there. Zaquan rented a red Mustang. Zaquan, "T" and "Mojo" got into the rental vehicle and departed, and Ms. Pusha left in the red Charger.

After leaving Hertz, Ms. Pusha stated she went to Zaquan's mother's residence, who resides on 6th street in Mt. Pleasant, to McDonald's, and then returned to her residence on Dogwood Rd. Once at her residence, the key provided to her wouldn't work, so she couldn't get into her house. She called Zaquan and informed him, and he instructed her to go to his Grandmother's residence located at 2022 Riverview, which is where he said he was at that time. Ms. Pusha was to meet him there and retrieve the other house key.

Ms. Pusha went to Riverview and retrieved the other key, and then went back home. Once at home, she advised she received a Facebook message from a female named "Sheka" who instructed her to call her. I asked Ms. Pusha who "Sheka" was to her and she advised she doesn't know her well and couldn't provide her last name. She called "Sheka" at [REDACTED]-6867, and "Sheka" told Ms. Pusha to call an unknown male at phone number [REDACTED]-6984. Ms. Pusha called this unknown male at 1:54pm, and the call lasted for 41 seconds. Ms. Pusha stated the male informed her Zaquan was being arrested and that he was on Ottawa St. She advised he never provided his name and she never asked.

Ms. Pusha advised she went to Ottawa Street but Zaquan was already gone. She was informed by two unknown males in the area that Zaquan left with the police and they thought it had something to do with the shooting. She advised she observed the the rented red Mustang on Ottawa Street.

Ms. Pusha advised she went to her mother's store in Fabian Plaza and called Tyrone ("T"). She advised her call went to voice mail so she called again. She stated she asked "T" what was going on, and he advised her he didn't know but was trying to find out. He advised her he was at P&M at the time of their conversation. "T" then stated to her that he had to get off the phone because the police were walking up to him.

Charleston County Sheriff's Office Inmate Report



NOTE: Inmate search results Generated at: 10/2/2019 9:47:28 AM

Inmate Details											
Inmate #	Name	DOB	Booking Date	Booking Time	Booking Status	Gender	Race	Release Date	Release Time	Early Release Date	Final Due Date
0001173374	BENN, TYRONE MALCOLM	1986 8/23/2008	18:43	RELEASED	M	B		11/5/2008	07:31		
Additional Information											
Age		Height		Weight		Confinment Reason					
22		5 11		165 lb		ZARRST					
Charge Details											
Arresting Agency	Charge #	Warrant #	Bond Amount	Charge Status	Charge Description	Court	Court Date				
P&P	44-53-390	K350943	\$20,000.00		PROHIBITED ACTS C	GENERAL SESSIONS					
P&P	24-19-130	Y10081164			CONVICTED VIOL YOA COND RELEASE	PROBATION AND PA					
Holding Agency		Holding Charge									
PROBATION AND PAROLE		Y10081164 HOLD									

BENN, TYRONE MALCOLM



Print



Charleston County Sheriff's Office

Inmate Report



NOTE: Inmate search results Generated at: 10/2/2019 9:55:58 AM

Inmate Details

Inmate #	Name	DOB	Booking Date	Booking Time	Booking Status	Gender	Race	Release Date	Release Time	Early Release Date	Final Due Date
0001300009	BENN, DESMOND JEROD	1988 3/28/2008	11:40	RELEASED	M	B	3/28/2008	21:52			

Additional Information

Age	Height	Weight	Confinment Reason
20	6 00	180 lb	ZARRST

Charge Details

Arresting Agency	Charge #	Warrant #	Bond Amount	Charge Status	Charge Description	Court	Court Date
INCHAS	SPM	12247EL			POSTED SIMPLE POSS OF MARIJUANA	NORTH CHARLESTON	4/16/2008

BENN, DESMOND JEROD



Print

EXHIBIT

PENGAD 800-631-6939

Applicant 4
(9/1)

Charleston County Sheriff's Office Inmate Report



NOTE: Inmate search results Generated at: 10/2/2019 9:56:28 AM

Inmate Details

Inmate #	Name	DOB	Booking Date	Booking Time	Booking Status	Gender	Race	Release Date	Release Time	Early Release Date	Final Due Date
0001300009	BENN, DESMOND JEROD	1988 6/19/2008	13:35	RELEASED	M	B	7/15/2008	13:49			

Additional Information

Age	Height	Weight	Confinment Reason
20	6 00	180 lb	ZARRST

Charge Details

Arresting Agency	Charge #	Warrant #	Bond Amount	Charge Status	Charge Description	Court	Court Date
Z35	44-53-445E	K296578	\$5,000.00	POSTED	POSS COCAINE PROX SCHOOL	GENERAL SESSIONS	
Z35	56-1-460	81958EN		TIME	DUS	NORTH CHARLESTON	7/7/2008
Z35	44-53-445D	K296579	\$5,000.00	POSTED	DIST. OF CONTROLLED SUB PROX SCHOOL	GENERAL SESSIONS	
Z35	SPM	12247EL		TIME	SIMPLE POSS OF MARIJUANA	NORTH CHARLESTON	
Total			\$10,000.00				

BENN, DESMOND JEROD



Print

EXHIBIT

Applicant 5
(Signature)

PENGAD 800-631-6969

AG
SOL
GS
ATTY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Tyrone M. Benn, SCDC #306805)

Case No.: 2018-CP-10-813

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

2023 AUG 10 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY NCL

FILED

This matter comes before this Court by way of Applicant Tyrone M. Benn's February 15, 2018, application for post-conviction relief challenging his convictions and sentences for murder and possession of a firearm during the commission of a violent crime based on allegations of ineffective assistance of counsel. On March 15, 2018, James K. Falk, Esquire, was appointed to represent Applicant. On or about June 7, 2018, Respondent State of South Carolina filed a Return disputing the claims of ineffective assistance of counsel and requesting an evidentiary hearing to resolve the claims of ineffective assistance of counsel as set forth in the application and any future amendments thereto. Applicant filed a *pro se* Motion to Amend his application on or about July 9, 2019.

An evidentiary hearing on this action was convened before this Court on October 2, 2019, at the Charleston County Courthouse. Applicant appeared with counsel James Falk. Assistant Attorney General Benjamin H. Limbaugh of the South Carolina Attorney General's Office appeared on behalf of the State. Applicant proceeded forward on the claims raised in his original and amended applications as set forth below.

At commencement of the hearing, Applicant's counsel informed the Court he attempted to subpoena a witness, Zaquan Watson, who would purportedly provide testimony regarding an alibi for Applicant at the time the crime was committed, but Watson could not be located on the date of the hearing. This Court ultimately held the record open for ten (10) days to afford Applicant's counsel an opportunity to locate and obtain an affidavit from the witness regarding any testimony he could provide regarding Applicant's alibi.¹ (PCR Hearing Transcript [HT] 7-8, 13-14, 67). The Court then heard testimony from Applicant and his former trial counsel, W. Ted Smith, Esquire.

Following a thorough review of the record in its entirety, including the testimony and evidence presented at the trial and the evidentiary hearing, this Court finds Applicant failed to establish any ineffective assistance of counsel claims entitling him to relief. Accordingly, the application and amended application are denied and dismissed with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

FACTUAL AND PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In October 2014, the Charleston County Grand Jury indicted Applicant for possession of a firearm during the commission of a violent crime (2014-GS-10-5846) and murder (2014-GS-10-5844). Assistant Public Defenders W. Ted Smith and Shirene Hansotia of the Charleston County Public Defender's office represented

¹As of the date of this Order, no affidavit has been submitted.

Applicant. Assistant Solicitor Burns Wetmore of the Ninth Circuit Solicitor's Office prosecuted the case.

On April 11, 2016, Applicant proceeded to a jury trial before the Honorable Deadra L. Jefferson, Circuit Court Judge. The jury convicted Applicant as indicted, and Judge Jefferson sentenced Applicant to imprisonment for concurrent terms of life without the possibility of parole and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on November 22, 2017. The remittitur was returned to the circuit court on December 9, 2017.

ALLEGATIONS BEFORE THE COURT

In his *pro se* application for post-conviction relief filed February 15, 2018, Applicant alleged he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

1. "Counsel failed to provide Applicant effective assistance of counsel prior to and during his trial proceeding. In as much as counsel failed to recognize errors which occurred during trial and therefore failed to make appropriate objections and supporting legal arguments. Had objections been made, the outcome may have been different. Counsel's failure to object deprived Applicant of appellate review on direct appeal."
2. Trial counsel was ineffective for failing to investigate second suspect and third party guilt, and potential alibi witnesses and exculpatory witnesses."

In his *pro se* Motion to Amend his application for post-conviction relief, filed on or about July 9, 2019, Applicant alleged the following grounds:

A1. “Counsel abandoned applicant at a critical stage under United States v. Cronin by failing to investigate and make timely objections.”

A2. “Counsel abandoned applicant at critical stage when he failed to object to the police lay opinion testimony.”

A3. “Counsel abandoned applicant at critical stage when he failed to object to the authenticity of voice identification.”

A4. “Counsel abandoned applicant at critical stage when counsel failed to object to Judge trial court charge of identification.”

A5. “Counsel failed to object to Judge charge on admissibility of statement when the charge on admissibility of statement is based on Miranda.”

A6. “Counsel abandoned applicant at a critical stage when counsel failed to investigate why state sought the phone call made on certain days, to determine if this information was provided by confidential informant, and counsel failed to determine this on cross-examination.”

At the evidentiary hearing, Applicant raised an additional allegation related to counsel’s failure to object to court’s charge that malice can be inferred from the use of a deadly weapon. In addition to that ground, Applicant proceeded on the grounds set forth below.²

²The *pro se* motion to amend was filed after Applicant’s counsel was appointed. Therefore, this Court will only consider grounds set forth in the motion to amend that appointed counsel adopted at the hearing. See Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (pro se filing when represented is a nullity).

SUMMARY OF THE EVIDENTIARY HEARING

Applicant testified on his own behalf. He testified documents contained in the discovery materials from his criminal case indicated Watson (the missing witness) told police Applicant was with him at the time the murder was committed. Applicant stated he gave Watson's name to his trial counsel as an alibi witness, but Watson was not called to testify at the trial. (HT 9-13).

Applicant also testified counsel failed to object to a redacted recording of a call he made from the jail to Watson. Applicant stated he called Watson to seek his help in getting money to an attorney, he told Watson "in confidence" what to tell the lawyer, and the redacted portion of the call was interpreted as an admission that he killed the victim when he was actually telling Watson the detectives were saying Applicant did it. Applicant testified he asked trial counsel to play the entire recording, but it was not played at trial. (HT 14-18).

Applicant further testified trial counsel failed to challenge a police officer's testimony that he recognized Applicant on the convenience store surveillance video based on prior dealings with Applicant in 2008 and Applicant's dreadlocks. Applicant stated he believed the officer confused him with another person arrested years earlier under his name who did have dreadlocks. He testified he told trial counsel the officer could not have identified him and had him confused with another person, but counsel did not pursue it. (HT 18-23).

Applicant also stated he asked trial counsel to find out how the State obtained the recording of his telephone conversation with Watson when "it was supposed to be between me and a lawyer," and he had to go through Watson because he could not contact a lawyer directly from the jail. He testified he wanted to find out if an informant told the State which recording to locate. Applicant

stated trial counsel did raise the issue at trial but did not object to introduction of the redacted recording. He also stated he wanted trial counsel to introduce the entire taped conversation. (HT 23-28).

Applicant testified, over the State's objection to a new allegation, that he was concerned about the inferred malice from a deadly weapon jury charge given by the trial court. PCR counsel stated he was not sure an objection to the charge would have been proper in light of Applicant's defense that he was not even present at the crime. This Court indicated it would give that claim any appropriate weight it warranted. (HT 27-29).

On cross-examination, Applicant admitted he did not know if trial counsel investigated Watson as a possible witness on his behalf at trial. He also admitted he was aware his calls from the jail would be monitored. As to the police identification, Applicant acknowledged another officer identified him on the surveillance video based on his mannerisms and distinct walk. (HT 31-35).

Trial counsel, W. Ted Smith, testified he did discuss with Applicant the possibility of calling Watson as an alibi witness, and one reason he did not want to call Watson was that Watson tentatively identified Applicant on the surveillance video of the actual crime. Counsel did talk to Watson and Watson's girlfriend, who initially gave statements different from the statements they gave to the police, and then were uncooperative. During Watson's interview with police, he indicated he did not know Applicant "was going to do anything," which suggested Watson knew more about what happened than he initially stated. Counsel was concerned about calling Watson as a witness because of differing statements he gave about the day of the crime. (HT 39-41).

As to the officer's identification of Applicant, counsel testified he remembered having a discussion with Applicant about the possibility of officers confusing him with two other people the police specifically talked about in connection with the crime. He stated he did not remember any discussion with Applicant about the person arrested years earlier under Applicant's name. He further stated the officer "seemed to indicate that he knew [Applicant.]" (HT 41-42).

Counsel testified there was a pretrial motion regarding introduction of the jail telephone call recording, but it was fairly settled that jail call recordings are admissible as evidence, especially when a warning is given. He stated the solicitor's office routinely gets the recordings in the course of business in every case, the investigators listen to the recordings, and the solicitor's office turns over any that may be prejudicial. He further stated he did not think the context of Applicant's statements during the call changed anything regarding the part the State wanted to key in on, and as a matter of trial strategy, he elected to go with the redaction and confront it directly with Applicant's explanation about what he was saying on the call. At trial, he asked the jury to listen to the recording for "the differences that I thought existed." (HT 42-46).

As to the inferred malice charge, counsel testified he did not consider objecting to the charge because the circumstances of the case did not fit the specific facts of the case law prohibiting that charge.

PCR Counsel: But this doesn't fit the specific Belcher facts.

Trial Counsel: That's correct.

PCR Counsel: Because there was no other evidence of prior ill will.

Trial Counsel: That's correct.

PCR Counsel: That could justify the exclusion of the inferred malice.

Trial Counsel: That's correct.

(HT 43-44).

On cross-examination, counsel testified he decided not to call Watson as a trial witness because Watson was uncooperative, Watson's conflicting statements to law enforcement could be used to impeach Watson, and one of his statements could be interpreted to mean he did not know Applicant "was going to shoot someone at the store." As to the issue of confusion between Applicant and another person, counsel testified he was focused on two other people who were potential suspects in the case, but there was no evidence either person was involved. Counsel stated he always contended the person in the video had facial features that did not match Applicant, he cross-examined the police officers about the basis of their identifications, and he was able to address the identification issues in closing. (HT 47-51)

Counsel further testified he listened to the jail call recording, he was able to talk about the recording in his closing, and the jurors had the recording to listen to and come to their own conclusion about what was said. In addition, every person entering the detention center is advised their phone calls will be monitored, there is a recording on each call reminding inmates the call can be recorded and monitored, and Applicant told counsel he was advised of that fact. (HT 51-52).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application, and to prove ineffective assistance of counsel allegations as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 334 S.E.2d at 814; Rule 71.1(e), SCRCRCP (post-conviction relief applicant has the burden to establishment entitlement to relief by a preponderance of evidence).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient, and the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Id.*; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (*quoting Strickland*, 466 U.S. at 690). To receive relief, the applicant must overcome the strong presumption counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690).

Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 386 S.E.2d at 625. A reasonable probability is a

probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” *Id.* at 687.

Allegations of ineffective assistance of counsel set forth a prima facie violation of the constitutional right to counsel and raise a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 199 S.E.2d 761, 762 (1973). A mere allegation of ineffective assistance is not sufficient to warrant relief, however, and the applicant bears the burden to prove the allegations by a preponderance of the evidence. Butler, 334 S.E.2d at 814; Rule 71.1(e), SCRC.

Strickland “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.”

Strickland, 466 U.S. at 689; *see also* Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). A reviewing court “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” because the trial attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Strickland, 466 U.S. at 690 (reviewing court must “reconstruct the circumstances of counsel’s challenged conduct”). The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also* Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial).

The Strickland standards “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” 466 U.S. at 696. Further, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697.

Findings as to Specific Claims Raised

Other than a general allegation of constitutionally ineffective assistance of counsel, Applicant alleged eight specific claims of ineffective assistance of counsel in his application and pro se amended application. At the evidentiary hearing, Applicant presented no testimony, evidence or argument pertaining to claims A4 (jury charge on identification) and A5 (jury charge

on admissibility of statement) as set forth in his *pro se* amendment. Accordingly, those claims are abandoned and denied with prejudice. See Marlar v. State, 375 S.C. 407, 653 S.E.2d 266, 266-267 (2007) (allegations may be denied when “absolutely no evidence is presented”).

Allegation #1 & A1: Trial Counsel was ineffective for failing to recognize trial errors and make appropriate objections.

This Court reviewed the trial record and finds it is clear trial counsel was prepared for trial, actively participated throughout the trial, made appropriate objections, and acted to protect Applicant’s rights. Accordingly, this Court denies and dismisses this allegation with prejudice.³ Applicant’s only specific allegations regarding purported trial errors and objections were either abandoned at the evidentiary hearing or are subsumed in the claims discussed below.

Allegation #2 & A1: Trial Counsel was ineffective for failing to investigate second suspect and third-party guilt and potential alibi witnesses and exculpatory witnesses.

This Court finds Applicant failed to meet his requisite burden of proof as to this allegation. As a threshold matter, Applicant failed to introduce any witnesses or otherwise offer evidence to support his claim, even though, as set forth above, this Court afforded Applicant additional time after the hearing to produce such evidence by way of affidavit. See Bannister v. State, 333 S.C. 298,

³Applicant attempts to strengthen his allegations by stating “counsel abandoned applicant at a critical stage under United States v. Cronic.” In Cronic, 466 U.S. 648 (1984), the United States Supreme Court reversed the lower court’s grant of post-conviction relief, holding a claim of ineffective assistance can only be made by pointing out specific errors made by trial counsel, and overcoming the presumption of effective assistance requires a conclusion that the trial was unfair if an accused was denied counsel at a critical stage of his trial. *Id.* at 658-659. In short, simply citing Cronic and claiming abandonment at a critical stage of the proceedings is insufficient to prevail on an ineffective assistance of counsel allegation.

303, 509 S.E.2d 807, 809 (1998) (“This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse’s notes presented at PCR hearing corroborated lack of penetration in sexual assault case); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel’s failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice). Thus, Applicant did not prove any prejudice from counsel’s failure to call additional witnesses at trial.

Likewise, Applicant did not prove counsel was deficient. At the evidentiary hearing, trial counsel testified he specifically investigated two other suspects in the murder and determined they were excluded. Counsel further testified he spoke with Watson and his girlfriend, who Applicant had identified as his alibi and/or exculpatory witnesses. Both were uncooperative, and counsel determined Watson would not be a good witness for Applicant due to the changes in Watson’s statements to law enforcement. This Court finds trial counsel’s testimony was credible, he articulated a reasonable strategy for not calling the witnesses, and the record amply demonstrates trial counsel’s diligence in investigating the case and witnesses. *See* Stokes v. State, 308 S.C. 546, 419 S.E.2d 778, 779 (1992) (when counsel articulates a valid reason for employing certain

strategy, such conduct will not be deemed ineffective assistance of counsel); Brown v. State, 375 S.C. 464, 652 S.E.2d 765, 774 (Ct. App. 2007) (same). Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #A2: Trial Counsel was ineffective for failing to object to the police lay opinion testimony.

This claim appears to allege trial counsel failed to object to police officers' testimony regarding the basis for their identification of Applicant as the person in the surveillance video who shot the victim. Applicant testified one officer claimed he identified Applicant from interactions with Applicant in 2008 and Applicant's dreadlocks, but Applicant did not have dreadlocks in 2008. (HT 18-23).

Trial counsel testified the officers' identification was not based solely on Applicant having dreadlocks, but on Applicant's face and specific mannerisms, including Applicant's "funny gait or a way of walking." He stated he cross-examined the police officers about the basis for their identification, and then addressed the identification issues more fully in closing argument. (HT 41-42, 48-51).

This Court reviewed the trial transcript, and the officers who identified Applicant as the person in the video did not base their identification solely on Applicant's dreadlocks. Sergeant Joseph Niemiec testified he had worked in the area surrounding the shooting for a long time in various law enforcement capacities, and he was the first officer to view the surveillance video. He had known Applicant since 2008 through the date of the shooting, which he later confirmed through further investigation. After Applicant was arrested and brought into the police department, Sgt. Niemiec recognized Applicant's "stride," which was "almost perfect to what the – what the

video showed.” Trial counsel cross-examined Sgt. Niemiec about the fact Sgt. Niemiec’s report did not include any identification of Applicant from the video, which Sgt. Niemiec explained was because the identification was his opinion and not a fact, and he only included facts in his report. (Record on Appeal [R.] 121-144).

Officer Charles Martin testified he was a Neighborhood Resource Officer with the North Charleston Police Department assigned to the area where the shooting occurred and interacted with the people in the community on a regular basis. In July 2014, he had been working in the area for a year, and he responded to the crime scene when he heard the call go out over the radio. He knew the victim from being in the area, and when he reviewed the surveillance video, he immediately recognized Applicant as the shooter. He identified Applicant based on his face, dreadlocks and “a funny gait” as he ran away from the scene. (R. 145-157).

Officer Travis Repman testified he was a detective with the North Charleston Police Department for approximately eight years, and he was called to the shooting crime scene on July 12, 2014. He recognized the victim from prior interactions over the course of his career. Based on information received during the course of the investigation that day, law enforcement investigated two people as possible suspects, but concluded neither individual was involved in the shooting. (R. 174-182).

Officer Repman did not immediately recognize the shooter from the surveillance video, but other officers involved in the case named Applicant as a suspect, and Applicant was brought to the police station for an interview. Officer Repman testified he immediately recognized Applicant as the person in the surveillance video based on the way he walked, his mannerisms, his

facial features, and his appearance. He stated he was 100% sure of the identification at that point, but as he became even more sure Applicant was the person in the video as he interviewed Applicant and observed more of Applicant's mannerisms. (R. 181-182, 214-215).

During cross-examination, trial counsel questioned Officer Repman about other people interviewed during the investigation, including Watson and his girlfriend, who stated they were with Applicant at some point on the day of the shooting. Counsel also got Officer Repman to acknowledge witnesses at the scene at the time of the shooting did not identify Applicant as the shooter. (R. 219-224). In closing argument, counsel emphasized what he saw as problems with the identifications, the lack of identifications from the witnesses at the scene, as well as what he believed were differences between Applicant's facial features and the facial features of the shooter in the video. (R. 328-335).

It is clear from the record that the police officers' identification of Applicant as the shooter in the surveillance video was not based solely on interactions with him in 2008 or his dreadlocks. In the face of each officer's direct testimony regarding the basis for his identification, trial counsel cross-examined each one as thoroughly as possible, and used potential problems with the identifications in his closing argument. Counsel employed reasonable strategies in dealing with almost conclusive proof Applicant was the person seen in the surveillance video shooting the victim and represented Applicant as effectively as possible in the face of credible adverse evidence. Accordingly, Applicant did not prove deficiency or prejudice, and this Court denies and dismisses this allegation with prejudice.

Allegation #A3: Counsel was ineffective for failing to object to the authenticity of voice identification

At the evidentiary hearing, Applicant averred the State introduced into evidence a redacted phone call he placed from jail on June 13, 2014, but the portion of the call that was admitted did not completely reflect his conversation. He stated he asked counsel to play the entire recording for the jury, but counsel did not. (HT 15-16). Applicant stated the portion of the call that was played just “jumped to where it says man listening and then what they interpret to say why I said I killed someone.” (HT 16). Although he initially averred the transcript of the call was inaccurate, he later agreed the transcript accurately reflected what was played in court. (HT 16). However, he asserted his statement was taken out of context, and he wanted counsel to play the entire recording for the jury. (HT 16, 27-28, 32). When asked the context in which he made the statement, he replied, “That they said I killed someone. I said the police if you play the entire tape you’re going to hear me tell Mr. Watson the detective was questioning me he said the reason they charged me is because I shot someone and I had on a green shirt, clearly.” (HT 32).

Counsel testified he received the jail call as part of discovery and listened to it. (HT 38). He stated he moved pretrial to exclude the call but was arguing against precedent and did not expect it to be excluded. (HT 42-43, 53). Regarding redactions, counsel explained there were “considerations about money being paid and those kinds of things that were potentially on the call.” (HT 45). He stated Applicant had his own explanation about what he was saying on the call, and they “elected to go with the redaction and to kind of confront it head-on.” (HT 45). Counsel testified he did not consider putting the entire call into evidence because he did not believe they needed to add anything else. He averred, “I didn’t think the context changes things; especially

with the part that the solicitor keyed in on.” (HT 45). Ultimately, counsel relayed his decision to not request the entire call was strategic. (HT 45). He testified the solicitor prepared a transcript of the redacted call that fairly represented what the jury heard. (HT 45-46). Counsel relayed the jury had the redacted calls, and he “asked them to listen to the tapes specifically; to listen to the differences that [counsel] thought existed.” (HT 45-46). Specifically, counsel argued that in a certain portion of the call, Applicant said, I tell that boy, I tell that boy,” whereas the solicitor argued Applicant said, “I killed that boy.” (HT 52). He explained the jury had the calls and could listen to them and decide what Applicant said. (HT 52).

This Court finds Applicant has not shown counsel was ineffective for not objecting to the redacted call.⁴ This Court finds credible counsel’s testimony that he did not consider putting the entire call into evidence because he did not need to add anything else, and the redacted portion did not change the context of the statement the solicitor focused on. This Court further finds counsel articulated a valid strategy in confronting the call head-on. Based on the transcript, counsel *did* argue to the jury that the solicitor was taking the call out of context or misinterpreting what Applicant said in the call. (R. 335). Ultimately the jury had the recording of the call and could determine for itself what Applicant said. Overall, this Court finds Applicant did not prove counsel’s representation in this regard was deficient. Likewise, Applicant did not show a reasonably likelihood the outcome would have been different had counsel requested the entire call

⁴ Although Applicant raised this as an allegation that counsel did not object to the authenticity of the voice identification, his testimony at the PCR hearing focused on his belief that counsel should have objected to the redacted version. To the extent he raises an issue with the authenticity of the jail call, this Court notes Applicant never denied it was him in the call; rather, he took issue with the solicitor’s interpretation of what he said.

be entered into evidence. Thus, this claim is denied and dismissed with prejudice.

Allegation #A6: Trial Counsel was ineffective for failing to investigate whether the State obtained the jail call recording introduced at trial as a result of information from a confidential informant.

Applicant asserts trial counsel was ineffective for failing to investigate whether information from a confidential informant led the State to obtain the recording of his jail call to Watson. Trial counsel testified he did make a pretrial motion regarding admissibility of the jail call recording, but the law was pretty settled that such calls are admissible, “especially in situations where a warning was given.” He further testified the solicitor’s office routinely obtains the recordings in every case, investigators listen to them and any that are prejudicial to the defense are turned over to defense counsel. Counsel also stated did not think adding any other part of the recording would provide useful context, he strategically decided not to ask that additional parts of the recording be admitted, and he argued in closing there was a different interpretation of what Applicant said during the call. Counsel stated the jury had the recording to listen to during deliberations and could come to its own conclusion regarding what was actually said. (HT 42-43). Counsel testified he did discuss with Applicant whether he was aware his calls from the jail could be monitored and recorded, and Applicant stated he was so advised. Counsel also knew there was a recording on each jail call reminding people the call could be recorded. (HT 51-53).

This Court finds credible counsel’s forgoing testimony. Based on the record, it is clear Applicant was aware his calls from the jail could be monitored and/or recorded. Applicant’s telephone conversation with Watson was not privileged, and whether an informant gave information to the State about the call was irrelevant. Applicant has not proven any deficiency, nor has he shown

a reasonably likelihood the outcome would be different had counsel investigated the manner in which the State obtained the jail calls. Accordingly, this claim is denied and dismissed with prejudice.

Allegation raised at evidentiary hearing: Trial Counsel was ineffective for failing to object to the implied malice jury charge.

At the evidentiary hearing, Applicant alleged for the first time, over the State's objection, that trial counsel was ineffective for failing to object to a jury charge that malice can be implied from the use of a deadly weapon, citing State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). In Belcher, the Supreme Court held it was error to charge the jury malice could be implied from the use of deadly weapon where evidence is presented that would reduce, mitigate, excuse or justify the homicide. *Id.* at 809.⁵

Trial counsel testified he did not object to the jury charge because he did not believe Belcher was controlling due to factual differences between that case and Applicant's case. Specifically, unlike Belcher, there was no evidence the shooter acted in self-defense. (HT 43-44, 53-54). Indeed, after the State objected to the new allegation, PCR counsel indicated he was not sure there was a Belcher argument because Applicant's defense was he was never present at the crime scene, and there was no evidence to support an objection based on Belcher (HT 28-29).

Based on the trial record and trial counsel's hearing testimony, there was no basis to object to the implied malice charge under the law applicable at the time, and trial counsel was not

⁵Three years after Applicant's trial, the Supreme Court held that trial courts "shall not" instruct a jury the element of malice may be inferred from the use of a deadly weapon regardless of the evidence presented at trial. State v. Burdette, 427 S.C. 490, 832 S.E.2d 575, 583 (2019)

ineffective for failing to object to the charge. PCR counsel's concession on this issue based on the law at the time of Applicant's criminal trial is well taken. Even if the jury charge was improper, there was no possible prejudice because Applicant did not assert self-defense and there was no evidence to support a lesser included offense charge. Rather, Applicant insisted, and continues to insist, he was not present when the murder occurred.

Applicant failed to meet his burden of proof as to this allegation. Accordingly, this Court denies this allegation and dismisses it with prejudice.

CONCLUSION

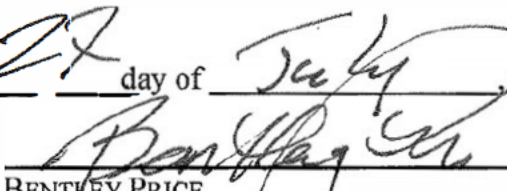
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations requiring this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied in its entirety and dismissed with prejudice.

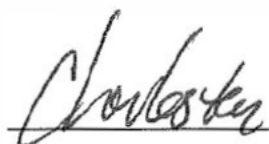
This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. *See* Rule 203 and 243, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Tyrone M. Benn shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 27 day of July, 2023.


BENTLEY PRICE
PRESIDING JUDGE - NINTH JUDICIAL CIRCUIT


Charles, South Carolina

BMW20140707140

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014023393

ARREST WARRANT NUMBER

2014A1010203650

DATE OF ARREST

July 12, 2014

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1005844

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

TYRONE MALCOLM BENN

Indictment for

Murder

4/13/2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

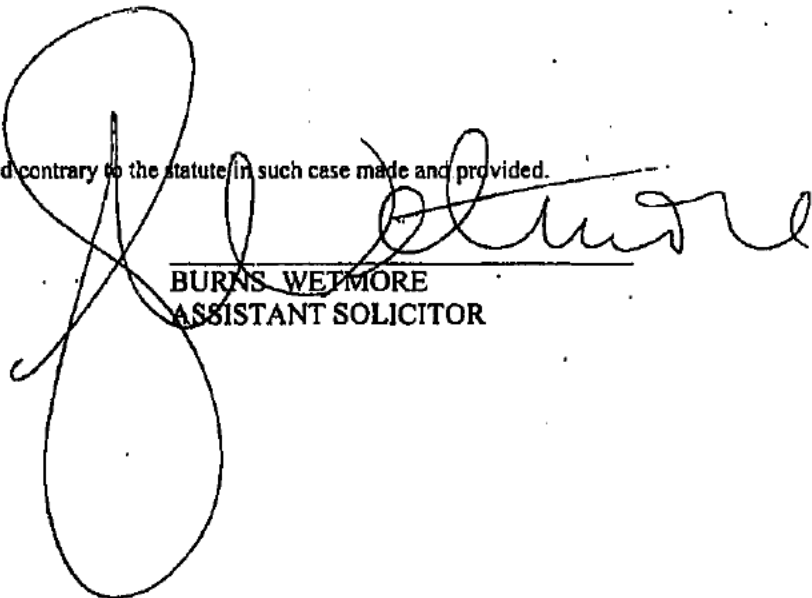
INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County, South Carolina, on or about July 12, 2014, with malice aforethought, TYRONE MALCOLM BENN did kill and murder Samuel Coardes by means of shooting, and that Samuel Coardes did die in Charleston County as a proximate result thereof on July 12, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BURNS WETMORE
ASSISTANT SOLICITOR

BMW20140707140

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014023393

ARREST WARRANT NUMBER

2014A1010203651

DATE OF ARREST

July 12, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 7 - 2014

VERDICT

Guilty

[Signature]

4/13/16

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1005846

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

TYRONE MALCOLM BENN

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

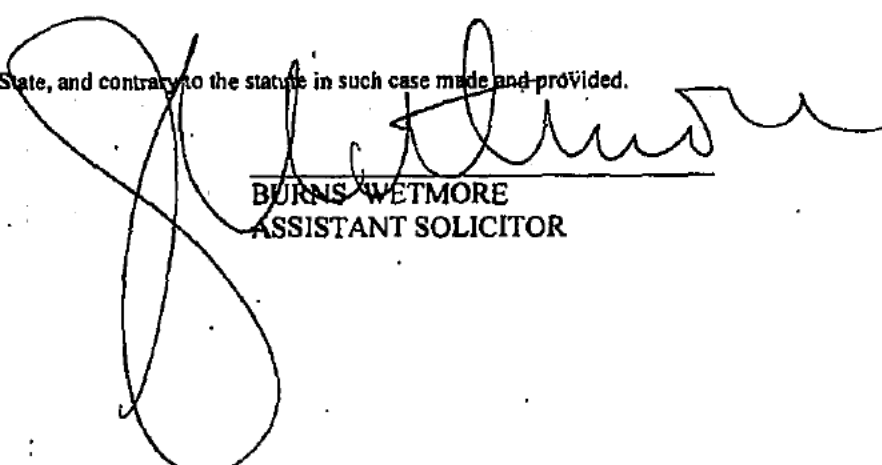
INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about July 12, 2014, the Defendant, TYRONE MALCOLM BENN, did possess a handgun during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BURNS WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TYRONE MALCOLM BENN

AKA:

Race:

DOB:

Address:

City, State, Zip:

DL#:

SID#:

Sex:

SS#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1005844

A/W: 2014A1010203650

Date of Offense: 07/12/2014

S.C. Code §: 16-03-0050

CDR Code #: 0217

SENTENCE SHEET

RECEIVED
APR 22 2016
SC Court of Appeals*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant, who was

TO: Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, hearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-10

The charge is:

☒ As indicted.☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Buras Malone, Asst. Solicitor SC Bar # 17241

Defendant

Attorney for Defendant SC Bar # 70744

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-5846☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

\$ 5.00

3% to County (If paid in installments)

\$

\$

\$ 3.90

TOTAL

\$ 133.90Clerk of Court/Deputy Clerk: Samuel PerryCourt Reporter: Denise LauderPresiding Judge: DR JudgeJudge Code: 2128Sentence Date: 4/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TYRONE MALCOLM BENN

AKA:

Race: [REDACTED] Sex: [REDACTED]

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession Of A Weapon During The Commission Of A Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is ☒ As indicted, ☐ Lesser Included Offense,The plea is ☐ Without Negotiations or Recommendation,

ATTENTION

☒ CONVICTED OF or ☐ PLEADS☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)☐ Negotiated Sentence,☐ Recommendation by the State.

Dennis Malone Wetmore, Asst. Solicitor SC Bar # 17241

Defendant

Attorney for Defendant

70744
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____, provided that upon the service of _____ days/months/years and or payment of \$_____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-10-5844☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$_____ plus 20% fee: \$_____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

parts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fines:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk: Amuril CherryCourt Reporter: Denise LanderPresiding Judge: Ad JettJudge Code: 2128Sentence Date: 4/3/2016