

RECEIVED

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

Mar 25 2024
S.C. SUPREME COURT

Appeal from Beaufort County
The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2023-001613

Earnest Daise, ... Petitioner,

v.

The State of South Carolina, ...Respondent.

SUPPLEMENTAL APPENDIX

ALAN WILSON
Attorney General

ELIZABETH FRANKLIN-BEST

DANIELLE DIXON
Assistant Attorney General

Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorney for Petitioner

Attorneys for Respondent

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APPLICANT’S PCR EXHIBITS	001
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State of South Carolina
County of Beaufort
Earnest Stewart Daise #207516
pro se applicant,

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP

2021 FEB 17 PM 1:36
JEFFREY A. ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Applicant's PCR Exhibits

Applicant now submits the following exhibits to be used at his post conviction relief evidentiary hearing. Applicant's exhibits include, but are not limited to the following:

1. Remittitur from Applicant's Direct appeal
2. Applicant's original PCR application
3. Motion to Amend Applicant's original PCR application
4. Indictment numbers 2009-GS-01-02030, 2037, 2039, 2594, 2595
5. Text message records for Earnest Daise's cell phone number 043-263-0455
6. Supplementary Report of officer Kellener's interview of Michael Wilson
7. Memorandum in Support of Defendant's motion to suppress
8. Order Denying defendant's motion to suppress
9. Trial Brief of Appellant
10. Trial Transcript pp. 1605-2523, 3178-3184

February 12, 2021

Earnest Stewart Daise
Earnest Daise #207516
pro se applicant

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT 2018-CP-07-0562
IN THE COURT OF COMMON PLEAS

Earnest S. Daise, #287516

Pro Se Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Applicant's
PCE Exhibits has been served upon the Respondent by mailing
one (1) copy in the United States mail, postage prepaid, addressed to:

Mr. Benjamin Limbaugh
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549

2021 FEB 17 PM 1:36
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

February 12, 2021

Earnest Daise,

Earnest Daise #287516
pro se Applicant

Earnest Daise #287516
B.R.C.I., Marion #252
4460 Broad River Road
Columbia, SC 29210



Ms. Jerri Ann Rosenau
Clerk of Court
Post Office Box 1128
Beaufort, SC 29901-1128

February 12, 2021

Ms. Jeri Ann Rosenay
Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901-1128

2021 FEB 17 PM 1:36
JERI ANN ROSENAY
BEAUFORT COUNTY, S.C.
CLERK OF COURT

re: Filing of Applicant's PCR Exhibits

Dear Clerk of Court:

please, find enclosed a copy of applicant's exhibits that I would like to have filed please.

respectfully,

Ernest Daise
Ernest Daise #282516

Exhibit

1



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 22, 2018

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Earnest S. Daise
Lower Court Case No. 2009GS0702636, 2009GS0702637,
2009GS0702639, 2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

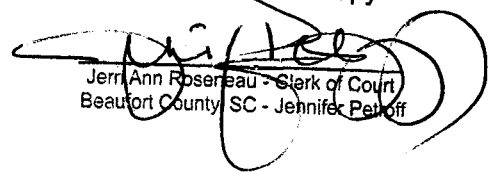
Very truly yours,


CLERK

Enclosure

cc: Isaac McDuffie Stone, III, Esquire
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Allen Mattison Bogan, Esquire

Certified - A True Copy


Jerri Ann Roseneau - Clerk of Court
Beaufort County SC - Jennifer Pettoff

Exhibit

2

STATE OF SOUTH CAROLINA

County of Beaufort

Earnest Stewart Daise #287516

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2010 MAR 13 AM 11:28

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 Broad River Correctional Institution,
4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence General Sessions
Beaufort, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009 GS 0702636 Murder
 - (b) 2009 GS 0702639 Murder

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 23, 2013 Murder Life
- (b) October 23, 2013 Murder Life
- (c) October 23, 2013 ABWIK Twenty (20) years (see Attachment)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 25, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Daise, 2017 WL 4799688
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) see Attachment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

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

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

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

Revised 3/2003

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First opportunity to pursue post conviction relief
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
(b) your trial, if any? yes
(c) your sentencing? yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

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. see Attachment

ii. _____

iii. _____

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

i. see Attachment

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

I am seeking a new trial on all convictions and any other relief the court deems proper.

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

NO

STATE OF SOUTH CAROLINA)

County of Beaufort)

VERIFICATION

I, Earnest Stewart Daise, 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.

Earnest Stewart Daise

SWORN to and subscribed before me this 27
day of FEBRUARY, 2018.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/16/2025

Revised 3/2003

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

I, Earnest Stewart Daise, 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.

Earnest Stewart Daise
Applicant

SWORN or affirmed to and subscribed before me this

27 day of February, 2015.


Notary Public

My Commission Expires: 9/15/2026

Revised 3/2003

PCR Application Attachment

4. (d) 2009 GS 0702594 Trafficking crack 10-28 grams
(e) 2009 GS 0702595 PWID Marijuana
5. (d) October 23, 2013 Trafficking crack 10-28 grams 30 years and \$50,000
(e) October 23, 2013 PWID Marijuana 20 years
10. (a) Applicant was denied the right to effective assistance of counsel — guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution — during the guilt-or-innocence phase of his Capital trial.
- (b) Applicant was denied the right to effective assistance of appellate counsel — guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article I, sections 3 and 14 of the South Carolina Constitution — during his direct appeal.
11. (a) Trial counsel's performance during the guilt-or-innocence phase of applicant's trial was both unreasonable and prejudicial. See Strickland v. Washington, 466 US 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:
- 1.) Failing to establish applicant had "standing" to challenge the search search warrants that applicant challenged pretrial.
 - 2.) Failing to timely file and serve "Memorandum in Support of Defendant's Motion to Suppress."
 - 3.) Failing to object at first opportunity to preserve applicant's pre-trial motion to suppress fruits of two (2) search warrants.
 - 4.) Mentioning fruits of search warrants before a final ruling was made thereby waiving applicant's objection.

5.) Mentioning fruits of search warrants during cross-examination of State's witness before a final ruling was made thereby waiving applicant's objection.

6.) Mentioning to jury that applicant hid a gun at Eddie's Disco.

7.) Implying to jury that GSR particles on applicant's jeans could have come from applicant shooting an AK-47 "from the hip."

8.) Failing to interview and subpoena witness, Cassandra Simmons.

9.) Failing to cross-examine state's witness Michael Wilson about statement he made to police.

10.) Failing to object to hearsay testimony of Frank Mullen.

11.

(b) Appellate counsel's performance during applicant's direct appeal was both unreasonable and prejudicial. see Strickland v. Washington, 466 US 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1.) Failing to brief applicant's objection to two (2) search warrants.

2.) Failing to brief applicant's objection to the hearsay testimony of Frank Mullen.

18.

(a)

1.) Bill McGuire
SCCID Capital Trial Division
1330 Lady St. Suite 401
Columbia, SC 29211

2.) Boyd Young
(same)

3.) Casey Secor
(same)

4.) Micah Leddy
The Leddy law firm
1522 Lady St. Suite B
Columbia, SC 29201

(2)

LEGAL MAIL

5.) Mark J. Mae Dougall
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564

6.) Robert Dudek
SCCD Appellate Division
1330 Lady St, Suite 401
Columbia, SC 29211

7.) Allen Matison Bogan
1320 Main St, Fl. 17
Columbia, SC 29201

18.
(b)

- 1.) Trial
- 2.) Trial
- 3.) Trial
- 4.) Trial
- 5.) Trial
- 6.) Appeal
- 7.) Appeal

February 18, 2018

Earnest Stewart Daise
Earnest Stewart Daise #287516
B.R.C.F. Manor #274
4460 Broad River Rd.
Columbia, SC 29210

(3)

LEGAL MAIL

Exhibit

3

State of South Carolina
County of Beaufort
Earnest Stewart Daise, #28754,
Pro Se Applicant,
v.
State of South Carolina,
Respondent

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2018-CP-07-0562
Notice of Motion and Motion to Amend
PCR Application

Motion to Amend PCR Application

Applicant moves, pursuant to S.C. Code sect. 17-27-70(a), to amend the following parts of his PCR application to read as follows:

10.
 - (a) Applicant was denied the right to effective assistance of counsel — guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article I, sections 3 and 14 of the South Carolina Constitution — during the guilt-or-innocence phase of his capital trial.
 - (b) Applicant was denied the right to effective assistance of appellate counsel — guaranteed by the sixth and Fourteenth Amendments to the United States Constitution and by Article I, sections 3 and 14 of the South Carolina Constitution — during his direct appeal.
11.
 - (a) That counsel's performance during the guilt-or-innocence phase of applicant's trial was both unreasonable and prejudicial. See, Strickland v. Washington, 466 US 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:
 - 1.) Counsel failed to establish applicant had a legitimate reasonable expectation of privacy to challenge two search warrants applicant challenged pre-trial.
 - 2.) Counsel failed to timely file and serve "Memorandum in Support of Defendant's Motion to Suppress."
 - 3.) Counsel failed to object at first opportunity, during state's opening arguments, to preserve Applicant's pre-trial motion to suppress two search warrants.
 - 4.) Counsel mentioned fruits of search warrants during defense opening arguments before a final ruling was made thereby waiving applicant's pre-trial motion to suppress.

- 5.) Counsel mentioned fruits of search warrants during cross-examination of State's witness before a final ruling was made thereby waiving applicant's pre-trial motion to suppress.
- 6.) Counsel mentioned to jury during defense opening arguments that applicant had a gun.
- 7.) Counsel elicited testimony from State's GSR expert that GSR particles on Applicant's jeans could have come from applicant shooting an AK-47 "from the hip."
- 8.) Counsel failed to interview and subpoena Cassandra Simmons to testify for the defense in order to rebut and impeach state's witness, Michael Wilson.
- 9.) Counsel failed to cross-examine state's witness Michael Wilson about prior statement he made to law enforcement.
- 10.) Counsel failed to object to hearsay testimony of State's witness, Frank Mullen.
- 11.) Counsel failed to object to testimony of State's witness Michael Wilson on all available grounds including, but not limited to: Rule 401 SCRS, Rule 403 SCRS.
- 12.) Appellate counsel's performance during applicant's direct appeal was both unreasonable and prejudicial. See, Strickland v. Washington, 466 US 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:
 - 1.) Counsel failed to brief applicant's objection to two (2) search warrants (motion to suppress) for direct appeal.
 - 2.) Counsel failed to brief applicant's objection to the hearsay testimony of Frank Mullen.

Applicant wishes to keep all other parts of his original application as they were when he filed his application. This is not a waiver of any other portion of applicant's original application.

Consequently, Applicant respectfully requests that the portions of the application listed above be granted for amendment.

Earnest Daise
pro, se applicant

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

ERNEST S. DAISE, #287516

Pro Se Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Motion to Amend Pet Application has been served upon the Respondent by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Mr. Benjamin Limbaugh
SC Attorney General's Office
Post office Box 11549
Columbia, SC 29211-1549

CLERK OF COURT

2019 APR 29 PM 12:50

This 23rd day of April 2019

Jennifer Washington
4-23-19

expires: March 8, 2028

Ernest Daise

Pro Se Applicant

Exhibit
4

WITNESSES

Hiers - BCSO

DOCKET NO. 2009GS0702636

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2009

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

MO55889

THE STATE

vs.

Earnest Stewart Daise

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 12-17-09

VERDICT

Indictment for

Murder

Defendant

Witness:

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

C.C.C. PLS. and G.S.

Foreperson of Petit Jury
Date:

INDICT

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

WITNESSES

Hiers - BCSO

DOCKET NO. 2009GS0702839

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2009

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M055872

THE STATE

vs.

Earnest Stewart Daise

ACTION OF GRAND JURY

True Bill

Angela Courtney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Indictment for

Murder

Defendant

Witness:

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

C.C.C. PLS. and G.S.

Foreperson of Petit Jury
Date:
INDICT

Certified - A True Copy

Pam V. Burries
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

WITNESSES

Hiers - BCSO

DOCKET NO. 2009GS0702637

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2009

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M055870

THE STATE

vs.

Earnest Stewart Daise

ACTION OF GRAND JURY

True Bill

Angela Courney
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Indictment for

**Assault and battery with intent to Kill
(ABWIK)**

Defendant

Witness:

SC Code: 16-03-0620
CDR Code:0014

C.C.C. PLS. and G.S.

Foreperson of Petit Jury
Date:
INDICT

Certified - A True Copy

Pam V. Burries
Jerril Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

WITNESSES

Rice - BCSO

ARREST WARRANT NUMBER

M055850

ACTION OF GRAND JURY

True Bill

Angela Courtnay
Foreperson of Grand Jury
Date: 12/17/09

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0702594

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2009

THE STATE

vs.

Earnest Stewart Daise

Indictment for

Drugs / Trafficking Crack 10 - 28 grams

SC Code: 44-53-0375(C)(1)(a)
CDR Code: 0450

Certified - A True Copy

Pam V. Burries
Jerrl Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

Rice - BCSO

DOCKET NO. 2009GS0702595

**The State of South Carolina
County of Beaufort**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2009

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M055851

THE STATE

vs.

Earnest Stewart Daise

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

INDICT

Indictment for

Drugs / Possession with Intent to Distribute
Marijuana

SC Code: 44-53-0370(b)(2)
CDR Code:0186

Certified - A True Copy

Pam V. Burries
Jerr Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

Defendant

Witness:

C.C.C. PLS. and G.S.

Exhibit
5

***** Key *****

Destination-Address	Date Time	System-ID	Source-Address	Billstate
8432630455	13-NOV-09 09:32:38	VMU_SMS[249]	8435753108	Not-Processed
Received				
Hi feeling betta Queen b				
8432630455	13-NOV-09 09:54:56	VMU_SMS[251]	8435753108	Not-Processed
Received				
Hi feeling betta Queen b				
8432630455	13-NOV-09 09:58:58	VMU_SMS[255]	8435753108	Not-Processed
Received				
E fuc u Queen b				
8432630455	13-NOV-09 09:59:12	VMU_SMS[250]	8435753108	Not-Processed
Received				
E fuc u Queen b				
8432630455	13-NOV-09 14:30:34	VMU_SMS[249]	8433385776	Not-Processed
Received				
You ready 2 take me shopping? Shit!				
8433385776	13-NOV-09 14:42:08	ICGTX[73]	8432630455	Not-Processed
Received				
Re: U a mess				
8432630455	13-NOV-09 14:44:56	VMU_SMS[251]	8433385776	Not-Processed
Received				
Woe<0d><0a>Wow!				
8432630455	13-NOV-09 15:06:46	VMU_SMS[259]	8433385776	Not-Processed
Received				
Didnt mean to say woe but yes on wow!				
8433385776	13-NOV-09 15:49:32	ICGTX[69]	8432630455	Not-Processed
Received				
Re: Wow wat				
8432630455	13-NOV-09 15:55:10	VMU_SMS[249]	8433385776	Not-Processed
Received				
I ask u when am I doing this lil shopping thing				

8433385776 13-NOV-09 16:16:52 ICGTX[71] 8432630455 Not-Processed
Received
Re: Whn i get sum spare change

8432630455 13-NOV-09 16:18:08 VMU_SMS[249] 8433385776 Not-Processed
Received
Wow,spare change?

8433385776 13-NOV-09 16:19:17 ICGTX[72] 8432630455 Not-Processed
Received
Re: Yea ima broke nigga babe tryna get my weight up

8432630455 13-NOV-09 17:13:44 VMU_SMS[249] 8434418131 Not-Processed
Received
Hey baby!<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:16:56 VMU_SMS[250] 8434418131 Not-Processed
Received
Home. Im on my way to your side now for church.... Havnt been to church in almost 3 months<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:18:06 VMU_SMS[253] 8434418131 Not-Processed
Received
What hav u ben up to<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:19:24 VMU_SMS[248] 8434418131 Not-Processed
Received
Thats whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:20:41 VMU_SMS[256] 8434418131 Not-Processed
Received
Lol... Dont say that<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:21:48 VMU_SMS[251] 8434418131 Not-Processed
Received
It aint ben that long hun<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 17:23:45 VMU_SMS[251] 8434418131 Not-Processed
Received
You be on this side you could stop by and say hello sometimes<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 18:27:44 VMU_SMS[252] 8434418131 Not-Processed
Received
Yes i do.<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 13-NOV-09 18:37:14 VMU_SMS[251] 8433385776 Not-Processed
Received
I hear you!

8433385776 13-NOV-09 18:53:28 ICGTX[72] 8432630455 Not-Processed
Received
Re: Wat u doin

8432630455 13-NOV-09 18:54:11 VMU_SMS[247] 8433385776 Not-Processed
Received
On the phone,was good?

8432630455 13-NOV-09 18:55:36 VMU_SMS[254] 8433385776 Not-Processed
Received
YEA BORED,MAN

8433385776 13-NOV-09 18:56:12 ICGTX[69] 8432630455 Not-Processed
Received
Re: Same here

8432630455 13-NOV-09 19:02:23 VMU_SMS[254] 8438120765 Not-Processed
Received
Nuthn bout 2 go out

8432630455 13-NOV-09 19:15:03 VMU_SMS[252] 8433385776 Not-Processed
Received
ITS FRIDAY U SHUDNT B BORED

8433385776 13-NOV-09 19:17:02 ICGTX[69] 8432630455 Not-Processed
Received
Re: Wat friday got 2 do wit dat

8432630455 13-NOV-09 19:17:29 VMU_SMS[260] 8433385776 Not-Processed
Received
IDK,THERE'S USUALLY SUMTHIN TO DO

→ 8434766636 13-NOV-09 19:34:26 ICGTX[69] 8432630455 Not-Processed
Received
Wat u doin

8432630455 13-NOV-09 19:36:43 VMU_SMS[264] 2297129265 Not-Processed
Received
Home eating soup

8432630455 13-NOV-09 19:42:04 VMU_SMS[247] 8433385776 Not-Processed
Received

Me neither,dis shit depressing..

→ 8432630455 13-NOV-09 19:44:37 VMU_SMS[248] 8434766636 Not-Processed
Received
Jus wakin up from nappin

→ 8434766636 13-NOV-09 19:45:10 ICGTX[71] 8432630455 Not-Processed
Received
Re: Oh no now

8432630455 13-NOV-09 19:45:12 VMU_SMS[248] 8433385776 Not-Processed
Received
Yes,Im only here b/c I have to pay my p/o and shit dass why I got a job and shit
man,once I pay it I get off,and Im out.Made up my mind that I came bac 2 what I

8432630455 13-NOV-09 19:45:13 VMU_SMS[247] 8433385776 Not-Processed
Received
left,knawmean

8432630455 13-NOV-09 19:45:43 VMU_SMS[251] 2297129265 Not-Processed
Received
Are you going to be able to get me a 30 doller card

→ 8432630455 13-NOV-09 19:46:55 VMU_SMS[250] 8434766636 Not-Processed
Received
Yep I slept from th time u left until now

→ 8434766636 13-NOV-09 19:51:14 ICGTX[73] 8432630455 Not-Processed
Received
Re: Oh day. my baby tired

8433385776 13-NOV-09 19:51:37 ICGTX[70] 8432630455 Not-Processed
Received
Re: I feel it

→ 8432630455 13-NOV-09 19:52:01 VMU_SMS[248] 8434766636 Not-Processed
Received
Okay I wuz tired as hell all day

8432630455 13-NOV-09 19:52:02 VMU_SMS[248] 8433385776 Not-Processed
Received
Yea man

→ 8434766636 13-NOV-09 19:52:53 ICGTX[72] 8432630455 Not-Processed
Received
Re: Poor thng

8433385776 13-NOV-09 19:53:46 ICGTX[72] 8432630455 Not-Processed

Received

Re: Wats 4 dinner

→ 8432630455 13-NOV-09 19:54:08 VMU_SMS[248] 8434766636 Not-Processed

Received

That power nap did me sum gud tho

8432630455 13-NOV-09 19:54:11 VMU_SMS[253] 8433385776 Not-Processed

Received

Ch? U buying?

→ 8434766636 13-NOV-09 19:55:52 ICGTX[72] 8432630455 Not-Processed

Received

Re: Dats gud u jus need a lil grub now. did u finish ur paper

8433385776 13-NOV-09 19:56:51 ICGTX[69] 8432630455 Not-Processed

Received

Re:depend wats 4 dinner

8432630455 13-NOV-09 19:57:21 VMU_SMS[249] 8433385776 Not-Processed

Received

Chinese Food

8432630455 13-NOV-09 19:57:38 VMU_SMS[248] 2297129265 Not-Processed

Received

Yes i eating some oyster cracker

8433385776 13-NOV-09 19:58:21 ICGTX[71] 8432630455 Not-Processed

Received

Re: Im not big on chinese

8432630455 13-NOV-09 19:58:52 VMU_SMS[248] 8433385776 Not-Processed

Received

Shut up and u just had it the otha night

8433385776 13-NOV-09 20:00:35 ICGTX[72] 8432630455 Not-Processed

Received

Re: I had da chickn smart ass

8432630455 13-NOV-09 20:01:41 VMU_SMS[254] 8433385776 Not-Processed

Received

o

→ 8432630455 13-NOV-09 20:05:42 VMU_SMS[251] 8434766636 Not-Processed
Received
Th one that's due sunday no not yet. And yep it is ab that time 4 me 2 eat. Ev body sleep
except me n seri.

8432630455 13-NOV-09 20:41:38 VMU_SMS[247] 2297129265 Not-Processed
Received
Yes its calming down a little

→ 8434766636 13-NOV-09 20:42:49 ICGTX[73] 8432630455 Not-Processed
Received
Re: Wherd u go

→ 8432630455 13-NOV-09 20:43:41 VMU_SMS[256] 8434766636 Not-Processed
Received
Jdub jus woke up

→ 8432630455 13-NOV-09 20:44:03 VMU_SMS[253] 8434766636 Not-Processed
Received
I'm still here babe

→ 8434766636 13-NOV-09 20:44:03 ICGTX[70] 8432630455 Not-Processed
Received
Re: Oh oh

→ 8432630455 13-NOV-09 20:45:38 VMU_SMS[249] 8434766636 Not-Processed
Received
Okay

→ 8432630455 13-NOV-09 20:47:43 VMU_SMS[257] 8434766636 Not-Processed
Received
Oh ok then I dnt wanna worry my baby then

→ 8434766636 13-NOV-09 20:48:23 ICGTX[73] 8432630455 Not-Processed
Received
Re: I miss dat warm ass meat boy

→ 8432630455 13-NOV-09 20:50:39 VMU_SMS[252] 8434766636 Not-Processed
Received
And I miss u 2 daddy

→ 8434766636 13-NOV-09 20:51:44 ICGTX[71] 8432630455 Not-Processed
Received
Re: Dats luv ther now. 2 sweet

→ 8432630455 13-NOV-09 20:53:15 VMU_SMS[249] 8434766636 Not-Processed
 Received
 Cuz I love me sum Edub now I aint gne lie

→ 8434766636 13-NOV-09 20:53:55 ICGTX[70] 8432630455 Not-Processed
 Received
 Re: U dnt even no y!

→ 8432630455 13-NOV-09 20:57:11 VMU_SMS[250] 8434766636 Not-Processed
 Received
 Yes bcuz even tho u harsh u r still my best friend n u hv a gud heart at times n u r very
 caring at times 2. U luk out 4 me n my kids. U r my comforter.

8432630455 13-NOV-09 20:58:21 VMU_SMS[251] 8434418210 Not-Processed
 Received
 Wrk whereelse<0a>Never say never

8432630455 13-NOV-09 21:02:09 VMU_SMS[255] 8434418210 Not-Processed
 Received
 I dnt seem to see it tryin to do to much to fast<0a>Never say never

8432630455 13-NOV-09 21:03:35 VMU_SMS[255] 8434418210 Not-Processed
 Received
 I guess<0a>Never say never

→ 8432630455 13-NOV-09 21:08:33 VMU_SMS[252] 8434766636 Not-Processed
 Received
 Oh stop it

→ 8432630455 13-NOV-09 21:10:09 VMU_SMS[248] 8434766636 Not-Processed
 Received
 Watchn tv

→ 8432630455 13-NOV-09 21:10:49 VMU_SMS[249] 8434766636 Not-Processed
 Received
 Jus hung up with mama

→ 8434766636 13-NOV-09 21:12:30 ICGTX[70] 8432630455 Not-Processed
 Received
 Re: Watchu watchn

→ 8432630455 13-NOV-09 21:13:04 VMU_SMS[251] 8434766636 Not-Processed
 Received
 Boomerang again

→ 8434766636 13-NOV-09 21:13:12 ICGTX[69] 8432630455 Not-Processed
Received

Re: Wat she doin up she betta get in bed

→ 8432630455 13-NOV-09 21:15:28 VMU_SMS[260] 8434766636 Not-Processed
Received

Okay I gotta go to her early in th morning

8432630455 13-NOV-09 21:21:28 VMU_SMS[251] 8434418210 Not-Processed
Received

Ok a lil busy but im not tired suprising had no meds<0a>Never say never

8432630455 13-NOV-09 21:25:11 VMU_SMS[251] 8435750013 Not-Processed
Received

Yo

→ 8432630455 13-NOV-09 21:29:22 VMU_SMS[254] 8434766636 Not-Processed
Received

Nuthn much she jus can't get her dvr in her room 2 work rite n she wants me 2 go 2 th
store with her 2morrow

→ 8434766636 13-NOV-09 21:32:39 ICGTX[70] 8432630455 Not-Processed
Received

Re: Umm i c

→ 8432630455 13-NOV-09 21:34:08 VMU_SMS[259] 8434766636 Not-Processed
Received

Whatchu doing babe?

→ 8432630455 13-NOV-09 21:35:20 VMU_SMS[250] 8434766636 Not-Processed
Received

No u supposed 2 say SHIT

→ 8434766636 13-NOV-09 21:37:56 ICGTX[72] 8432630455 Not-Processed
Received

Re: Shit! lol

→ 8432630455 13-NOV-09 21:38:32 VMU_SMS[251] 8434766636 Not-Processed
Received

I love you!

→ 8434766636 13-NOV-09 21:39:12 ICGTX[70] 8432630455 Not-Processed
Received

Re: I luv u 2. is dis u

→ 8432630455 13-NOV-09 21:40:26 VMU_SMS[248] 8434766636 Not-Processed
 Received
 It is. We gone make love 2nite? Lol jus kidding

→ 8432630455 13-NOV-09 21:43:09 VMU_SMS[251] 8434766636 Not-Processed
 Received
 Yo tired ass lol

→ 8434766636 13-NOV-09 21:45:41 ICGTX[72] 8432630455 Not-Processed
 Received
 Re: U da one

→ 8432630455 13-NOV-09 21:46:13 VMU_SMS[250] 8434766636 Not-Processed
 Received
 We both are

→ 8434766636 13-NOV-09 21:47:02 ICGTX[73] 8432630455 Not-Processed
 Received
 Re: Not me im up and i want it ill cum rite now

→ 8432630455 13-NOV-09 21:48:25 VMU_SMS[254] 8434766636 Not-Processed
 Received
 Rite now?

→ 8434766636 13-NOV-09 21:48:54 ICGTX[71] 8432630455 Not-Processed
 Received
 Re: Rite now

→ 8432630455 13-NOV-09 21:50:02 VMU_SMS[259] 8434766636 Not-Processed
 Received
 U like 2 play

→ 8434766636 13-NOV-09 21:55:05 ICGTX[78] 8432630455 Not-Processed
 Received
 Re: No now and

→ 8432630455 13-NOV-09 21:55:58 VMU_SMS[248] 8434766636 Not-Processed
 Received
 Well cum on then do I need 2 go n wash now

→ 8434766636 13-NOV-09 21:56:51 ICGTX[73] 8432630455 Not-Processed
 Received
 Re: No in a few or u can wait 4 me i gotta wash 2

→ 8432630455 13-NOV-09 21:58:34 VMU_SMS[253] 8434766636 Not-Processed
 Received

Well I will wait n everybody is back up in here n it sounds like I'm hvn a party

→ 8434766636 13-NOV-09 21:58:59 ICGTX[70] 8432630455 Not-Processed
Received
Re: Dang

→ 8432630455 13-NOV-09 21:59:22 VMU_SMS[254] 8434766636 Not-Processed
Received
Okay

8432630455 13-NOV-09 22:29:03 VMU_SMS[250] 8434418210 Not-Processed
Received
Hi friend<0a>Never say never

8432630455 14-NOV-09 06:30:15 VM1[253] 8435752339 Not-Processed
Received
PLEASE CALL

8432630455 14-NOV-09 10:13:25 VMU_SMS[253] 8434418210 Not-Processed
Received
Hi dear<0a>Never say never

8432630455 14-NOV-09 10:14:20 VMU_SMS[266] 8434418210 Not-Processed
Received
Fine n u at wrk<0a>Never say never

8432630455 14-NOV-09 10:29:57 VMU_SMS[247] 8434418210 Not-Processed
Received
O wat u grubbin on<0a>Never say never

8432630455 14-NOV-09 10:53:22 VMU_SMS[253] 8434418210 Not-Processed
Received
O im bout to walk to chinese Place<0a>Never say never

8432630455 14-NOV-09 12:27:42 VMU_SMS[247] 8434418131 Not-Processed
Received
Whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 14-NOV-09 12:28:58 VMU_SMS[254] 8434418131 Not-Processed
Received
Nothing much just laying down<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 14-NOV-09 12:30:27 VMU_SMS[248] 8434418131 Not-Processed
Received
Idk yet. Y whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455	14-NOV-09 12:31:33 VMU_SMS[251]	8434418131	Not-Processed
	Received		
	Oh<0d><0a>HAILEY DA'NEICE WRIGHT<0a>		
8432630455	14-NOV-09 13:11:29 VMU_SMS[249]	8435753108	Not-Processed
	Received		
	Hello Queen b		
8432630455	14-NOV-09 13:46:49 VMU_SMS[252]	8435753108	Not-Processed
	Received		
	How r u Queen b		
8432630455	14-NOV-09 14:01:12 VMU_SMS[253]	8435753108	Not-Processed
	Received		
	Im ok just work hard Queen b		
8432630455	14-NOV-09 14:03:47 VMU_SMS[252]	8435753108	Not-Processed
	Received		
	I guess its busy 4 the holidays Queen b		
8432630455	14-NOV-09 17:54:59 VMU_SMS[248]	8432635633	Not-Processed
	Received		
	Hi		
8432630455	14-NOV-09 19:41:02 VMU_SMS[258]	0000000868	Not-Processed
	Received		
	\$VMU\$<0b><08>jMonthly Charge Failed Add \$ to cover charge+tax now or pay		
	20c/min if \$ in account, until service expires.<04>CALL<00><00><03><0b><08><06>		
8432630455	14-NOV-09 20:12:41 VMU_SMS[250]	8435753108	Not-Processed
	Received		
	H Queen b		
8432630455	14-NOV-09 20:13:16 VMU_SMS[254]	8435753108	Not-Processed
	Received		
	Hello Queen b		
8432630455	14-NOV-09 20:26:52 VMU_SMS[256]	8435753108	Not-Processed
	Received		
	I guess i can give up huh u dont want 2 b bothered Queen b		
8432630455	14-NOV-09 21:25:08 VMU_SMS[249]	8435750013	Not-Processed
	Received		
	Yo		

8432630455	14-NOV-09 22:19:03 VMU_SMS[255]	8435753108	Not-Processed
	Received		
	U cud answer icu Queen b		
8432630455	14-NOV-09 22:26:03 VMU_SMS[258]	8435753108	Not-Processed
	Received		
	Fuc u Queen b		
8432630455	15-NOV-09 10:49:42 VMU_SMS[249]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c> >Top-Up: \$50.00<0d><0a>Tax: \$0.00<0d><0a>Total:		
	\$50.00<0d><0a>New Bal:<0d><0a>\$50.13 <0d><0a>		
8432630455	15-NOV-09 11:09:46 VMU_SMS[248]	8435750013	Not-Processed
	Received		
	Yo call me		
8432630455	15-NOV-09 11:14:39 VMU_SMS[249]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c> >Top-Up: \$20.00<0d><0a>Tax: \$0.00<0d><0a>Total:		
	\$20.00<0d><0a>New Bal:<0d><0a>\$69.98 <0d><0a>		
8432630455	15-NOV-09 11:16:45 VMU_SMS[248]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c><00>ZYou've switched to our \$49.99 Totally Unlimited Monthly Plan with		
	a \$10.00 Messaging Pack.		
8432630455	15-NOV-09 11:17:38 VMU_SMS[251]	0000000868	Not-Processed
	Received		
	\$VMU\$<0c><00> Top-Up another \$20.00 by 11/18/2009 09:17:37 to qualify for Virgin		
	Mobile's Service Preserver and extend service for a year!		
8432630455	15-NOV-09 13:24:36 VMU_SMS[248]	8435750013	Not-Processed
	Received		
	Yo		
8432630455	15-NOV-09 13:38:46 VMU_SMS[247]	2297129265	Not-Processed
	Received		
	What you doing		
8432630455	15-NOV-09 17:04:06 VMU_SMS[254]	8432631787	Not-Processed
	Received		
	On the way		
8432630455	15-NOV-09 18:40:05 VMU_SMS[248]	8434418210	Not-Processed
	Received		

U alrite<0a>Never say never

8432630455 15-NOV-09 18:59:15 VMU_SMS[249] 8432635633 Not-Processed
Received
Sweetie rochelle jus call me is everythng ok.... call me

8432630455 15-NOV-09 19:05:19 VMU_SMS[248] 3863387317 Not-Processed
Received
Is thir ew phone *FEELS LIKE MY LIFE IS CAUGHT IN A STORM*

8432630455 15-NOV-09 19:10:30 VMU_SMS[248] 8433385776 Not-Processed
Received
What up?<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:16:44 VMU_SMS[256] 8433385776 Not-Processed
Received
U SLEEP?<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:37:27 VMU_SMS[260] 8433385776 Not-Processed
Received
Georgie aint say nuthin bout how he sounded? He not replying to my text and I damn sure aint bout to call.Girl everybody callin me askin questions bout the damn

8432630455 15-NOV-09 19:37:27 VMU_SMS[260] 8433385776 Not-Processed
Received
boy,and we were only text buddies!<0d><0a><0d><0a>I AM SHE*

8432630455 15-NOV-09 19:46:44 VMU_SMS[247] 2297129265 Not-Processed
Received
What is going on i heard some crazy stuff just now call please

8432630455 15-NOV-09 21:04:28 VMU_SMS[248] 8434418131 Not-Processed
Received
Whats up<0d><0a>HAILEY DA'NEICE WRIGHT<0a>

8432630455 15-NOV-09 22:05:36 VMU_SMS[249] 8435750960 Not-Processed
Received
Hope u ok dis nikki

8432630455 15-NOV-09 22:07:30 VMU_SMS[249] 8435750960 Not-Processed
Received
Im worried bout u

8432630455 15-NOV-09 22:28:30 VMU_SMS[252] 8434418210 Not-Processed
Received
U alrite<0a>Never say never<0a>

8432630455 15-NOV-09 22:51:26 VMU_SMS[251] 8435750960 Not-Processed
Received

E i hope u ok im worried bout u pls text me so i can no u alrite

8432630455 16-NOV-09 06:57:37 VMU_SMS[248] 8032368262 Not-Processed
Received

Call me

8432630455 16-NOV-09 07:16:25 VMU_SMS[248] 8435750013 Not-Processed
Received

Yo i need a jump i am at the school i have caales

8432630455 16-NOV-09 07:29:57 VMU_SMS[247] 8435750013 Not-Processed
Received

I am good

8432630455 16-NOV-09 08:20:35 VMU_SMS[253] 8435750013 Not-Processed
Received

Yo man wats up

***** Key *****

Destination-Address	Date Time	System-ID	Source-Address	Billstate
---------------------	-----------	-----------	----------------	-----------

Deliverstate

Message-Text

Exhibit
6

AGENCY I.D.
SC0 070000

SUPPLEMENTARY REPORT

CASE NUMBER

20091115557

NO. 94
EXTD.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 2 PAGES

REFERENCE: (A)

CASE NUMBER:

2009115-557

INCIDENT TYPE:

Murder

INCIDENT LOCATION:

Assault & Battery w/ Intent to Kill

COMPLAINANT:

20 Player Road, Dale

VICTIM:

1) Mullen, Frank

1) Mullen, Jeanine

2) Davis-Mullen, Waltfredo

3) Daise, Jeremiah

SUSPECT:

1) Daise, Earnest

REPORTING OFFICER:

Lcpl K. Rivers

INVESTIGATION OFFICER:

Ssgt J. Hiers

1. SYNOPSIS:

Reference (A) reported that on 11-15-09, the above listed victims were located at their residence. Each victim was shot from a close range with an unknown type firearm and only Jeremiah Daise (two years old) was still alive at the home.

2. INTERVIEW w/ MICHAEL K. WILSON JR.:

On 11-18-09 I met with Wilson at Lady's Island Middle school where he works. He agreed to speak with me in reference to the investigation to the incident from 11-15-09. Wilson said that on 11-15-09 at an unknown time in the late afternoon he was watching television at his residence located at 17 Simmons Family Road. He said at an unknown time, he believes around dusk, he went to take the trash outside. He said he saw an unknown number of men standing outside of Eddie's Disco club drinking what he believed to be beer from cans. He said he recognized one of the black males as, Earnest Daise by sight and he heard his voice. He said that Daise was laughing and speaking loudly, which he stated usually, meant that Daise was drinking a lot. Wilson said just prior to going into the house he heard Daises' cell phone ringing, he said the ring sounds similar to a gun shooting he thought. He said soon after answering the cell hone he heard Daise yell into the cell phone "who do you think you're talking to like that". He said Daise then soon

TYPE	SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☐ ACTIVE ☐ ADM CLOSER ☐ UNFOUNDED	☒ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY				
ADMIN	REPORTING OFFICER John E. Kellner	DATE 11-25-09	UNIT NUMBER K2290	APPROVING OFFICER <i>[Signature]</i>	DATE 11-27-09
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER <i>[Signature]</i>	UNIT NUMBER

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise

80

AGENCY I.D.
SC8 070000

SUPPLEMENTARY REPORT

CASE NUMBER

200911150002

NOB

22

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 - 2 PAGES

hung up the phone, and he noticed the van that Daise drives departing the area. He said the van he saw was the one that Daise drives a lot. He believes it does belong to Daise's girlfriend (Mullen's). He said sometime later around approx 2000 to 2030 he was told by his girlfriend, Cassandra Simmons that Mullen's and her children were shot and killed.

Wilson refused to write a statement in reference to his interview with me.

3. INTERVIEW w/ TARMEKA SIEVRIGHT:

On 11-19-09 I met with Tarmeka Sievright, also known as "Nikki", at the BCSO Investigation Office. I made telephone contact with her prior to our meeting. I requested to meet with her tomorrow and closer to her residence located on Hilton Head Island. She insisted meeting ASAP with me, so within the hour she drove to the BCSO Investigation office meeting with me.

I advised Tarmeka her Miranda right. Tarmeka stated she has been seeing Daise for approx a year and a half. She said that it is not a serious relationship but mostly just a "sexual one". She said she was in the Beaufort area Saturday evening the 14th. She stated that while driving along Poppy Hill Rd, toward Hwy 21, she saw the van that Daise drives parked with its parking lights on in the driveway of 43 Poppy Hill Road. She stated that she knows that Daise lives at that location.

Tarmeka said she did not see anyone near or around the van as she drove by. She stated the van belongs to Jeanne Mullen's and that Daise uses it a lot. Tarmeka stated she worked, Sam's Club store on Hilton Head Island on 11-15-09 from 1000 until 1830. She stated that approx 2030 she received a telephone call from her sister, Coreatha Powell, who informed her that she had heard that Mullen's and her children were found shot to death. She said that she did send a text message to Daise at approx 2305 and 2351 asking him if he was ok. She stated she asked that question of him only because she understood that his children were injured. She said that she never heard any reply back from Daise. Tarmeka said she believed she last had contact with Daise either Friday or Saturday early in the day.

4. CASE STATUS:

Arrest

5. ATTACHMENT:

Miranda rights form

Statement from Tarmeka Sievright

ADMINISTRATIVE	☒ SUBJECT IDENTIFIED	☐ SUBJECT LOCATED	☐ ACTIVE	☐ ADM CLOSED	☐ ARRESTED UNDER 16	☐ EX-CLEAR UNDER 16
	☐ YES	☐ NO	☐ YES	☐ NO	☐ CONVICTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
John E. Kallala		11/25/09	EN730			
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO				OFFICER		

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise

81

Exhibit
7

M055869 - M055872

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GENERAL SESSIONS COURT
FOURTEENTH JUDICIAL CIRCUIT

Indictments 2009-GS-07-2636, 37, 38, 39

STATE OF SOUTH CAROLINA,

DEATH PENALTY CASE

v.

EARNEST STEWART DAISE,

Defendant.

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS
PHYSICAL EVIDENCE**

Because the affidavits presented in support of the search warrants executed on (1) the person of Earnest S. Daise and (2) 43 Poppy Hill Road lacked probable cause, the warrants were illegal under the Fourth Amendment of the United States Constitution; Article 1, § 10 of the South Carolina Constitution; and South Carolina Code § 17-13-140. Consequently, Mr. Daise hereby moves to suppress all evidence seized from his person and 43 Poppy Hill Road, and all other evidence obtained directly or indirectly as a result of the illegal searches. Mr. Daise, through his undersigned counsel, hereby respectfully submits the following memorandum in support.

I. Facts

A. Search Warrant for the Person of Earnest Daise

On November 16, 2009, Sergeant John W. Foskey of the Beaufort County Sheriff's Office ("BCSO") presented a search warrant affidavit ("Foskey Affidavit") to Beaufort County Magistrate Judge Orville G. Chase. Attached hereto as **Exhibit 1**. The Foskey Affidavit related to the ongoing investigation of a shooting that occurred at 20 Player Road in Dale, South

Certified - A True Copy

Pam V. Burries
Jefri Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

Carolina on November 15, 2009. Its purpose was to establish probable cause and obtain authorization to search "the person of Ernest [sic] Daise, black male, dob 5-07-82, SSN XXX-XX-4120."

The section entitled "DESCRIPTION OF PROPERTY SOUGHT," reads:

Clothing being worn by Ernest [sic] Daise at the time of his interview at the Beaufort County Sheriff's Investigations Office at 1925 Duke Street in Beaufort SC. Clothing to include a white tank top shirt, blue jean pants and a pair of blue and white Nike shoes.

The section entitled, "REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY IS ON THE SUBJECT PREMISES," reads:

That on November 15, 2009 three people were shot at a residence 20 Player Road in Dale within Beaufort County South Carolina. Two of the people died at the scene. During the investigation information was revealed that Ernest [sic] Daise was the possible shooter in this incident. Witnesses placed the subject at the scene at the time of the incident. The surviving victim is the victim's son who told EMS personnel that "his daddy" Ernest [sic] Daise was the one who shot him. A red in color substance was observed on the subjects [sic] clothing at the time of his interview and the substance appears to be blood.

After being presented with the above information, Judge Chase signed the search warrant. Judge Chase did not receive any additional information, orally or otherwise, outside the statement of probable cause contained in the affidavit.

B. Search Warrant for 43 Poppy Hill Road

On November 16, 2009, Sergeant Christine L. Wilson of the BCSO presented a search warrant affidavit ("Wilson Affidavit") to Beaufort County Magistrate Judge Orville G. Chase. Attached hereto as **Exhibit 2**. The affidavit related to the ongoing investigation of a shooting that occurred at 20 Player Road in Dale, South Carolina on November 15, 2009. The purpose of

the affidavit was to establish probable cause to obtain authorization to search 43 Poppy Hill Road in Burton, S.C.

In the section of the search warrant affidavit entitled, "DESCRIPTION OF PROPERTY SOUGHT," Sergeant Wilson wrote:

Evidence related to a murder, including, but not limited to: firearms, spent shell casings, live ammunition, cellular telephones, letters, photographs, and other documents; and forensic evidence, including, but not limited to: blood, saliva, hair, fibers, other bodily fluids, and any items containing such forensic evidence, such as clothing, rags, or towels.

In the section of the search warrant affidavit entitled, "REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY IS ON THE SUBJECT PREMISES," Sergeant Wilson wrote:

Shortly before 7:00 PM on November 15, 2009, BCSO responded to 20 Player Rd, Dale, SC, regarding the report of three gunshot victims inside the residence. Two of the victims, a woman (Jeanine Mullen), and her four-year-old son, were pronounced dead at the scene; her two-year-old son also sustained a gunshot wound and was transported the [sic] hospital. A witness reported that earlier in the afternoon, Ernest [sic] Daise, who is Jeanine Mullen's boyfriend, was observed pulling into the driveway of 20 Player Road in Ms. Mullen's van, and getting out of the vehicle. Following the shooting incident, while being treated for his injuries, the two-year-old child said, "Daddy did it;" Ernest [sic] Daise is the child's father. Shortly after 2:00 AM on November 16, 2009, Ernest [sic] Daise was located at 43 Poppy Hill Rd, Burton, SC, which is a residence he frequents. He was wearing blue jeans, on which a red stain that appeared to be dried blood was observed just below the left front pocket opening. It is believed that based on the foregoing information, evidence of the murder will be located at the premises to be searched.

After being presented with the above information by Sergeant Wilson, Judge Chase signed the search warrant. Judge Chase did not receive any additional information, orally or otherwise, outside the statement of probable cause contained in the affidavit.¹

¹ Sergeant Wilson obtained a second warrant to search 43 Poppy Hill Road on November 17, 2009. The affidavit submitted in connection with that warrant application states that items—

C. February 4, 2013 Hearing

Pursuant to a motion by Mr. Daise, this Court held a hearing on February 4, 2013 at the Beaufort County Judicial Center, where testimony was given regarding the search of Mr. Daise's person and his residence at 43 Poppy Hill Road. See Hearing Transcript, attached hereto as **Exhibit 3**.

Beaufort County Magistrate Orville G. Chase, the issuing judge for both warrants at issue in this Motion, testified as follows:

- Both the Foskey and Wilson Affidavits were presented to Magistrate Chase in the early morning hours of November 16, 2009. Ex. 3 at 10-12.
- Magistrate Chase testified that when he is presented with a warrant affidavit, he typically does not receive supplemental oral testimony in support of the affidavit; rather, if law enforcement officers wish to supplement an affidavit, Magistrate Chase requires them to "take it back to their office, redo it, and bring it back." Id. at 11. Magistrate Chase does not recall ever having a law enforcement officer supplement an affidavit in that manner. Id.
- In keeping with his typical practice, Magistrate Chase did not receive oral testimony to supplement the Foskey or Wilson Affidavits. Id. at 10-11.

including shoes, cell phones, and cell phone adapters/chargers—allegedly belonging to Mr. Daise were observed but not seized during the first search of 43 Poppy Hill Road. As discussed in Section III.D., *infra*, the items seized during the second search of 43 Poppy Hill Road should be suppressed as illegal fruits of the improper initial search of that location along with any other evidence developed, directly or indirectly, as a result.

- Based purely on evidence within the four corners of the Foskey and Wilson Affidavits, Magistrate Chase ultimately issued warrants for searches of Mr. Daise and 43 Poppy Hill Road. Id. at 11-12.

Master Sergeant Jeffery Purdy of the BCSO then testified on direct examination as follows:

- In November of 2009, Master Sergeant Purdy was employed as the Supervisor of the Northern Criminal Investigation Section of the BCSO. Ex. 3 at 13-14. Master Sergeant Purdy became involved in the investigation of the shooting at 20 Player Road and was present during Mr. Daise's interrogation. Id. at 15. The Foskey Affidavit was sworn in Master Sergeant Purdy's presence at Master Sergeant Purdy's office. Id. at 14.
- Master Sergeant Purdy testified that the statement in the Foskey Affidavit that "[w]itnesses placed the subject [Mr. Daise] at the residence at the time of the incident" was based on the statements of Rebecca Nation and Jeremiah Daise. Id. at 18. Specifically, Jeremiah Daise told an EMS worker that "my daddy hurt me," and "as a result of that, we figured out who Jeremiah Daise's daddy was, and we started the investigation." Id. at 15. Master Sergeant Purdy further testified that "Rebecca Nation saw Mr. Daise arrive, witnessed him get out of the van, never saw him leave." Id. at 18.
- Master Sergeant Purdy and his officers found out where Mr. Daise lived and proceeded to that address for a "knock-and-talk." Id. at 15-16. According to Master Sergeant Purdy, when Mr. Daise answered the door, the officers saw what they believed to be blood on Mr. Daise's pants. Id. at 16. The officers then "detained him and handcuffed him, read him his Miranda rights, asked him if he would come back to the sheriff's office, the

investigations office, to discuss the case with them to find out about his son, find out the status of his girlfriend, so on and so forth. As a direct result of that, he agreed to go back to the office.” Id. at 16

- Based on the officers’ discussion with Mr. Daise, Master Sergeant Purdy “proceeded to get a search warrant” for Mr. Daise’s person. Id. at 17.

Master Sergeant Purdy then testified on cross-examination as follows:

- Master Sergeant Purdy has been in law enforcement for approximately twenty years and has taken part in drafting “over a hundred search warrants.” Ex. 3 at 22. Master Sergeant Purdy testified that he has received training on drafting warrant affidavits. Id.
- Master Sergeant Purdy agreed that a warrant affidavit must contain specific information to establish probable cause and that the affidavit must establish the source of any information provided in the affidavit. Id. at 23; 26-27.
- Master Sergeant Purdy disagreed that a warrant affidavit should establish the basis on which the affiant chooses to rely on a particular witness, stating that “if the judge wants more details about the specifics in a warrant, he or she will ask, and then they may have us amend the search warrant if they don’t like what – if there’s not enough in it.” Id. at 26.
- Master Sergeant Purdy then testified that the Foskey Affidavit does not contain an explanation of the source of its statement that “[d]uring the investigation, information was revealed that Ernest [sic] Daise was the possible shooter.” Id. at 32.

- Master Sergeant Purdy further testified that the Foskey Affidavit does not contain information concerning the source of its statement that “[w]itnesses place the subject at the scene at the time of the incident,” such as the name of the witnesses or the witnesses’ bases of knowledge. Id. at 33-34. Rather, Master Sergeant Purdy testified that “if the magistrate wanted to know their names, we would have shared that.” Id.
- Master Sergeant Purdy admitted that though the Foskey Affidavit states that “witnesses” saw Earnest Daise at 20 Player Road, Rebecca Nation, the *single* witness to whom he is sure the affidavit refers, did not identify Earnest Daise by name, but rather referred to him as “Jeanine’s boyfriend” or “E.” Id. at 35-36.
- Master Sergeant Purdy testified that where the Foskey Affidavit states that witnesses put Earnest Daise at Jeanine’s home “at the time of the incident,” “the time of the incident” actually refers to a multi-hour span from approximately 4:30 p.m. to approximately 7:30 p.m. Id. at 36-37.
- Master Sergeant Purdy testified that the Foskey Affidavit contains no information about where Mrs. Nation was standing when she supposedly saw “Jeanine’s boyfriend” or how far away she was at the time. Id. at 38.
- Master Sergeant Purdy also agreed that although the Foskey Affidavit states that a “[s]urviving victim told EMS personnel that his daddy, Ernest [sic] Daise, was the one who shot him,” the Foskey Affidavit does not disclose: (1) that the surviving victim referred to was Jeremiah Daise, (2) that Jeremiah was two years old at the time, (3) that EMS personnel solicited this statement by asking Jeremiah who hurt him, (4) that Jeremiah was actively being treated for a gunshot wound at the time of the statement, (5)

that Jeremiah could not name his daddy when asked, or (6) that Jeremiah answered “Doug” when asked his own name. Id. at 38-45.

- Master Sergeant Purdy agreed that a warrant affidavit must include information that “may be contradictory to [law enforcement’s] theory of the case.” Id. at 28.

Following Master Sergeant Purdy’s testimony, BCSO Criminal Investigator Christine L. Wilson testified on direct examination as follows:

- In August 2009, Sergeant Wilson was employed by the BCSO. Ex. 3 at 47. She was involved in the investigation of the shootings at 20 Player Road. Id. She submitted the Wilson Affidavit in support of a request for a warrant to search 43 Poppy Hill Road for “any evidence related to a murder.” Id. at 48.
- Sergeant Wilson testified that the investigation led to Earnest Daise based on statements made by Mrs. Nation and Jeremiah Daise. Specifically, “[a] witness reported that earlier in the afternoon Earnest Daise, who is Jeanine Mullen’s boyfriend, was observed pulling into the driveway at 20 Player Road . . .”, and “the two-year-old child said daddy did it, and Earnest Daise is the child’s father.” Id. at 49.
- Sergeant Wilson testified that law enforcement officers located Earnest Daise at 43 Poppy Hill Road and that he had “a red stain that appeared to be dry blood” on his jeans. Id. Based on the stain, Sergeant Wilson believed that evidence of the shootings would be located at 43 Poppy Hill Road. Id. at 50.

Sergeant Wilson then testified as follows on cross-examination:

- Sergeant Wilson has been in law enforcement for twenty-two years and has significant experience with warrant affidavits. Ex. 3 at 54.
- Sergeant Wilson agreed that “specificity is an important aspect of writing warrant affidavits” and that “to the best of your ability[,] . . . you put in where that information came from.” Id. at 55. She further agreed that “if you had any information that contradicted your theory, . . . you also provide the judge that information.” Id. at 57.
- Nevertheless, Sergeant Wilson testified that she does not ordinarily establish the reliability of her sources in a warrant affidavit. Id. at 56.
- Sergeant Wilson admitted that although the Wilson Affidavit stated that “[a] witness reported that earlier in the afternoon Ernest [sic] Daise, who is Jeanine Mullen’s boyfriend, was observed pulling into the driveway of 20 Player Road,” the Affidavit did not identify the witness as Mrs. Nation, did not describe what the witness saw, and did not contain information establishing the conditions under which the witness made her observation. Id. at 65.
- Sergeant Wilson admitted that the wording of the Wilson Affidavit implied that the witness, Mrs. Nation, told law enforcement that she saw Earnest Daise. Id. at 66. She further admitted that Mrs. Nation did not actually say “Earnest Daise.” Id. at 67.
- Sergeant Wilson admitted that although the Wilson Affidavit stated that “[f]ollowing the shooting incident, while being treated for his injuries, the two-year-old child said daddy did it,” the Affidavit did not include the information that the child was Jeremiah Daise or that Jeremiah misidentified himself as “Doug.” Id. at 68-70. Nor did the Wilson

Affidavit explain how law enforcement established that Earnest Daise was Jeremiah's father. Id. at 68-70.

Mrs. Rebecca Nation, Jeanine Mullen's neighbor at the time of the shooting, then testified via Skype as follows:

- Mrs. Nation lived at 24 Player Road at the time of the shootings at 20 Player Road. Ex. 3 at 75. Mrs. Nation knew Jeanine, and their children often played together. Id. at 75-76.
- After dinner on November 16, 2009, while Mrs. Nation and her husband were standing on a side porch facing Jeanine's house and smoking cigarettes, Mrs. Nation saw "what I believed to be Jeanine's boyfriend pull up in her van, get out, and walk into Jeanine's house." Id. at 76.
- Mrs. Nation testified that she did not know the name of Jeanine's boyfriend at the time, nor was she asked by law enforcement to attempt to identify the person she saw. Id. Mrs. Nation only remembers seeing "a black male, mid/early-thirties, mid thirties. He was dressed in a white, fleece sweater looking thing, and tan pants, with a tan beanie on his head." Id.

Finally, BCSO Staff Sergeant Jody Hiers testified on direct examination as follows:

- In November of 2009, Staff Sergeant Hiers was employed by the BCSO. Staff Sergeant Hiers was involved in the investigation of the shootings at 20 Player Road, including conducting the interview of Mrs. Nation. Id. at 89.
- Staff Sergeant Hiers testified that in addition to having Mrs. Nation complete a written statement in her own words, Staff Sergeant Hiers also took notes of the interview. Id. at

90. In his interview notes, Staff Sergeant Hiers wrote that Mrs. Nation stated that “E was wearing what appeared to be a dark in color hoodie-type sweatshirt, blue jeans, and what appeared to be a brownish knit cap on his head.” Id. at 90-91.

Staff Sergeant Hiers then testified on cross-examination as follows:

- Staff Sergeant Hiers’s interview notes were dated December 16, 2009, a full month after the shootings at 20 Player Road, and after Staff Sergeant Hiers had conducted at least ten other interviews. Ex. 3 at 93-95. Staff Sergeant Hiers testified that he “make[s] sure to type [his notes] up within a reasonable amount of time,” and it is thus unlikely that he waited until December 16, 2009. Id.
- Staff Sergeant Hiers testified that when Mrs. Nation mentioned “Jeanine’s boyfriend,” he did not ask her how well she knew Jeanine’s boyfriend or whether she had spent any time with Jeanine’s boyfriend. Id. at 99. Staff Sergeant Hiers acknowledged that he did not provide photographs to see if Mrs. Nation could identify Jeanine’s boyfriend or organize a “show-up” identification. Id.

II. Law

A. Search warrants must be supported by an independent finding of probable cause by a neutral magistrate.

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,” and further provides that “no Warrants shall issue, but upon probable cause . . . particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const., amend. IV. “A search compromises the individual interest in privacy[,] [and] a seizure deprives the individual of dominion over his or her person or property.” Horton v. California, 496 U.S. 128, 133 (1990)

(citing United States v. Jacobsen, 466 U.S. 109, 113 (1984)). Thus, the Fourth Amendment requires that the probable cause determination must be made by a neutral magistrate to “insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause.” Wong Sun v. United States, 371 U.S. 471, 481 (1963).

South Carolina law similarly requires a finding of probable cause by a neutral and detached magistrate prior to the issuance of a valid search warrant. State v. Baccus, 625 S.E.2d 216, 220-21 (S.C. 2006). South Carolina Code of Laws § 17-13-140 mandates that the information used to make such a determination be set forth in an affidavit sworn to by the law enforcement officer requesting the search warrant. Consequently, the affidavit must contain “particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter.” Baccus, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154, 165 (1978)); see also State v. Smith, 392 S.E.2d 182, 183 (S.C. 1990) (“[m]ere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient”). After being presented with a sworn affidavit, “the task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983); see also State v. Driggers, 473 S.E.2d 57, 59 (S.C. Ct. App. 1996).

B. A finding of probable cause may not be based on false information in the supporting affidavit.

When a defendant alleges that a warrant affidavit contains a false statement, the necessary course of action articulated in State v. Jones, 500 S.E.2d 499 (S.C. Ct. App. 1998), is triggered. In Jones, the Court of Appeals held:

In the event that...the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Jones, 500 S.E.2d at 501 (quoting Franks, 438 U.S. at 155-56)); see also State v. Missouri, 524 S.E.2d 394, 397-98 (S.C. 1999) (same).²

C. Law enforcement may not omit material, exculpatory information.

In State v. Missouri, the South Carolina Supreme Court recognized that the test of Franks v. Delaware applies to warrant affidavits containing false information that was intentionally or recklessly provided, as well as to "acts of omission in which exculpatory material is left out of the affidavit." Missouri, 524 S.E.2d at 397. The facts of State v. Missouri were particularly egregious because the exculpatory information omitted from the warrant affidavit went to the heart of probable cause, and because the affidavit also contained a false statement on the same subject matter. In affirming reversal of Missouri's conviction, the Court stated, "When an omission is combined with an affirmative falsehood, it reveals that the affiant not only believed

² Although the Foskey and Wilson Affidavits were not supplemented by oral testimony, even if they had been, such oral testimony cannot stand in the place of false information in an affidavit, or provide information that should have been included, in order to establish probable cause. Jones, 500 S.E.2d at 502 (citing State v. McKnight, 352 S.E.2d 471, 472 (S.C. 1987) (holding that oral testimony standing alone does not fulfill the statutory requirement of Section 17-13-140)).

the omitted information was critical, but that a statement in the affidavit to the contrary was necessary for establishing probable cause.” Missouri, 524 S.E.2d at 398.

III. Argument

All Americans are constitutionally protected from unreasonable searches and seizures. U.S. Const., amend. IV; see also Katz v. United States, 389 U.S. 347, 351 (1967). As a result, the laws of the United States and South Carolina require that all search warrants be supported by a sworn statement containing “particular facts and circumstances underlying the existence of probable cause.” Baccus, 625 S.E.2d at 221 (citing Franks, 438 U.S. at 165); see also S.C. Code Ann. § 17-13-140. This vital protection is reduced to a nullity when law enforcement officers make false statements or omit material facts about probable cause, thereby preventing an independent determination about the constitutionality of a search based on the totality of the circumstances. When, as here, law enforcement officers rob the issuing judge of his or her ability to assess the existence of adequate probable cause, it is for this Court to right the wrong by making its own independent determination of probable cause without the taint of false information and including material information that was originally omitted. Jones, 500 S.E.2d at 501; Franks, 438 U.S. at 155-56.

The testimony given on February 4, 2013 demonstrates that officers of the BCSO have either a startling misunderstanding of, or a blatant disregard for, what they are required to provide in a warrant affidavit. According to officer testimony, omitting relevant information from warrant affidavits is tantamount to standard operating procedure. See, e.g., Ex. 3 at 26 (“if the judge wants more details about the specifics in a warrant, he or she will ask”); id. at 33-34 (acknowledging the omission of key facts about a witness’s basis of knowledge). The investigating officers in this case intentionally did not disclose material information about, for

example, the reliability of witness statements going to matters as fundamental as a *suspect's identity*. See, e.g., Ex. 3 at 38-45 (admitting that highly relevant information about supposed witness identification of Mr. Daise was omitted); id. at 68-70 (same); id. at 56 (admitting to *routinely* omitting information establishing or refuting the reliability of witnesses whose statements form the basis for alleged probable cause).

Moreover, Master Sergeant Purdy and Sergeant Wilson admitted that the statement in both affidavits that witnesses identified Mr. Daise at the scene was false and misleading. See, e.g., Ex. 3 at 35-36 (admitting that Rebecca Nation did *not* identify Earnest Daise by name); id. at 67 (admitting that the Wilson Affidavit implied that Mrs. Nation told law enforcement she saw Earnest Daise when she did not). This conduct is intolerable in any case, but particularly so coming from law enforcement officers with decades of experience and training in drafting warrant affidavits.

The law governing searches and seizures is clear. Officers may not pick and choose which relevant facts about probable cause to include in warrant affidavits.³ They may not fabricate evidence to bulk up their statements of probable cause. They may not substitute their own judgment about the reliability of a witness or statement for that of the judge. The burden is not on the issuing judge to prod them for additional information or to question the truth of the information provided. It is the officers' job to provide a truthful and complete statement of probable cause, even when portions of such a statement may contradict their theory of the case. Their failure to do so in this case fundamentally undermined Magistrate Chase's ability to assess the existence of probable cause based on the totality of the circumstances. Indeed, that

³ Master Sergeant Purdy and Sergeant Wilson both gave lip service to this principle during their testimony, but the deficient warrant affidavits demonstrate that it was not taken seriously in this case. See Ex. 3 at 28, 57.

determination was not even possible here because the information presented to Judge Chase was the exact opposite of a totality of the circumstances.

The affidavits submitted in support of the applications for warrants to search Mr. Daise's person and 43 Poppy Hill Road contain false statements that must be disregarded and omit material information that must be considered in this Court's determination about probable cause. Once the false information is removed and the omitted information added, it becomes clear that there was inadequate probable cause to support either search, and all the evidence derived therefrom, either directly or indirectly, must be suppressed.

A. The search of Mr. Daise's person was not supported by adequate probable cause.

- i. Because the Foskey Affidavit contains false information going to the heart of probable cause, this Court must make its own independent determination of probable cause without considering the false information.**

The Foskey Affidavit submitted in support of the application to search Mr. Daise states that "[w]itnesses placed the subject at the scene at the time of the incident." Ex. 1 (identifying the "subject" as "Ernest [sic] Daise"). This statement is false on its face for at least two reasons. First, Master Sergeant Purdy testified that the "witnesses" statement in the Foskey Affidavit refers to Rebecca Nation, a single witness. Ex. 3 at 35-36.⁴ As a result, the use of "witnesses" in the Foskey Affidavit is, itself, false and misleading. Second, even if Foskey was referring to multiple witnesses, the statement is still false because *no one* identified Mr. Daise at the scene at the time of the incident. Witness statements produced in the course of discovery in this case

⁴ It is worth noting that Sergeant Foskey did not include any further information about the witness to whom he was referring. As a result, Master Sergeant Purdy had to make an assumption about the person Sergeant Foskey meant. If he had to make such an assumption, it is obvious that Magistrate Chase had to do the same, as would this Court. An affidavit so lacking in detail as to require these sorts of assumptions is inherently flawed. *Jenkins*, 727 S.E.2d at 765 (an affidavit that "lacks specificity" is insufficient to establish probable cause).

indicate that only two people supposedly identified Mr. Daise at 20 Player Road at the time of the incident. Stmt. Of R. Nation, attached hereto as **Exhibit 4**; Stmt of D. Tinnel, attached hereto as **Exhibit 5**. The first was a neighbor, Rebecca Nation, who resided at 24 Player Road. The second was Jeanine Mullen's then two-year-old son. Neither of those people actually identified Mr. Daise, however, making the statement that witnesses placed Mr. Daise at the scene false.

Mrs. Nation recalls telling police that at approximately 4:30 pm on November 15, 2009, she observed Ms. Mullen's white van pull up in front of 20 Player Road and saw a black male get out. R. Nation Aff., ¶¶ 5-6 (Aug. 21, 2012), attached hereto as **Exhibit 6**; Ex. 3 at 76. As Mrs. Nation told the police at the time, she assumed that the person she saw was Ms. Mullen's boyfriend, but did not remember the boyfriend's name. Ex. 6 at ¶ 6; Ex. 3 at 76. As a result, it was not possible for Mrs. Nation to identify Mr. Daise by name or place him at the scene at the time of the incident. Police never asked Mrs. Nation to identify the man she saw by showing her a photo of Mr. Daise or anyone else. Ex. 6 at ¶ 9; Ex. 3 at 99.

The only other person who allegedly identified Mr. Daise as being at the scene at the time of the incident was a two-year-old child who also did not identify Mr. Daise, and whose statements were demonstrably unreliable. Shortly after the injured child was discovered at the scene, EMS personnel asked the child who hurt him and the child answered "daddy." Ex. 5. The child did not identify Mr. Daise. In fact, when EMS personnel asked the child who his "daddy" was, the child did not answer. Id.

Neither of the people who supposedly placed Mr. Daise at the scene at the time of the incident actually identified him. Because there was no witness to supply Mr. Daise's name, Sergeant Foskey supplied it himself in order to bolster an otherwise insufficient statement of

probable cause. The false statement concerning witness identification of Mr. Daise at the scene cannot be used to form any basis for probable cause and must be disregarded.

ii. Because the Foskey Affidavit omits material information, making it misleading, the Court must also consider the omitted information in making its independent determination of probable cause.

As the South Carolina Supreme Court has recognized, omitting information from an affidavit related to probable cause for the purpose of misleading the issuing judge, or with reckless disregard for whether the judge will be misled, is just as egregious as including false statements. See Missouri, 524 S.E.2d at 397. The problem is particularly serious where, as in this case, the omissions are accompanied by false statements that relate to the same subject. *Id.* at 398 (the presence of false statements and omissions on the same subject “reveals that the affiant not only believed the omitted information was critical, but that a statement in the affidavit to the contrary was necessary for establishing probable cause”).

The Foskey Affidavit states that witnesses, necessarily including Mrs. Nation, placed Mr. Daise at 20 Player Road on November 15, 2009 at the time of the incident. That false statement is accompanied by telling omissions that must be considered in this Court’s determination about probable cause. The Foskey Affidavit does not disclose that Mrs. Nation: (1) merely assumed that the person she saw was Ms. Mullen’s boyfriend, but could not confirm that; (2) did not recall Ms. Mullen’s boyfriend’s name; and (3) was never asked to identify the person she saw from a photograph of Mr. Daise or anyone else.

The Foskey Affidavit also omits material information about what Mrs. Nation *did* see. It does not disclose that, according to Mrs. Nation, the man she saw at 20 Player Road at approximately 4:30 pm on November 15, 2009 was dressed in clothing substantially different from the clothing Mr. Daise was wearing at the time of his interview with police not long after

the incident. Mrs. Nation recalls telling police that she saw a man wearing “a white fleece-type shirt, tan pants, and a tan beanie cap.” Ex. 6 at ¶ 6; Ex. 3 at 76. The Foskey Affidavit, in contrast, describes Mr. Daise’s clothing as a “white tank top shirt, blue jean pants and a pair of blue and white Nike shoes,” and notes that the jeans had what appeared to be blood on them. Ex. 1. Omitting Mrs. Nation’s description of the clothing makes the affidavit misleading because it implies that blood got on a pair of jeans Mr. Daise was wearing during the commission of the crime when Mrs. Nation recalls that she had already told police the man she saw was wearing “tan pants,” not jeans. Ex. 6 at ¶ 6; Ex. 3 at 76.

In addition to omissions concerning Mrs. Nation’s statements, the Foskey Affidavit omits key information concerning the only other person to allegedly place Mr. Daise at the scene at the time of the incident. Sergeant Foskey did not tell Judge Chase that the child who stated that his “daddy” hurt him was only two years old. He also did not tell Judge Chase that: (1) the child did not answer when EMS personnel asked who his “daddy” was; (2) the child was seriously injured from a gunshot wound at the time he allegedly made the “daddy” statement; and (3) that the child misidentified *himself* when EMS personnel asked his name. Ex. 5; Stmt. of S. Orsen, attached hereto as **Exhibit 7**.

Sergeant Foskey therefore omitted material information going directly to the questionable reliability of the child’s statement. But a decision about the veracity of the child’s statement was not his to make. State v. Johnson, 395 S.E.2d 167, 169 (S.C. 1990) (“Without information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime....”). Sergeant Foskey’s improper omissions prevented Judge Chase from fulfilling his

obligation to independently consider facts going to the child's "veracity and basis of knowledge." State v. Jenkins, 727 S.E.2d 761, 764-65 (S.C. Ct. App. 2012) (internal quotations and citations omitted); see also Gates, 462 U.S. at 233 (stating that "veracity" and "basis of knowledge" are "relevant considerations in the totality-of-the-circumstances analysis that traditionally has guided probable cause determinations").

Because the omissions concerning Mrs. Nation and the child relate to subjects about which the Foskey Affidavit also makes a false statement—that witnesses placed Mr. Daise at the scene at the time of the incident—there is a strong presumption that Sergeant Foskey believed the omitted facts were material. As a result, those omitted facts should be taken into account when this Court makes an independent determination about probable cause.

Finally, the Foskey Affidavit omits important information about the "red in color" spot on the jeans Mr. Daise was wearing during his interview with police in the early morning hours of November 16, 2009. Although the affidavit notes the presence of what "appears to be blood" on Mr. Daise's pants, it neglects to disclose that the spot police observed was isolated and small in size. Instead of providing Judge Chase with this relevant information—information that could have led him to reasonably conclude that the spot on Mr. Daise's pants was inconsistent with his being present during a multiple shooting incident—the affidavit strategically omits an accurate description of the spot because it would have subtracted from, rather than added to, the statement of probable cause.

Judge Chase was entitled, as is this Court, to consider *all* the material facts concerning probable cause, whether supporting or detracting. Those facts include Mrs. Nation's description of the man she saw, information going to the veracity of the child's statement, and the true nature of the spot on Mr. Daise's jeans. Sergeant Foskey omitted these important facts either intending

to mislead Judge Chase, or with reckless disregard for the fact that Judge Chase would be misled. As a result, they must be included in this Court's independent analysis of probable cause.

iii. The remaining content of the Foskey Affidavit is insufficient to establish probable cause.

Removing the false statements from the Foskey Affidavit (struck through) and adding the material omissions (underlined) results in a statement of probable cause that is far from sufficient:

That on November 15, 2009 three people were shot at a residence 20 Player Road in Dale within Beaufort County South Carolina. Two of the people died at the scene. During the investigation information was revealed that Ernest [sic] Daise was the possible shooter in the incident. Witnesses placed ~~the subject a~~ black male at the scene at the time of the incident. The surviving victim is the victim's two-year-old son who told EMS personnel that his "daddy" ~~Ernest Daise~~ was the one who shot him. When asked to identify his father, the child did not respond. The child was severely injured at the time he made the statement and, when asked his own name, said the wrong name. A red in color substance was observed on the subjects [sic] clothing at the time of his interview and the substance appears to be blood. The substance appears as a small spot. The clothing the subject was wearing during his interview is inconsistent with a witness's description of the possible shooter's clothing.

Once the false statements are removed, the remaining statements in the Foskey Affidavit concerning Mr. Daise's supposed connection to the shooting incident are conclusory and inadequate to establish probable cause as a matter of law. Jenkins, 727 S.E.2d at 765 (an affidavit that "lacks specificity and contains nothing more than conclusory statements" is insufficient to establish probable cause because it "fails to meet the requirement of showing why" police believe a subject committed a crime).

The statement in the Foskey Affidavit that the investigation revealed information that Mr. Daise was the shooter, without more, cannot possibly reach the required level of specificity. Baccus, 625 S.E.2d at 221 (requiring affidavits to "set forth particular facts and circumstances

underlying the existence of probable cause"); Jenkins, 727 S.E.2d at 765 (same). Moreover, the statement that police saw a spot of a "red substance" on Mr. Daise's jeans does not explain *why* police believed Mr. Daise committed the crime. Jenkins, 727 S.E.2d at 765; see also Wong Sun, 371 U.S. at 484 (a "vague suspicion" cannot be "transformed into probable cause").

When the material omissions are included, they further erode the paltry statement of probable cause and demonstrate that Judge Chase could not have made the requisite determination about probable cause based on a totality of the circumstances. Including the material omissions makes clear that Judge Chase was prevented from considering that: (1) there were no witnesses who placed Mr. Daise at the scene at the time of the incident; (2) there was insufficient physical evidence to tie Mr. Daise to the crime; (3) there are serious questions about the veracity of the child's statement; and (4) the clothing that was seized was inconsistent with the clothing of the possible shooter as described by an eye witness. This Court's probable cause determination should be based on all the relevant circumstances, including those that were hidden from Judge Chase. When the omitted facts are included, they reduce the affidavit's statements of probable cause to nothing.

B. The search of 43 Poppy Hill Road was not supported by adequate probable cause.

The Wilson Affidavit presented to Judge Chase in connection with the application to search 43 Poppy Hill Road is deficient for many of the same reasons as the Foskey Affidavit. As a result, like the search of Mr. Daise's person, the search of 43 Poppy Hill Road was illegal because it was not supported by an adequate showing of probable cause.

- i. **Because the Wilson Affidavit contains false information going to the heart of probable cause, this Court must make its own independent determination of probable cause without considering the false information.**

The Wilson Affidavit submitted in support of the application to search 43 Poppy Hill Road states that “[a] witness reported that earlier in the afternoon, Ernest [sic] Daise, who is Jeanine Mullen’s boyfriend, was observed pulling into the driveway of 20 Player Road in Ms. Mullen’s van, and getting out of the vehicle.” Ex. 2. That statement is false and should not be included in this Court’s independent analysis of probable cause. Mrs. Nation, the “witness” this statement refers to, merely reported that she had seen a black male she assumed was Ms. Mullen’s boyfriend pull up in Ms. Mullen’s van. Ex. 3 at 76. As discussed above, Mrs. Nation did not identify Mr. Daise because she could not; she did not know who Mr. Daise was.

The Wilson Affidavit also claims that the two-year-old child answered “Daddy did it” when asked who shot him. As an initial matter, the Wilson Affidavit is inconsistent with other accounts on this point. Witness statements from EMS personnel who treated the child reflect that, when asked who hurt him, the child answered “daddy.” Additionally, the child did not identify Mr. Daise by name at any time, and, in fact, could not even correctly identify himself. The Wilson Affidavit’s assertion to the contrary—that the child said “Ernest [sic] Daise was the one who shot him”—is false and should be disregarded.

- ii. **Because the Wilson Affidavit omits material information, making it misleading, the Court must also consider the omitted information in making its independent determination of probable cause.**

Like the Foskey Affidavit, the Wilson Affidavit pairs a false statement with material omissions on the same subject, indicating that Sergeant Wilson believed the omissions were material. While stating that a witness (Mrs. Nation) saw Mr. Daise pull into the driveway of 20 Player Road at the time of the incident, it does not disclose that Mrs. Nation: (1) only assumed

that the person she saw was Ms. Mullen's boyfriend; (2) did not recall the boyfriend's name; and (3) was never asked to identify the person she saw from a photograph of Mr. Daise or anyone else. Ex. 3 at 67, 76, 99. Because these omissions directly pertain to the identity of the person Mrs. Nation saw, they are material and should be considered in this Court's independent determination of probable cause.

The Wilson Affidavit further omits important information bearing directly on the veracity of the only other person to allegedly place Mr. Daise at the scene at the time of the incident. Like Sergeant Foskey, Sergeant Wilson did not tell Judge Chase that: (1) the child who supposedly identified Mr. Daise did not answer when EMS personnel asked him to identify his father; (2) the child was seriously injured from a gunshot wound at the time he allegedly made the "daddy" statement; and (3) the child gave a demonstrably incorrect answer when asked his own name. Ex. 3 at 68-70. Sergeant Wilson also failed to disclose that EMS accounts of the child's behavior in the ambulance differ from each other. Specifically, Crew Chief Danny Tinnel told law enforcement that the child did not answer the question about who his father is, but did answer medical questions Mr. Tinnel asked subsequently. Ex. 5. Paramedic Shayna Orsen, however, told law enforcement that the child did not respond when asked to identify his father, and did not respond to any further questions at all. Ex. 7.

Sergeant Wilson therefore omitted material information that misled Judge Chase about the reliability of the child's statement. In doing so, she improperly substituted her own opinion about the child's statement for Judge Chase's. Johnson, 395 S.E.2d at 169. Judge Chase was therefore unable to independently consider facts going to the child's "veracity and basis of knowledge," as he was required to do. Jenkins, 727 S.E.2d at 764-65 (internal quotations and citations omitted); Gates, 462 U.S. at 233.

In addition to omissions related to false statements, the Wilson Affidavit also strategically omits material information Mrs. Nation recalls providing to law enforcement that distinguishes the person she saw at the scene from Mr. Daise. Sergeant Wilson, like Sergeant Foskey, did not inform Judge Chase that the man Mrs. Nation saw at 20 Player Road around 4:30 pm on November 15, 2009 was dressed in clothing substantially different from the clothing police sought from Mr. Daise as potential evidence of his presence at the scene. Omitting Mrs. Nation's description of the clothing makes the Wilson Affidavit just as misleading as the Foskey Affidavit because it implies that blood got on a pair of jeans Mr. Daise was wearing during the commission of the crime, when Mrs. Nation recalls that she had already told police the man she saw was wearing "tan pants," not jeans. Ex. 6 at ¶ 6; Ex. 3 at 76.

Finally, the Wilson Affidavit makes the same omission as the Foskey Affidavit concerning the "red in color" spot on Mr. Daise's jeans, neglecting to provide a description of the spot. Instead of providing Judge Chase with this relevant information—information that could have led him to reasonably conclude that the spot on Mr. Daise's pants was inconsistent with his being present during a multiple shooting incident—the Wilson Affidavit omits an accurate description of the spot because it would have subtracted from, rather than added to, the statements of probable cause.

Officers were required to present *all* the material facts concerning probable cause, whether supporting or detracting, to Judge Chase. Those facts included Mrs. Nation's description of the man she saw, information going to the reliability of the child's statement, and the true nature of the spot on Mr. Daise's jeans. Sergeant Wilson omitted these important facts, either intending to mislead Judge Chase, or with reckless disregard for the fact that Judge Chase

would be misled. As a result, they must be included in this Court's independent analysis of probable cause.

iii. The remaining content of the Wilson Affidavit is insufficient to establish probable cause.

Removing the false statements from the Wilson Affidavit (struck through) and adding the material omissions (underlined) results in an insufficient statement of probable cause:

Shortly before 7:00 PM on November 15, 2009, BCSO responded to 20 Player Rd, Dale, SC, regarding the report of three gunshot victims inside the residence. Two of the victims, a woman (Jeanine Mullen), and her four-year-old son, were pronounced dead at the scene; her two-year-old son also sustained a gunshot wound and was transported the [sic] hospital. A witness reported that earlier in the afternoon, Ernest [sic] Daise, ~~who is Jeanine Mullen's boyfriend, a black male~~ was observed pulling into the driveway of 20 Player Rd in Ms. Mullen's van, and getting out of the vehicle. ~~Following the shooting incident, while being treated for his injuries, the two-year-old child said, "Daddy did it;"~~ The surviving victim is the victim's two-year-old son who told EMS personnel that his "daddy" Ernest Daise was the one who shot him. When asked to identify his father, the child did not respond. The child was severely injured at the time he made the statement and, when asked his own name, said the wrong name. Even though the child's name is Jeremiah, he told EMS personnel that his name was "Doug." There are conflicting witness accounts concerning whether the child was able to accurately answer any other questions, or if he was able to answer at all. Ernest [sic] Daise is the child's father. Shortly after 2:00 AM on November 16, 2009, Ernest [sic] Daise was located at 43 Poppy Hill Rd, Burton, SC, where he lives, which is a residence he frequents. He was wearing blue jeans, on which a red stain that appeared to be dried blood was observed just below the left front pocket opening. The substance appears as a small spot. The clothing the subject was wearing during his interview is inconsistent with a witness's description of the possible shooter's clothing. It is believed that based on the foregoing information, evidence of the murder will be located at the premises to be searched.

Once the false statements are removed, the remaining statements in the Wilson Affidavit concerning Mr. Daise are conclusory: (1) that Mr. Daise is the child's father, which is unsupported by any further information in the affidavit and, in fact, is not confirmed even today; (2) that Mr. Daise lives at a residence that is not connected to the crime being investigated except through false statements; and (3) that Mr. Daise was wearing clothing during his interview that is

inconsistent with a witness's statement about clothing the potential shooter was wearing. These conclusory statements are inadequate to establish probable cause as a matter of law. Jenkins, 727 S.E.2d at 765 (an affidavit that "lacks specificity and contains nothing more than conclusory statements" is insufficient to establish probable cause because it "fails to meet the requirement of showing why" police believe a subject committed a crime). Similarly, the statement: "It is believed that based on the foregoing information, evidence of the murder will be located at the premises to be searched," is conclusory and insufficient to establish probable cause because, as the corrected affidavit makes clear, there is *no information* upon which Judge Chase could have based a decision about probable cause to search Mr. Daise's residence. The corrected affidavit is therefore completely devoid of any information explaining *why* law enforcement thought Mr. Daise was connected to the crime they were investigating.

Sergeant Wilson's omissions are particularly telling as a result. Because Judge Chase's probable cause decision was limited to what Sergeant Wilson included in her grossly deficient affidavit, he was prevented from considering material facts including: (1) that there were no witnesses who placed Mr. Daise at the scene at the time of the incident; (2) that there was no physical evidence to tie Mr. Daise to the crime; (3) that there were serious questions about the veracity of the child's statements; and (4) that the clothing Mr. Daise was wearing during his interview was inconsistent with the clothing of the possible shooter as described by an eye witness. This Court's probable cause determination should be based on all the circumstances, including those that were hidden from Judge Chase. When the omitted circumstances are included, they clearly demonstrate an absence of probable cause to justify the search of 43 Poppy Hill Road.

C. All evidence derived from the illegal searches and seizures was also illegally obtained and must be suppressed.

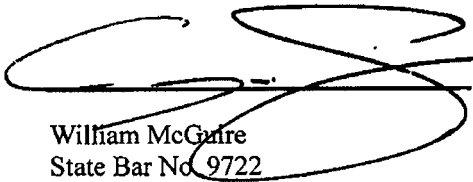
The “exclusionary rule” is part of the foundation of our legal system and exists not only to protect the “fundamental constitutional guarantees” of each citizen, but also to prevent the State from benefitting from its own unlawful actions. Wong Sun, 371 U.S. at 484 (internal citations omitted). Consequently, evidence obtained directly or indirectly from an illegal search cannot be used against a criminal defendant in court, or indeed *at all*. Id. at 484-85 (quoting Silverthorn Lumber Co. v. United States, 251 U.S. 385, 392 (1920)) (emphasis added).

Because the warrants to search Mr. Daise and 43 Poppy Hill Road were not supported by adequate probable cause, and because the State has not provided any other justification for the searches, the searches were illegal and their fruits must be suppressed.

IV. Conclusion

The affidavits presented in connection with the applications for warrants to search Mr. Daise and 43 Poppy Hill Road fail to establish probable cause by any measure. They are replete with false statements made knowingly and intentionally, or with a reckless disregard for the truth. They omit material exculpatory information—including information that directly contradicts false statements—for the purpose of misleading the issuing magistrate, or with reckless disregard for the fact that the issuing magistrate would be misled. The affidavits utterly fail to achieve any lawful objective, and instead excel at duping an independent magistrate into signing improper search warrants in violation of Mr. Daise’s well-established constitutional rights. The State may not use the items seized and the evidence developed as a result of these illegal searches for any purpose. As a result, Mr. Daise, through his undersigned counsel, respectfully requests that all fruits of the illegal searches, whether direct or indirect, be suppressed.

Respectfully submitted,



For:

William McGuire
State Bar No. 9722
SCCID, Capital Trial Division
1330 Lady Street, Ste. 401
Columbia, SC 29201
803-734-7818

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

**IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Defendant.

Ind. No.s: 2009-GS-07-2636, 2637, 2638, 2639

The undersigned hereby certifies that a copy of pleading listed below has been mailed by U.S. First Class Mail addressed to I. McDuffie Stone and Sean P. Thornton, 14th Circuit Solicitor's Office, PO Box 1880, Bluffton, SC 29910.

This 10th day of September, 2013.

**Defense's Memorandum of Law in Support of Defendant's Motion
to Suppress Physical Evidence**


Natasha J. Holliday

EXHIBIT

1

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SEARCH WARRANT

DATE NOVEMBER 16, 2009

OFFICER SGT. JOHN W. FOSKEY

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
122

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT SC

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-43-600
March 14, 1999

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PERSON OF ERNEST DAISE, BLACK MALE, DOB [REDACTED], SSN: [REDACTED]

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize
such property if found:

DESCRIPTION OF PROPERTY

CLOTHING BEING WORN BY ERNEST DAISE AT THE TIME OF HIS INTERVIEW AT THE BEAUFORT COUNTY SHERIFF'S
INVESTIGATIONS OFFICE AT 1925 DUKE STREET IN BEAUFORT, SC. CLOTHING TO INCLUDE A WHITE TANK TOP
SHIRT, BLUE JEAN PANTS AND A PAIR OF BLUE AND WHITE NIKE SHOES.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person
in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy
shall be attached to a prominent place on such premises.

Beaufort, S.C.
NOVEMBER 16, 19 2009

[Signature]
Signature of Judge

(L.S.)

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
123

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BEAUFORT

Personally appeared before me, one SGT. JOHN W. FOSKEY
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

CLOTHING BEING WORN BY ERNEST DAISE AT THE TIME OF HIS INTERVIEW AT THE BEAUFORT COUNTY

SHERIFF'S INVESTIGATIONS OFFICE AT 1925 DUKE STREET IN BEAUFORT SC. CLOTHING TO INCLUDE A

WHITE TANK TOP SHIRT, BLUE JEAN PANTS AND A PAIR OF BLUE AND WHITE NIKE SHOES.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

THE PERSON OF ERNEST DAISE, BLACK MALE, DOB [REDACTED] SSN [REDACTED]

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES
THAT ON NOVEMBER 15, 2009 THREE PEOPLE WERE SHOT AT A RESIDENCE 20 PLAYER ROAD IN DALE WITHIN
BEAUFORT COUNTY SOUTH CAROLINA. TWO OF THE PEOPLE DIED AT THE SCENE. DURING THE INVESTIGATION
INFORMATION WAS REVEALED THAT ERNEST DAISE WAS THE POSSIBLE SHOOTER IN THIS INCIDENT. WITNESSES
PLACED THE SUBJECT AT THE SCENE AT THE TIME OF THE INCIDENT. THE SURVIVING VICTIM IS THE VICTIM'S
SON WHO TOLD EMS PERSONNEL THAT "HIS DADDY" ERNEST DAISE WAS THE ONE WHO SHOT HIM. A RED IN
COLOR SUBSTANCE WAS OBSERVED ON THE SUBJECTS CLOTHING AT THE TIME OF HIS INTERVIEW AND THE
SUBSTANCE APPEARS TO BE BLOOD.

Sworn to and Subscribed before me
this 15th day of November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant
Address 1925 DUKE ST BEAUFORT, SC
Phone 843-470-3214

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
124

RETURN

I received the attached Search Warrant November 16, 2009, and have executed it as follows:
On November 16, 2009 at 0625 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Ernest Daise
Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

1 White Tank Top Shirt
1 Pair Blue Jeans
1 Pair Nike Blue + white shoes

This inventory was made in the presence of MSGT JEFF Pandy + SLED agent JEFF Crooks
AND _____

I swear that the inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 23^d
DAY OF November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

EXHIBIT

2

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SEARCH WARRANT

DATE November 16, 2009

OFFICER Sgt C. L. Wilson

2009-1115-0557
Search Warrant served at 0505
hours on 11-16-09 at 43 Poppy Hill Rd

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
126

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Beaufort

Personally appeared before me, one Sgt C. L. Wilson who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Evidence related to a murder, including, but not limited to: firearms, spent shell casings, live ammunition, cellular telephones, letters, photographs, and other documents; and forensic evidence, including, but not limited to: blood, saliva, hair, fibers, other bodily fluids, and any items containing such forensic evidence, such as clothing, rags, or towels.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The residence located at 43 Poppy Hill Rd in the Grays Hill community of Burton, SC. Said residence is described as a white double- wide mobile home with green shutters and is surrounded by a wooden privacy fence. A mailbox at the end of the driveway is marked with the number "43."

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Shortly before 7:00 PM on November 15, 2009, BCSO responded to 20 Player Rd, Dale, SC, regarding the report of three gunshot victims inside the residence. Two of the victims, a woman (Jeanine Mullen), and her four-year-old son, were pronounced dead at the scene; her two-year-old son also sustained a gunshot wound and was transported the hospital. A witness reported that earlier in the afternoon, Ernest Daise, who is Jeanine Mullen's boyfriend, was observed pulling into the driveway of 20 Player Rd in Ms. Mullen's van, and getting out of the vehicle. Following the shooting incident, while being treated for his injuries, the two-year-old child said, "Daddy did it." Ernest Daise is the child's father. Shortly after 2:00 AM on November 16, 2009, Ernest Daise was located at 43 Poppy Hill Rd, Burton, SC, which is a residence he frequents. He was wearing blue jeans, on which a red stain that appeared to be dried blood was observed just below the left front pocket opening. It is believed that based on the foregoing information, evidence of the murder will be located at the premises to be searched.

Sworn to and Subscribed before me
this 16 day of November 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant

Address 2001 Duke St
Beaufort, SC 29902
Phone 470-3213

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
127

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

SEARCH WARRANT

Form Approved by
U.S. Attorney General
Section 17-13-400
March 14, 1914

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Beaufort

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The residence located at 43 Poppy Hill Rd in the Grays Hill community of Burton, SC. Said residence is described as a white double-
wide mobile home with green shutters and is surrounded by a wooden privacy fence. A mailbox at the end of the driveway is marked
with the number "43."

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Evidence related to a murder, including, but not limited to: firearms, spent shell casings, live ammunition, cellular telephones, letters,
photographs, and other documents; and forensic evidence, including, but not limited to: blood, saliva, hair, fibers, other bodily fluids,
and any items containing such forensic evidence, such as clothing, rags, or towels.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort, S.C.
November 16 2015 [Signature] (I.S.)
Signature of Judge

Fourteenth Circuit Solicitor's Office

State vs. Ernest Daise
128

RETURN

I received the attached Search Warrant November 16, 2009, and have executed it as follows:

On November 16, 2009 at 5:05 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Asia Palmer

Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

See attached search warrant inventory.

This inventory was made in the presence of SSgt A. Vines

AND PFC A. Rice

I swear that the inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 23^d
DAY OF November, 2009
[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

SEARCH WARRANT INVENTORY

CASE NO.: 2009-1115-0557

PAGE: 1 OF 1

LOCATION: 43 Poppy Hill Rd, Burton, SC

DATE: 11-16-09

BEGIN: 0505 END: 0745

ITEM NO.	DESCRIPTION	LOCATION	LOCATED BY	TIME
1	Gray Hooded Sweatshirt	② Rear BR	C. Wilson	0521
2	Plastic baggie w/ white rock substance	② Rear BR under hoodie	C. Wilson	0521
3	Camcorder key ring w/ 5 keys	② Rear BR under hoodie	C. Wilson	0521
4	Two sweats from bed stain on back	② Rear BR Door	C. Wilson	0554
5	\$3000 in ③ \$1000 bundles (currency)	② Rear BR in black rear	C. Wilson	0613
6	Ziploc Bag w/ green vegetable matter	② Rear BR in floor	C. Wilson	0623
7	Martha envelope containing resident's reports / indictments in the name of "Ernest Stuart Daise"	② Rear BR on floor	C. Wilson	0627
8	Palm Tree (sprout) S/N #PUPP877 11826	② Rear BR on sofa	C. Wilson	0635
9	Blue Samsung (Verizon) Flip Phone	② Rear BR on handbag	C. Wilson	0637
10	Black Samsung (Verizon Mobile) Flip Phone	② Rear BR on bed	C. Wilson	0638
11	Box of ⑤ 7.62x39mm rounds of ammunition in "Wolf" Box	② Rear BR on closet shelf	C. Wilson	0641
12	One spent Winchester .38 S&W shell casing	MAR "weight room" on shelf	C. Wilson	0659
13	Ziploc Bag containing small amt of vegetable matter	MAR "weight room" on Nike bag	C. Wilson	0702
14	One unspent 30-06 round	MAR Bathroom on drawer by sink	C. Wilson	0704
15	One unspent .223 round	MAR "weight room" on floor under windows	C. Wilson	0708
16	One Black "A15" digital scale with adapter (a/c)	② Rear BR on floor	C. Wilson	0715
17	Palm Tree (sprout) S/N #PUPP826 11825	on top screen shelf under	C. Wilson	0720

C. Wilson 11-16-09
D. L. L. Service

AC

EXHIBIT

3

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) IND. NO.: 2009-GS-07-02636
) 2009-GS-07-02637
) 2009-GS-07-02638
) 2009-GS-07-02639

STATE OF SOUTH CAROLINA,)
)
 vs.) TRANSCRIPT OF RECORD
)
 EARNEST S. DAISE,)
)
 DEFENDANT.)
)

February 4, 2013

Beaufort, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, JUDGE.

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

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1 **SOLICITOR STONE:** May it please the Court, Your
2 Honor?

3 **THE COURT:** Yes, sir.

4 **SOLICITOR STONE:** We have a number of motions that
5 are pending, and we have gone through the list. I believe
6 that we are at this time prepared to go forward on them.

7 Before we get started on the motions, Your Honor, I
8 would ask if we could address the issue of a trial date.
9 I know we had -- we were here, I believe, about this time
10 last year and we tried to discuss that. The State
11 informed you at that time that we were ready as soon as
12 you could get it scheduled, and the defense needed some
13 time. If we could revisit that as soon as possible, we
14 would appreciate it.

15 **THE COURT:** Okay.

16 All right, Mr. McGuire, I know your trial schedule is
17 quite tough.

18 **MR. MCGUIRE:** It is, Judge. There are only about
19 nineteen pending capital trials in South Carolina right
20 now. My office is on about thirteen of them; however, we
21 could be ready in twenty-four to twenty-eight weeks --
22 July.

23 **THE COURT:** Okay. Would you prefer -- yes, sir?

24 **MR. SECOR:** I'm sorry. Casey Secor for Mr. Daise, as
25 well. I just wanted to add one thing to the record on

1 behalf of Mr. Daise.

2 He and I have discussed a trial several times, and as
3 you know, he has been in jail for quite some time. He has
4 expressed to me his desire to move for a speedy trial, and
5 I have explained to him that if I do that on his behalf
6 that it would be tantamount to me telling Your Honor that
7 I am ready to go to trial, and the truth is that I am not.

8 I did want the Court to know and the State to know
9 that Mr. Daise does wish to have a trial as soon as
10 possible and that he desires and requests a speedy trial,
11 but I told him that because it is my job to look out for
12 his best interest that I would not formally move for one
13 as his counsel, but I did just want the Court to know
14 that.

15 **THE COURT:** All right. Well, let me ask then, how
16 does defense counsel's June schedule look, and same thing
17 from the solicitor's office?

18 Allison, pull mine.

19 **SOLICITOR STONE:** June works for us, Your Honor.

20 **THE COURT:** Mr. McGuire?

21 **MR. MCGUIRE:** Judge, I have a -- there is a proposed
22 scheduling order before Judge Durham Cole in Cherokee
23 County that has me in trial in May, and so I would ask for
24 a little time to bounce back from that.

25 **THE COURT:** I am looking at a possible date of -- I

1 am looking at either June 10th or June 17th to begin,
2 either one of those, and I am thinking that maybe June
3 17th is better.

4 Mr. McGuire, I think it would have to be the 17th,
5 June 17th.

6 MR. MCGUIRE: And, Your Honor, if I could -- we may
7 need an ex parte proceeding, but if I could, without going
8 into too much detail, I can tell you that one of our
9 expert witnesses that we would need and would be critical
10 to trial indicated to us their availability not until
11 early fall or late summer, and that's the one hold up that
12 we would have. I don't know how much more detail you
13 would want from me, but I can tell you this is a person we
14 would have to have.

15 THE COURT: Okay.

16 MR. MCGUIRE: And we have talked to this person
17 exclusively.

18 THE COURT: Okay.

19 MR. MCGUIRE: I know that if I could tell you what
20 this person does, it is very limited people that are
21 qualified to do this.

22 THE COURT: Okay.

23 MR. MCGUIRE: I don't know if we could get a
24 replacement any earlier than that.

25 THE COURT: Okay.

1 **MR. MCGUIRE:** So we -- that person has indicated to
2 us that late summer/early fall would be acceptable.

3 **THE COURT:** Would it be possible when we take a break
4 for one of you to go ahead and maybe make a phone call to
5 this person and ask them? I mean, I understand they are
6 saying what their preference is, early fall, but if for
7 some reason they do happen to be available during the time
8 that possibly they would be testifying, see if we can't
9 make that work.

10 **MR. SECOR:** Yes, Your Honor, I will call them
11 whenever you tell me to.

12 **THE COURT:** I appreciate it.

13 **MR. SECOR:** Yes, ma'am.

14 **THE COURT:** Okay. All right.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification and received into evidence.)

17 (WHEREUPON, Court's Exhibit No. 2 was marked for
18 identification and received into evidence.)

19 **DEPUTY SOLICITOR THORNTON:** May it please the Court,
20 Your Honor?

21 **THE COURT:** Yes, sir.

22 **DEPUTY SOLICITOR THORNTON:** Your Honor, we are here
23 today, and I talked to Mr. McGuire and I know he has been
24 in contact with your office, we're going to deal with the
25 motion, actually the first motion dealing with the

1 suppression issues, which is Motion Number Eighteen filed
2 by the defense.

3 There were -- there was a response by the State which
4 asked for more specificity, which I didn't get a file
5 copy. Mr. McGuire was kind enough to give me a copy of
6 his subsequent motion, and I believe that we have narrowed
7 the field down, Your Honor, to two search warrants; one of
8 which I have marked as Court's Exhibit Number One, or had
9 pre-marked, which is the November the 16th, 2009, search
10 warrant dealing with the defendant's clothing he was
11 wearing at the time of his interview. The other one,
12 which I have labeled as Court's Exhibit Number Two, which
13 is the November the 16th, 2009, search warrant of 43 Poppy
14 Hill Road, which is done by Chris Wilson, Your Honor. I
15 believe that those are the two matters that we are here
16 about today, unless Mr. McGuire has any others. I believe
17 that's what we have narrowed the field to.

18 THE COURT: Okay. You can go ahead and give this to
19 my court reporter. I have copies of it.

20 DEPUTY SOLICITOR THORNTON: Thank you, Your Honor. I
21 had these pre-marked. If it's all right with the Court, I
22 will hold onto them until I call witnesses.

23 THE COURT: Certainly.

24 DEPUTY SOLICITOR THORNTON: Thank you, Judge. May I
25 proceed, Your Honor?

1 **THE COURT:** You may.

2 **DEPUTY SOLICITOR THORNTON:** At this time, I would
3 call Master Sergeant Purdy to the stand.

4 **MR. MCGUIRE:** Actually, I tell you what, before you
5 do that, just for Your Honor's benefit and in the spirit
6 of judicial economy, basically what we are doing is we are
7 challenging the two warrants, and I think the first step
8 would be to establish that they were presented on their
9 four corners with no oral testimony.

10 I have spoken to Magistrate Chase. There he is, and
11 we would only have about maybe ten questions for the
12 magistrate who signed them to establish that there is no
13 oral testimony. And then, I think it would be appropriate
14 to go from there.

15 **THE COURT:** Okay.

16 **MR. MCGUIRE:** If we could call him as our witness?

17 **THE COURT:** As to Magistrate Chase, any objection?

18 **DEPUTY SOLICITOR THORNTON:** No objection, Your Honor.

19 **THE COURT:** Magistrate Chase, come on up here so we
20 can swear you in, sir.

21 Place your left hand on the Bible, and raise your
22 right hand, sir.

23 **ORVILLE G. CHASE,** after being duly sworn,
24 testified as follows:

25 **THE COURT:** Thank you, sir. Come on around. Sir, if

DIRECT - ORVILLE G. CHASE BY MR. MCGUIRE

10

1 you would just give us your complete name for the record?

2 WITNESS: Orville G. Chase.

3 THE COURT: Thank you, sir.

4 DIRECT EXAMINATION

5 BY MR. MCGUIRE:

6 Q Thank you, sir. Mr. Chase, in November of 2009, how
7 were you so -- how were you employed, sir?

8 A I was a Beaufort County Magistrate.

9 Q Okay. And in the course of those duties, you would
10 occasionally sign search warrants?

11 A Yes, I would.

12 Q And I'm going to hand you what's been marked Number
13 One and Two, Court's Exhibits. If you could, just take a
14 look at both of those.

15 A All right.

16 Q My understanding is that you are the issuing
17 magistrate and signed those search warrants.

18 A I was.

19 Q And they were submitted by two different officers,
20 Officer Foskey was the first one with regard to clothing.
21 And then Court's Number Two is a search warrant for a
22 residence on Poppy Hill; is that correct?

23 A That's correct.

24 Q And my understanding is that there was no oral sworn
25 testimony to supplement the affidavit on the search

DIRECT - ORVILLE G. CHASE BY MR. MCGUIRE

11

1 warrants, either one.

2 A No.

3 Q Okay. In fact, my understanding is your usual
4 practice would be to review the affidavit, ask the officer
5 if he wants to stick with that, or if he wants to offer
6 more information, you would ask him to go ahead and take
7 the warrant back and put it in writing.

8 A I was -- yes, that's correct. I would swear
9 specifically to the affidavit, what's in the affidavit.
10 If there were -- if there was additional testimony, they
11 would alter the affidavit. They would take it back to
12 their office, redo it, and bring it back. Invariably
13 that -- I cannot recall that ever happening.

14 Q Okay. So, basically, you asked the officer: Do you
15 want to stick to this affidavit?

16 If they wanted to offer something more, you give them
17 the opportunity to take it back and add it in writing,
18 come back. And in your recollection, no one has ever done
19 that.

20 A That's correct.

21 Q Okay. And with regard to these warrants, the first
22 warrant, Courts Number One, the search warrant presented
23 by Officer Foskey, that was the first warrant of these two
24 that you reviewed.

25 A That's correct. That came in at approximately -- I

DIRECT - ORVILLE G. CHASE BY MR. MCGUIRE

12

1 have on the original copy 12:30 when it was issued, and I
2 believe it was returned the same day, 11/16/09, probably
3 not too much longer after that, but that was -- you are
4 correct, that was the first one.

5 Q Okay. Just for the Court's benefit, when you say
6 12:30, that's thirty minutes after midnight.

7 A Well, actually, thirty minutes after midnight would
8 be 0030.

9 Q So is this 12:30 ---

10 A Well, if this was 12:30 in the morning, then I was
11 probably half asleep and wrote 12:30 down here.

12 Q Okay.

13 A But it was 0030.

14 Q Okay. And the warrant does reference a November 15
15 incident date.

16 A Correct.

17 Q And then a November 16 issuance date, so I assume
18 that would be just after midnight.

19 A That's correct.

20 Q That's correct?

21 A That's correct. In fact, the warrant was executed,
22 according to the Return in my original copy, at 6:25 in
23 the morning.

24 Q Okay. That's fine. Thank you, sir. No further
25 questions. Thanks for coming.

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

13

1 **DEPUTY SOLICITOR THORNTON:** No questions, Your Honor.

2 **THE COURT:** You may be excused -- any objection to
3 him being excused?

4 **MR. MCGUIRE:** No, sir -- no, ma'am.

5 **THE COURT:** You are excused, sir. Thank you.

6 **WITNESS:** Thank you.

7 **DEPUTY SOLICITOR THORNTON:** Master Sergeant Purdy.

8 **THE COURT:** Sir, put your left hand on the Bible and
9 raise your right hand.

10 JEFFERY PURDY, after being duly sworn, testified
11 as follows:

12 **THE COURT:** Thank you. Come on around and give us
13 your full name for the record.

14 **WITNESS:** Jeffery Purdy.

15 **DIRECT EXAMINATION**

16 **BY DEPUTY SOLICITOR THORNTON:**

17 **Q** Master Sergeant Purdy, who do you work for, sir?

18 **A** The Beaufort County Sheriff's Office.

19 **Q** And in what capacity do you work for them?

20 **A** I supervise the northern criminal investigation
21 section.

22 **Q** On November the 15th of 2009, did you also work for
23 Beaufort County Sheriff's Office?

24 **A** Yes, sir, same role.

25 **Q** And were you involved in an investigation into the

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

14

1 case we are here about today, the State versus Earnest
2 Daise?

3 A I was.

4 Q All right, sir. And can you tell me what your role
5 was in that investigation?

6 A Well, I supervised the northern investigation
7 section. That was my responsibility, to make sure that
8 Staff Sergeant Harris at the time, who was the case
9 officer, has everything he needs to do his job. We kind
10 of worked together as a team. Whenever he needed help, I
11 tried to get it, if I can't provide it myself.

12 Q I'm going to show you what's been marked as for
13 identification as Court's -- I think it's actually been
14 entered now as Court's Exhibit Number One. Can you
15 identify that warrant for me?

16 A This is a search warrant that was sworn out by, at
17 the time, Sergeant Wayne Foskey who was a subordinate of
18 mine. It's a search warrant that was executed at 1925
19 Duke Street, which is my office, in the presence of Wayne
20 Foskey, myself, and S.L.E.D. Agent Jeff Crooks.

21 Q All right. And what was the purpose of that search
22 warrant? What were you trying -- what items, if any, were
23 you trying to seize?

24 A We were trying to seize the clothing off of Earnest
25 Daise, the defendant in this case.

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

15

1 Q All right. Can you explain to the Court, Her Honor,
2 how Mr. Daise came to be about -- being in your presence
3 on November the 17th, 2009?

4 A Specific to my presence, or in the investigations'
5 presence?

6 Q Start with the investigation, and go into
7 specifically into your presence at the time when you
8 seized the clothing.

9 A Well, we got called to 20 Player Road in reference to
10 a triple shooting, which turned out to be a double
11 homicide, with a third individual shot. The third
12 individual that was shot was Jeremiah Daise, a
13 two-year-old little boy. He was actually transported to
14 Beaufort Memorial.

15 On the way, he disclosed to one of the EMS people who
16 had asked who hurt him, and he said: My daddy hurt me.

17 As a result of that, we figured out who Jeremiah
18 Daise's daddy was, and we started the investigation.

19 We learned that Earnest had come to the house, 20
20 Player Road, earlier that evening. He hadn't been seen
21 since.

22 With that information, we tried to find Earnest. We
23 had somebody show us where he lived, another house that he
24 resided at.

25 So I sent Staff Sergeant Harris, Sergeant Wilson, and

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

16

1 several other people to that address, Sergeant Foskey, to
2 go on a knock-and-talk and see if Earnest was there, if he
3 wanted to talk with us to find out what happened to the
4 mother of his child, his two-year-old child and another
5 child that was at the house, that was to our understanding
6 that he was raising the child throughout the time that he
7 was with the mother, the victim, Jeanine.

8 So we went to that house and talked to him, excuse
9 me, not we but they did, Staff Sergeant Hiers, Sergeant
10 Wilson, and several others. They got ahold of Mr. Daise.

11 As soon as they saw Mr. Daise, they immediately saw
12 what they thought was blood on his pants. They detained
13 him and handcuffed him, read him his Miranda rights, asked
14 him if he would come back to the sheriff's office, the
15 investigations office, to discuss the case with them to
16 find out about his son, find out the status of his
17 girlfriend, so on and so forth. As a direct result of
18 that, he agreed to go back to the office.

19 He went back to the office, which is 1925 Duke
20 Street, with Staff Sergeant Hiers and Sergeant Foskey.
21 They started conducting an interview. As that went --
22 they continued on with their interview.

23 I was at the crime scene, with several other folks.
24 We finished up at the crime scene, and I came to the
25 office. Basically -- I met with Mr. Daise. I had known

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

17

1 him before. I had had dealings with him before. I
2 introduced myself -- I didn't really need to introduce
3 myself. I greeted him and said hello.

4 We talked for a few minutes, and then we executed --
5 proceeded to get a search warrant. Sergeant Foskey went
6 to the magistrate to get a search warrant because of the
7 information that we had at that time was pretty much what
8 I just explained.

9 Q All right. With reference specifically to what's in
10 Court's Exhibit Number One, Master Sergeant Purdy, what
11 was the evidence presented to the magistrate as to why you
12 believed there was probable cause for a search warrant of
13 Earnest Daise's clothing?

14 A Do you want me to read the affidavit?

15 Q Yes.

16 A That on November 15, 2009, three people were shot at
17 a residence of 20 Player Road in Dale, within Beaufort
18 County, South Carolina. Two of the people died at the
19 scene. During the investigation, information was revealed
20 that Earnest Daise was the possible shooter in this
21 incident.

22 Witnesses placed the subject at the residence at the
23 time of the incident. The surviving victim is the
24 victim's son, who told EMS personnel that daddy, Earnest
25 Daise, was the one who shot him.

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

18

1 A red in color substance was observed on the
2 subject's clothing at the time of his interview, and the
3 substance appeared to be blood.

4 Q All right. When you say earlier in Court's Exhibit
5 Number One, you said -- made reference to witnesses saw
6 Mr. Daise there around the time of the shooting, who are
7 the witnesses that you were referring to in that -- or
8 that were referred to, I should say, in that affidavit?

9 A I think, specifically, Rebecca Nation saw Mr. Daise
10 arrive, witnessed him get out of the van, never saw him
11 leave.

12 And then, of course, his son, Jeremiah Daise, made
13 the statement that my daddy did it. That places him at
14 the scene. It was those two witnesses at this time.

15 Q And Rebecca Nation is -- who is she to -- to -- to
16 the defendant or to the victims in this case?

17 A Rebecca Nation was a neighbor. She lived next door.
18 They had been living -- they had been neighbors for I
19 believe it was about a year and a half. So she was
20 familiar with all the members of the family, including Mr.
21 Daise.

22 (WHEREUPON, Court's Exhibit No. 3 was marked for
23 identification only.)

24 Q Master Sergeant Purdy, I'm going to hand you for
25 identification what's been marked as Court's Exhibit

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

19

1 Number Three. Can you identify that document for me, sir?

2 **A** This is a photocopied document. I believe it's
3 photocopied. It's a written statement from Rebecca
4 Nation, who is the neighbor, the one that lived next door
5 to 20 Player Road, the one that Staff Sergeant Hiers
6 interviewed.

7 **Q** And is Staff Sergeant Hiers the case officer that you
8 referred to earlier that you were supervising?

9 **A** That's correct.

10 **Q** Is that a statement that he got from Mrs. Rebecca
11 Nation, neighbor of the victim in this case -- or victims
12 in this case?

13 **A** Yes.

14 **Q** All right. And based on your information, as far as
15 you know after reviewing it, is that a true and accurate
16 copy of the statement that she provided -- that she, being
17 Rebecca Nation, provided to Jody Hiers?

18 **A** That's correct.

19 **DEPUTY SOLICITOR THORNTON:** Your Honor, I'd ask at
20 this time that Court's Exhibit Number Three, for the
21 purposes of this hearing, be entered into the record.

22 (WHEREUPON, Court's Exhibit No. 3 was admitted into
23 evidence.)

24 **THE COURT:** Can I see a copy of that?

25 Thank you.

DIRECT - JEFFERY PURDY BY DEPUTY SOLICITOR THORNTON

20

1 Q Master Sergeant Purdy, the information that was
2 provided to Jody Hiers that's referenced in Court's
3 Exhibit Number Three, is that information that was --
4 forgive me, for lack of a better word, delineated or
5 spread out amongst the officers in this case?

6 A Yes. Absolutely.

7 Q And the information that was provided to the EMS
8 worker in reference to who shot me -- or who, you know,
9 "Who hurt you?"

10 "My daddy did it," or "My daddy shot me;" was that
11 information also provided to many officers, including Mr.
12 Foskey?

13 A Absolutely.

14 Q And are those the basis for the search warrant that
15 is referenced in Court's Exhibit Number One?

16 A Yes. As far as witnesses, yes, it is.

17 Q All right. And were you present when -- as far as
18 the red stain or red markings on Earnest Daise's pants
19 while he was being -- while he was being interviewed, were
20 you present to witness those yourself?

21 A I witnessed them -- I witnessed them before the
22 clothes were seized, yes.

23 Q Okay. Now, after Sergeant Foskey went and got the
24 search warrant, could you detail what happened after that
25 when he returned with the warrant?

CROSS - JEFFERY PURDY BY MR. SECOR

21

1 **A** After Foskey got the warrant what happened?

2 **Q** Yes. What, if anything, did you do or that was done
3 in your presence as senior sergeant on this case?

4 **A** I provided Mr. Daise with a change of clothing. We
5 had a jail uniform for him to put on, pants, shirt, and a
6 sweatshirt, if I'm not mistaken. Gave the clothes to Mr.
7 Daise. Had him change in front of us.

8 The clothing was tested for blood to see if it was
9 positive or negative. We tested the blood. Jeff Crooks,
10 excuse me, Agent Crooks with S.L.E.D, tested the blood,
11 and then we secured the evidence for further testing.

12 **DEPUTY SOLICITOR THORNTON:** Court's indulgence, Your
13 Honor, please?

14 I have no further questions at this time, Your Honor.

15 **THE COURT:** Yes, sir?

16 **MR. SECOR:** Thank you, ma'am.

17 CROSS-EXAMINATION

18 BY MR. SECOR:

19 **Q** Good afternoon, Master Sergeant.

20 **A** Good afternoon, sir.

21 **Q** My name is Casey, by the way. I haven't met you
22 before.

23 You've been in law enforcement for quite some time, I
24 assume?

25 **A** Yes.

CROSS - JEFFERY PURDY BY MR. SECOR

22

1 Q About how long?

2 A Twenty years.

3 Q Twenty years. And was that everything from being a
4 beat cop to the position that you're currently in now?

5 A Correct. I started out as a uniform patrol.

6 Q Okay.

7 A I ended up coming to criminal investigations.

8 Q Okay.

9 A I went back to patrol for a year and came back to
10 criminal investigations.

11 Q Okay. So -- but a lot of your experience has been
12 criminal investigations; right?

13 A Most of it.

14 Q Okay. So you have -- you have experience with
15 warrants, I assume, a lot.

16 A Correct.

17 Q Have you drafted many yourself?

18 A I have.

19 Q Can you ballpark how many?

20 A Not a clue.

21 Q But I mean, over a hundred?

22 A I could say that I have been a part of over a hundred
23 search warrants.

24 Q Okay. All right.

25 So -- and as a consequence of being somebody who was

CROSS - JEFFERY PURDY BY MR. SECOR

23

1 involved in drafting them and executing them, I assume
2 that you are involved in or at least you have been trained
3 in drafting them, too; right?

4 A Correct.

5 Q Okay. And you know what is required of a search
6 warrant affidavit in order for it to be considered valid
7 by a judge; right?

8 A Correct.

9 Q Okay. I just want to ask you a couple of questions
10 to make sure that you and I are on the same page about the
11 requirements of warrant affidavits, because you obviously
12 know more about it than I do, but I just want to make sure
13 before we get into this specific warrant that you and I
14 are on the same page. Is that okay?

15 A Yes.

16 Q Okay. Would you agree with me that probably the most
17 important thing about a warrant affidavit is that it
18 include specific information?

19 A Probable cause, yes.

20 Q Okay. Yeah. So, as specific as possible, based upon
21 what you know, right?

22 A Correct.

23 Q Okay. And when you're talking about a search
24 warrant, the affidavit has to specify the items that you
25 want -- that you expect to find; right?

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24

1 A That's correct.

2 Q Okay. And it also has to specify the particular
3 place where you want to go to try to locate those items,
4 right?

5 A Correct.

6 Q Okay. And oftentimes when you're drafting a warrant
7 affidavit, you are relying on information from other
8 people; right?

9 A Correct.

10 Q And it might be other officers, it might be
11 eyewitnesses; right?

12 A Yes.

13 Q It might be unnamed informants, or it might be
14 somebody that y'all sent in wearing a wire; right?

15 A Correct.

16 Q So you're oftentimes dealing with secondhand
17 information; right?

18 A Yes.

19 Q Okay. And sometimes people are identified by name in
20 a warrant affidavit as somebody who gave you information;
21 right?

22 A Not typically.

23 Q Okay. Typically they are not, and they are
24 identified as ---

25 A Witnesses.

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25

1 Q Witnesses or informants or ---

2 A Typically, I use witnesses.

3 Q Okay.

4 A With my background.

5 Q And you know that when somebody is not identified in
6 a warrant affidavit as having given information, it's
7 important that the warrant affidavit in some way establish
8 why a judge would believe what they say; right?

9 A Can you repeat that?

10 Q Yeah. I'm sorry. I may have been overly wordy, and
11 I apologize. But if you are conveying secondhand
12 information to a judge, right, because you weren't present
13 for whatever happened; right?

14 A Correct.

15 Q And so you are conveying information that you got
16 from somebody else. It's important for you to establish
17 in the warrant affidavit why it is that a judge should
18 believe that person; right?

19 A Not necessarily. If the judge wants to know, he will
20 typically ask you.

21 Q Okay. Now, if you're dealing with information that
22 came from somebody who was not identified in the warrant
23 affidavit, if you're conveying to the judge secondhand
24 information but you don't have information about the
25 reliability of the source, would you agree with me that

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1 it's important to be able to establish in the warrant
2 affidavit that law enforcement has somehow corroborated
3 the information in the warrant affidavit?

4 A Again, if the judge wants more details about the
5 specifics in the warrant, he or she will ask, and then
6 they may have us amend the search warrant if they don't
7 like what -- if there's not enough in it.

8 Q Okay.

9 A But, you know, and again for this -- I used
10 witnesses. I use witnesses all the time in my search
11 warrants. I use witnesses all the time in my arrest
12 warrants. It's a term that we use all the time routinely.

13 Q I understand, and I don't mean to try to contest
14 that. I understand that you do that.

15 But, for instance, in a warrant affidavit, you
16 wouldn't just say that a crime occurred and we need a
17 warrant; right, because that wouldn't be sufficient.

18 A Right. We have to define a crime.

19 Q Right. And you have to say that you got some
20 information; right?

21 A Correct.

22 Q And you have to say specifically what that
23 information is; right?

24 A Correct.

25 Q And you have to identify where you got the

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1 information, whether it be a person's name or that they
2 are a witness, or that they are a confidential informant;
3 right?

4 A Correct.

5 Q And then, if you can't do those things, if you can't
6 name the person or identify them or establish their
7 credibility or reliability or basis of knowledge, you
8 could put in their information that law enforcement has
9 been able to corroborate what we've been told by this
10 third person.

11 A You could.

12 Q Okay.

13 A But that's not -- that's not how we practice it,
14 typically.

15 Q Okay. But you could do that; right?

16 A You could. I'm sure you could make a warrant
17 affidavit very lengthy, if you choose to.

18 Q Yeah. I understand.

19 Would you agree with me that the spirit of drafting a
20 warrant affidavit is in order to show why police believe a
21 specific person committed a specific crime?

22 A You need to show probable cause, and how ever we
23 establish probable cause is what we need to put in the
24 affidavit, and that's what I believe we have in this
25 affidavit here.

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1 Q Okay. And we will get to it. I promise.

2 Would you agree that it's also important when
3 drafting a warrant affidavit that you sometimes include
4 information that may be contradictory to your theory of a
5 case?

6 A If you have that information, you have to put it in
7 there.

8 Q Okay. Yeah, I agree with you.

9 If -- if someone said, "Casey committed a crime" and
10 then another person said, "No, it was Bill McGuire," you
11 would have to put in both of those things. You couldn't
12 just say witnesses said Casey did it. You would have to
13 say witnesses said Casey did it and another witness said
14 Bill did it; right?

15 A Right.

16 Q Okay. Now, this affidavit that you are testifying to
17 was actually drafted by Sergeant Foskey; is that correct?

18 A It is.

19 Q Okay.

20 A I have it right here.

21 Q Oh, and that State's -- I mean, Court's ---

22 A Court's Exhibit One.

23 THE COURT: One.

24 Q Court's Exhibit One. Okay. That would be the one
25 that I'm going to refer to, and I would just like to go

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1 through it with you, if that's all right.

2 And we'll skip the first two sections, because I
3 think there's not a whole lot for us to discuss. The
4 first section is obviously -- this would be Page
5 One-twenty-four in the bottom right-hand corner. Does
6 yours say Page One-twenty-four?

7 A (NO RESPONSE)

8 Q No?

9 MR. SECOR: May I approach, Your Honor?

10 THE COURT: You may.

11 Q My pages are stamped. I guess it would be the third
12 page. Yeah.

13 So the first two -- or the first section on that page
14 is entitled "Description of Property Sought." Correct?

15 A That's correct.

16 Q And that's simply like it sounds. It's describing a
17 property that you want to look for; correct?

18 A Mr. Daise's clothing. That's it.

19 Q Okay. And then the second section is just entitled
20 "Description of Premises to be Searched." Correct?

21 A That's correct.

22 Q And that just lists the person of Earnest Daise;
23 right?

24 A Correct.

25 Q Okay. Now, the third section on that page is

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1 entitled, "Reason for Affiant's Belief that the Property
2 Sought is on the Subject Premises." Is that right?

3 A That's correct.

4 Q Okay. And that's a section where you, or Sergeant
5 Foskey in this case, but this is where an officer puts in
6 a legal justification; right, for the search?

7 A Probable cause. Correct.

8 Q Right. This is the section where you are trying to
9 -- you are presenting information to the magistrate with
10 the intention of getting a search warrant, establishing
11 probable cause and getting a search warrant; right?

12 A Yes, sir.

13 Q Okay. And if at any time when I'm reading sections
14 if I mess up the actual wording, please stop me, because I
15 don't mean to do that. But the affidavit begins by
16 stating that on November 15, 2009, three people were shot
17 at a residence, 20 Player Road; correct?

18 A Correct.

19 Q And then he goes on to say that two of the people
20 died at the scene; right?

21 A Correct.

22 Q All right. And you would agree with me that there is
23 no information in the affidavit about who provided the
24 information; right?

25 A You are asking me if Sergeant Foskey witnessed that,

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1 if Sergeant Foskey went to the scene and saw that?

2 Q Well, I don't -- I guess what I'm saying is, the
3 question is, do you see anything in the warrant affidavit
4 that establishes where that information came from?

5 A No.

6 Q Okay. And it also does not say who the victims are;
7 correct?

8 A That's correct.

9 Q The affidavit then goes on to state -- to say,
10 "During the investigation, information was revealed that
11 Earnest Daise was the possible shooter in this incident."

12 Did I read that correctly?

13 A Can you repeat that?

14 Q Yes, sir.

15 It says in that third section in the warrant
16 affidavit, "During the investigation, information was
17 revealed that Earnest Daise was the possible shooter in
18 this incident."

19 A I'm not seeing that.

20 Okay. "During the investigation, information was
21 revealed that Earnest Daise was the possible shooter."
22 Yes.

23 Q Okay. Did you have that on a different page?

24 A No. I was actually reading way ahead of that.

25 Q Oh. Okay. I'm sorry.

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1 So but you agree with me that that's the next
2 sentence; right?

3 A Yes.

4 Q Okay. And would you agree with me that there is no
5 information in the affidavit about who provided that
6 information?

7 A His son provided that.

8 Q But I'm just saying, at that point in the warrant
9 affidavit, that line, it doesn't say where that
10 information came from.

11 A No, but it says it below it.

12 Q Okay. But do you agree that it says, "During the
13 investigation, information was revealed that Earnest Daise
14 was the possible shooter." Correct?

15 A Correct.

16 Q It doesn't state that according to so-and-so or
17 anything like that.

18 A Correct.

19 Q And it also doesn't say what that information was;
20 does it?

21 A Not in that sentence.

22 Q Okay. And it also -- we already stated that it
23 doesn't identify the source of the information, but if the
24 source of the information that's in that sentence was a
25 person, do you agree with me that it doesn't identify who

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1 that source was or who that person was; right?

2 A In that sentence, it does not.

3 Q Okay. The next sentence, and just read along with me
4 again to make sure that I read this correctly, it says,
5 "Witnesses place the subject at the scene at the time of
6 the incident." Is that correct?

7 A Yes, sir.

8 Q And at that point, the affidavit doesn't specify at
9 all what the witnesses witnessed; right?

10 A Correct.

11 Q And it also doesn't identify who the witnesses are;
12 correct?

13 A Correct.

14 Q And so if it doesn't identify who the witnesses are,
15 then they would be considered unnamed sources; right?

16 A Not necessarily.

17 Q Well, they are sources; right?

18 A Again, if the magistrate wanted to know their names,
19 we would have shared that.

20 Q Yeah. I understand, and again, I'm just trying to
21 talk about what's in the warrant affidavit. But you would
22 agree with me that it just says witnesses. It doesn't say
23 who they are.

24 A I agree.

25 Q And it doesn't say anything in the warrant affidavit

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1 about the witnesses basis of knowledge, or how they know
2 what they say they know.

3 A Correct.

4 Q All right. And there's nothing in the warrant
5 affidavit that establishes their reliability; right? It
6 just says witnesses.

7 A Correct.

8 Q All right. And there's also nothing in the warrant
9 affidavit that establishes the circumstances under which
10 the witnesses provided their information to law
11 enforcement; correct?

12 A Correct.

13 Q And I think when Mr. Thornton was talking to you,
14 everybody was assuming that by witnesses, Sergeant Foskey
15 meant Rebecca Nation; is that correct?

16 A I'm sure.

17 Q Okay. Now, the warrant affidavit drafted by Sergeant
18 Foskey says that, again as we discussed before,
19 information was revealed that Earnest Daise was the
20 possible shooter; correct?

21 A Correct.

22 Q And you've looked at Rebecca Nation's written
23 statement today; right?

24 A Correct.

25 Q And you would agree with me that in her written

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1 statement she did not say that she saw Earnest Daise.

2 A She saw him at the house get out of the van.

3 Q Okay. Do you still have her written statement up
4 there with you?

5 A I do.

6 Q Okay. Do you agree with me that nowhere in her
7 written statement does she say she saw Earnest Daise?

8 A She refers to Earnest Daise in her written statement
9 as Jeanie's boyfriend.

10 Q Okay. But do you agree with me that nowhere in her
11 written statement does she write Earnest Daise; correct?

12 A She didn't, but we all knew who she was talking
13 about.

14 Q You knew?

15 A I did.

16 Q You knew -- you knew who Jeanine's boyfriend was?

17 A Earnest Daise. We learned that early on. "E." They
18 call him "E." We figured out who "E" was.

19 Q Okay. But the warrant affidavit says a witness saw
20 Earnest Daise; right?

21 A That's correct.

22 Q But the witness who we are talking about did not say
23 Earnest Daise.

24 A She did in the interview. I believe you would have
25 to ask Staff Sergeant Hiers, but I believe you will find

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1 that she did identify him as "E."

2 Q Okay.

3 A Who we know is Earnest Daise.

4 Q But in her own written statement, ---

5 A She put her boyfriend, Jeanine's boyfriend.

6 Q Okay. But you agree with me, she did not -- she did
7 not ---

8 A Put his name.

9 Q --- she did not put the name Earnest.

10 A Correct. I agree.

11 Q Okay.

12 And she did write, as you pointed out, Jeanine's
13 boyfriend; right?

14 A Yes, sir.

15 Q But she did not say anything about who Jeanine's
16 boyfriend is. She did not identify Jeanine's boyfriend.
17 She just says Jeanine's boyfriend.

18 A Not in this written statement.

19 Q Okay.

20 Now, the warrant affidavit also says that the
21 witness, who we are assuming is Rebecca Nation, saw the
22 subject at the time of the incident. You agree with me
23 that that's what the warrant affidavit says?

24 A Yes, I do.

25 Q Okay.

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1 Now, would you agree that by putting in the warrant
2 affidavit the word "at" in terms of describing when this
3 witness saw the subject, wouldn't you agree with me that
4 saying -- using the word "at" sort of implies that you
5 know that it was at this specific time that these killings
6 took place?

7 A He was there during the timeframe.

8 Q Okay. But, I mean, but the warrant affidavit says at
9 the time of the incident.

10 A Well, we don't know the specific time of the
11 incident, so the time of the incident to us is between, if
12 I'm not mistaken, 4:30 and about 7:00.

13 Q Okay. So you would consider that whole timeframe to
14 be the incident?

15 A Sometime during that timeframe.

16 Q Okay. But the warrant affidavit says at the time of
17 the incident, not during the timeframe of the incident;
18 right?

19 A Correct.

20 Q And I think that the time that the sworn affidavit
21 was drafted, you, as law enforcement, did not know the
22 specific time of the incident; right?

23 A We just had a window.

24 Q Right. And that that was again, what, 4:00 ---

25 A 4:30 to 6:56 is when the 911 call came in.

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1 Q Okay. And regarding the affidavit's description of
2 what the witness said, who again, we have to assume is
3 Rebecca Nation, because she is not named in the affidavit,
4 but if we assume that the witness is Rebecca Nation,
5 there's nothing in the affidavit about where she was when
6 she made her observation; correct?

7 A Correct.

8 Q It doesn't say that she was a next-door neighbor.

9 A Correct.

10 Q It doesn't say anything about her being on her porch
11 smoking a cigarette.

12 A Correct.

13 Q And it also doesn't say anything about the distance
14 between those two homes; correct?

15 A Correct.

16 Q Now, the next line in the affidavit that I would like
17 to talk to you about is, just briefly is that the
18 affidavit states, "The surviving victim is the victim's
19 son;" right?

20 A Correct.

21 Q And there is no information in that warrant affidavit
22 about how Sergeant Foskey knew that to be true; right?

23 A Correct.

24 Q The next line in the affidavit states, "Surviving
25 victim told EMS personnel that his daddy, Earnest Daise,

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1 was the one who shot him."

2 Do you agree with me on that?

3 A Correct.

4 Q All right. And there is no information in Foskey's
5 affidavit about who it was that provided this information.
6 I mean, the assumption is it was EMS; right?

7 A Can you repeat that?

8 Q Yeah. There is no information in Foskey's affidavit
9 about who provided this information, other than the fact
10 that you just assume it was EMS; right?

11 A Foskey met with EMS personally and talked to them.

12 Q Right. But I'm saying in the warrant affidavit.

13 A Correct.

14 Q And also, lacking from the affidavit is the fact that
15 the surviving victim, who we, you and I, know is Jeremiah;
16 correct?

17 A That's correct.

18 Q There's nothing in the affidavit establishing the
19 fact that Jeremiah was two years old at the time; correct?

20 A Correct.

21 Q Which Sergeant Foskey would have known, because as
22 you said, he went to the hospital; right?

23 A That, plus Mr. Frank Nolan had provided us all with
24 that information. We had passed it amongst ourselves. So
25 we knew ---

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1 Q Okay.

2 A --- who the surviving victim was and how old he was.

3 Q So you knew his name.

4 A Yes, sir.

5 Q And you knew how old he was.

6 A Correct.

7 Q But none of that information is in the warrant

8 affidavit; correct?

9 A Correct.

10 Q I'm sorry?

11 A Correct.

12 Q Okay. And although it says that Jeremiah said --

13 what he said to EMS personnel, there's nothing in the

14 warrant affidavit describing the circumstances surrounding

15 them when Jeremiah said that; right?

16 A Correct.

17 Q Like, for instance, it doesn't -- it doesn't say that

18 they were in an ambulance; right?

19 A Right. It doesn't say that the EMS guy asked him who

20 hurt him. It doesn't say any of that.

21 Q And it doesn't say that the time Jeremiah was being

22 actively treated for a gunshot wound; correct?

23 A Correct.

24 Q And by reading the affidavit, you can see that it

25 doesn't identify who the EMS people were, but I think that

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1 if you are going through all the information about the
2 case, you and I know that it was Danny Tinnel; right?
3 A Yes, sir.
4 Q And Shayna Orsen?
5 A Sergeant Foskey talked to Danny ---
6 Q Okay.
7 A --- directly. That's what this is based on.
8 Q Right. But you know that Shayna Orsen was present,
9 too.
10 A When Wayne talked -- when Sergeant Foskey talked to
11 Danny?
12 Q Oh, no, no. I'm sorry. In the ambulance.
13 A Yes.
14 Q Okay. So in the ambulance was Jeremiah, and Danny
15 Tinnel, and Shayna Orsen; right?
16 A Correct.
17 Q All right.
18 A Back up a second. It does say in here that he was
19 one of the people that was shot, so that was clear to
20 whoever read this, that his daddy is the one that shot
21 him. So he knew what his condition was, but it doesn't go
22 into detail how he was being treated or any of that
23 information.
24 Q Right. Yeah, I understand, and I'll get to that. I
25 promise. I'm -- if I skip over anything, please stop me.

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1 Another thing that I know from reading the discovery
2 materials in this case, and I'm sure that you know as
3 well, is that in the ambulance that was taking Jeremiah to
4 the hospital when Danny Tinnel and Shayna Orsen were with
5 Jeremiah, the first question that they asked Jeremiah was
6 what his name was. You knew that; right?

7 A Yes.

8 Q And you know that both Danny Tinnel and Shayna Orsen
9 reported that Jeremiah's response to that was Doug; right?

10 A Correct.

11 Q All right. But that's not in the warrant affidavit;
12 right?

13 A Correct.

14 Q When I read the warrant affidavit, the only words
15 there put in quotation marks as being the words of
16 Jeremiah are the words "his" and "daddy." Right?

17 A That would be the quote from the EMS. That's
18 correct.

19 Q Okay. EMS putting in quotes the two words that they
20 say that Jeremiah said; right?

21 A Yes, sir.

22 Q But if you read Danny Tinnel and Shayna Orsen's
23 statements, as I'm sure you have, you know that the truth
24 is what they say he said was just the word daddy.

25 A But the EMS guy, this is the EMS, this is Tinnel's

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1 quote: "His daddy."

2 That's what he told, but you're correct.

3 Q Okay. And as I'm sure you also know, that after
4 Jeremiah said the word "daddy" when he was being talked to
5 by Danny Tinnel, Danny Tinnel followed up by asking
6 Jeremiah what his daddy's name is; right?

7 A Do I know what his answer was to the next question?
8 Is that what you're asking?

9 Q I'm just saying, was law enforcement aware that when
10 Danny Tinnel asked Jeremiah what his daddy's name was that
11 Jeremiah could not answer?

12 A Correct.

13 Q Okay. And despite the fact that law enforcement knew
14 that, ---

15 A Now this statement wasn't -- we didn't have this
16 written statement at that time, but I don't know if that
17 information was passed on verbally.

18 Q But the statement is dated November 15th, 2009;
19 right?

20 A Correct. If I'm not mistaken, this statement was
21 originally handed to the coroner, who ended up handing it
22 to Staff Sergeant Hiers.

23 Q Okay. But, regardless, as you've already testified,
24 Sergeant Foskey went to the hospital and spoke personally
25 with Danny Tinnel.

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1 A He did.

2 Q Okay. And no information about Jeremiah being unable
3 to answer the question about who his daddy was, was put in
4 the warrant affidavit; correct?

5 A Correct.

6 Q All right. And that piece of information, that
7 Jeremiah was unable to respond to the question about who
8 his daddy was, is not in the affidavit, but Sergeant
9 Foskey did put the name "Earnest Daise" after the word
10 "daddy" in this warrant affidavit; correct?

11 A Yes, he did.

12 Q And there's nothing in the warrant affidavit
13 establishing that Earnest Daise is Jeremiah's father;
14 correct?

15 A Correct.

16 Q And there's nothing in the warrant affidavit
17 establishing why a magistrate would believe that; right?

18 A Correct.

19 Q And there's nothing in Foskey's warrant affidavit
20 showing if, or how, law enforcement corroborated that
21 Earnest Daise was Jeremiah's father; correct?

22 A Correct.

23 Q And despite the fact that in the warrant affidavit,
24 the quoted word "daddy" and the name "Earnest Daise" are
25 in the same sentence right next to one another, the truth

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1 is that if you were basing the claim that Earnest Daise
2 was Jeremiah's father, based on what Jeremiah just said,
3 you would have no information that Earnest Daise was
4 Jeremiah's father; right?

5 A We found out who Jeremiah's father was through the
6 family members.

7 Q But that's not in the warrant affidavit.

8 A Correct.

9 Q Now as we were just talking about, both Danny Tinnel
10 and Shayna Orsen's written statements about what was said
11 in the ambulance, those written statements were made on
12 November 15th, '09; right?

13 A Correct. Foskey interviewed Tinnel. That's where
14 the basis of this came from, a specific interview. He did
15 not have these.

16 Q Okay. I'm not -- I don't know whether he did or not.

17 A Yeah, I'm just -- I do, because I remember it was
18 kind of odd the way we ended up with them, and I know that
19 Sergeant Foskey wasn't there when these showed up.

20 Q Okay. But -- but, I mean, you do agree with me that
21 they made their written statements on the 15th; right?

22 A I agree.

23 Q All right. And you agree with me that Foskey's
24 warrant affidavit was presented to Judge Chase on the
25 16th; right?

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1 A That's correct.

2 Q So it would have been within the realm of possibility
3 for Orsen and Tinnel's statements to have been attached to
4 the warrant affidavit.

5 A That's not a common practice.

6 Q But it's possible; right?

7 A It could have been possible.

8 Q Because then -- then Judge Chase could have assessed
9 information from the actual people; right?

10 A He could have.

11 Q But he didn't, as far as you know.

12 A He didn't have those with him.

13 Q Right.

14 MR. SECOR: May I have just a minute, Your Honor?

15 Q Just one last question. If you had to just ballpark
16 a figure between the Nations' trailer and 20 Player Road
17 in terms of yards, ---

18 A It's been over three years. I don't think it would
19 be fair to guess that.

20 Q Okay. That's fine.

21 A I know I could see the house clearly.

22 Q Okay. Thank you, sir. I appreciate it.

23 THE COURT: Yes, sir?

24 DEPUTY SOLICITOR THORNTON: Nothing further, Judge.

25 THE COURT: All right.

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1 You may step down, sir.

2 **DEPUTY SOLICITOR THORNTON:** Sergeant Chris Wilson.

3 **THE COURT:** Sergeant Wilson, if you would place your
4 left hand on the Bible and raise your right hand.

5 CHRISTINE L. WILSON, after being duly sworn,
6 testified as follows:

7 **THE COURT:** Come on around and state your full name
8 for the record, please.

9 **WITNESS:** Christine L. Wilson.

10 DIRECT EXAMINATION

11 BY DEPUTY SOLICITOR THORNTON:

12 **Q** Sergeant Wilson, who do you work for?

13 **A** The Beaufort County Sheriff's Office.

14 **Q** And in what capacity do you work for them?

15 **A** I'm a criminal investigator for the investigation
16 section north of the Broad River.

17 **Q** November the 15th and 16th of 2009, did you work for
18 Beaufort County Sheriff's Office?

19 **A** I did.

20 **Q** And did you have occasion to work on the case of the
21 State versus Earnest Daise?

22 **A** Yes, I did.

23 **Q** I'm going to hand you what's been marked as Court's
24 Exhibit Number Two and entered into evidence for the
25 purposes of this hearing. Can you identify that for me?

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1 A This is a search warrant that I applied for and
2 acquired for the search of a residence on the 16th of
3 November 2009 at 43 Poppy Hill Road, Beaufort, South
4 Carolina.

5 Q And what judge did you apply for that warrant?

6 A Magistrate Chase.

7 Q And is that the warrant -- search warrant for the
8 same case that we're here about today, Earnest Daise?

9 A It is.

10 Q And, again, I know you just mentioned it, but what
11 was the search warrant for? What premises was to be
12 searched?

13 A The residence located at 43 Poppy Hill Road in
14 Burton, which was within Beaufort County, South Carolina.

15 Q All right. And if you could, Sergeant, I know the
16 judge has a copy of this, but for the record, could you go
17 over number one, what property was it you were searching
18 for, and number two, what was your reason for probable
19 cause for applying for the search warrant?

20 A The property we were searching for was any evidence
21 related to a murder. It was including, but not limited
22 to, firearms, spent shell casings, live ammunitions,
23 cellular telephones, letters, photographs, and other
24 documents; and forensic evidence, including but not
25 limited to, blood, saliva, hair, fibers, other bodily

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1 fluids; and any items containing forensic evidence, such
2 as clothing, rags, or towels.

3 Q All right. And what was your basis for the search
4 warrant? In other words, what was your affidavit for
5 probable cause?

6 A The affidavit states that shortly before 7:00 p.m. on
7 November 15th, 2009, the Beaufort County Sheriff's Office
8 responded to 20 Player Road in Dale, South Carolina,
9 regarding the report of three gunshot victims inside the
10 residence. Two of the victims, a woman, Jeanine Mullen,
11 and her four-year-old son were pronounced dead at the
12 scene. Her two-year-old son also sustained a gunshot
13 wound and was transported to the hospital.

14 A witness reported that earlier in the afternoon
15 Earnest Daise, who is Jeanine Mullen's boyfriend, was
16 observed pulling into the driveway at 20 Player Road in
17 Ms. Mullen's van and getting out of the vehicle.

18 Following the shooting incident, while being treated
19 for his injuries, the two-year-old child said daddy did
20 it, and Earnest Daise is the child's father.

21 Shortly after 2:00 a.m. on November 16th, 2009,
22 Earnest Daise was located at 43 Poppy Hill Road, Burton,
23 South Carolina, which is a residence he frequents. He was
24 wearing blue jeans, on which a red stain that appeared to
25 be dry blood was observed just below the left front pocket

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1 opening. It is believed that based upon the foregoing
2 information, evidence of the murder will be located at the
3 premises to be searched.

4 Q All right. And did you then obtain the search
5 warrant?

6 A I did.

7 Q And did you execute that search warrant?

8 A I did.

9 Q And what were the items that you removed?

10 A There are seventeen items listed, and they are listed
11 in the order that they were collected. The first one was
12 a gray hooded sweatshirt located in the right, rear
13 bedroom.

14 The second item was a plastic baggie with white rock
15 substance. It was found in the right, rear bedroom
16 underneath a hoodie.

17 Item Number Three was a Carabiner key ring with five
18 keys, also found in the right, rear bedroom under the
19 hoodie.

20 Item Four, two swabs from a red stain on the door of
21 the right, rear bedroom -- right, rear bedroom door.

22 Item Number Five was three thousand dollars currency
23 in 3 one-thousand dollar bundles found in the floor vent
24 in the right, rear bedroom.

25 Item Number Six, a Ziploc bag with green vegetable

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1 matter inside a gray Express jean's bag, found on corner
2 of the bed in the right, rear bedroom.

3 Item Number Seven was a manila envelope containing
4 incident reports and indictments in the name of Earnest
5 Stewart Daise on the floor at the foot of the bed in the
6 right, rear bedroom.

7 Number Eight was a Palm Trio by Sprint Cellular,
8 identifies the serial number of that phone. Would you
9 like me to read the serial number for the phone?

10 Q You don't -- you don't have to.

11 A Okay. That was found on a sofa in the right, rear
12 bedroom.

13 Item Number Nine was a blue Samsung Verizon cellular
14 flip phone found on the boards above the headboard of the
15 right, rear bedroom.

16 Item Number Ten is a black Samsung cellular, carrier
17 Virgin Mobile, flip phone found on the bed in the right,
18 rear bedroom.

19 Item Eleven is a box of twenty rounds of ammunition,
20 7.62 by .39 millimeter in a Wolf brand box on a closet
21 shelf in the right, rear bedroom.

22 Item Twelve was one spent Winchester .38 Special
23 shell casing. This was found in the master bedroom/weight
24 room, which we called it a weight room. It could have
25 been a study, but I think it was converted into a weight

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1 room; on a shelf in that room.

2 Item Thirteen was a Ziploc bag containing a small
3 amount of vegetable matter, that was also in the master
4 bedroom/weight room, inside of a Nike box.

5 Item Fourteen, found in the master bedroom bathroom,
6 the master bath, in a drawer by the sink was one unspent
7 .306 round.

8 Item Fifteen, in the master bedroom/weight room on
9 the floor under the window, was one unspent .223 round.

10 Back to the right, rear bedroom, on the floor was
11 found one black AWS brand digital scale with an A/C
12 adapter.

13 Item Seventeen was a Palm Trio, also by Sprint, found
14 on a -- on top of a sconce shelf in the den.

15 Q Were those items removed, pursuant to that search
16 warrant?

17 A Yes, they were.

18 Q And are you one of the officers who actually executed
19 that search warrant?

20 A I was.

21 Q And once those items were collected, what was done
22 with them? As an initial matter, were they turned in to
23 evidence?

24 A The items that had anything to do with narcotics was
25 turned over to members of the narcotics unit that were

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1 also present at the service of the search warrant.

2 Q Okay. Did you then file a Return with the
3 magistrate?

4 A I did.

5 Q And is that -- is there also a layout of the house
6 attached to Court's Exhibit Number Two?

7 A There is.

8 Q All right. And is that -- do you know who drew that?

9 A I drew that.

10 Q And is that -- I know it's not to scale, but is it a
11 fair and accurate representation of the layout of the
12 interior?

13 A It is.

14 DEPUTY SOLICITOR THORNTON: Court's indulgence, Your
15 Honor?

16 I have no further questions. Thank you, Your Honor.

17 THE COURT: Are y'all ---

18 MR. LEDDY: Your Honor, I'm Micah Leddy. I'm not
19 asking any questions, but I was going to ask for a break,
20 if we could have one.

21 THE COURT: That's what I was going to go ahead and
22 do, if that was all right with you all.

23 MR. LEDDY: Yes.

24 THE COURT: Can we just go ahead and take a quick
25 five minute break, and we'll come back. Thank you.

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1 **WITNESS:** Thank you, Your Honor.

2 **THE COURT:** Thank you. You may step down. Of
3 course, you cannot discuss your testimony.

4 (4:37 P.M., WHEREUPON, A BREAK WAS TAKEN.

5 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
6 RECORD:)

7 **MR. SECOR:** May I proceed?

8 **THE COURT:** Whenever you're ready.

9 CROSS-EXAMINATION

10 BY MR. SECOR:

11 **Q** How are you?

12 **A** Fine, sir.

13 **Q** I'll try not to go over too much of the same things
14 that I did with Master Sergeant Purdy. Were you in here
15 when he and I were talking?

16 **A** I was.

17 **Q** Okay. So if you would, just give us a real brief
18 idea of your experience in law enforcement. How long have
19 you been in law enforcement?

20 **A** About twenty-two years.

21 **Q** Okay. Has a lot of that been in investigations?

22 **A** It has.

23 **Q** Okay. So I assume you've dealt with warrant
24 affidavits several times?

25 **A** I have.

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1 Q Okay. And you would agree that specificity is an
2 important aspect of writing warrant affidavits; right?

3 A I would agree.

4 Q Okay.

5 THE COURT: Sergeant Wilson, is your microphone on?

6 Yes, it is. All right. Thank you. I'm just having
7 a little bit of trouble.

8 WITNESS: Let me move it up.

9 THE COURT: Thank you.

10 Q And when you're writing a warrant affidavit, you
11 don't just state your conclusions in the warrant
12 affidavit; right? You identify where the information in
13 the affidavit came from; correct?

14 A As -- as best we can. Whatever information we have
15 available, we put it in there for -- to establish probable
16 cause.

17 Q Right. And I understand it's not an exact science,
18 but in terms of -- to the best of your ability under the
19 circumstances with the information that you have at the
20 time, you put in where that information came from; right?

21 A If -- if that is known, yes.

22 Q Okay. And if you identify a source of information,
23 it's important to put in the warrant affidavit how it is
24 that source is reliable; correct?

25 A It depends on the circumstances, I would imagine,

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1 case-by-case basis. I don't know that it's something that
2 we would normally do in the affidavit, would be to
3 establish the reliability of somebody.

4 Q Okay. So you -- that's not something that you would
5 do?

6 A I believe that we would just base the affidavit on
7 the information that we had at the time. Whether or not
8 that person was reliable, I don't know if that's something
9 that would be addressed at that particular moment.

10 Q Okay. But I mean, you know that the process of
11 obtaining a search warrant requires that the magistrate
12 judge make an independent evaluation of the information;
13 right?

14 A I agree.

15 Q So it's not like -- you're not going and trying to
16 get the judge to just adopt what you say; right?

17 A Correct.

18 Q It's the job of the judge to scrutinize the
19 information to see if he thinks it's worthy of a warrant;
20 right?

21 A I would agree.

22 Q Okay. And ultimately, the goal of the information in
23 the warrant affidavit drafted by a law enforcement agent
24 is to specify facts showing why you, as law enforcement,
25 believe that a specific person committed a specific crime;

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1 right?

2 A Well, in the search warrant, we were looking for
3 evidence of the crime.

4 Q Right. Okay. And that's -- that was my fault. I
5 was talking about arrest warrant, but correct, with a
6 search warrant, you would be -- the goal in writing the
7 warrant affidavit would be to state specifically what
8 information or what evidence you're looking for; right?

9 A That would be correct.

10 Q And why you believe it's in a specific location;
11 right?

12 A Correct.

13 Q And, obviously, that it relates to a crime, because
14 that's why you would be investigating; right?

15 A Correct.

16 Q And it would also be important, in terms of giving
17 the judge all of the information he or she would need to
18 make that independent determination, that if you had any
19 information that contradicted your theory, that you also
20 provide the judge that information; right?

21 A If it existed, correct.

22 Q Okay. Now, if we could go through the affidavit that
23 you drafted in this case for 43 Poppy Hill Road, and if
24 you would be so -- you have a copy up there; right?

25 A I do.

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1 Q And how is that marked?

2 A That is Court Exhibit Two.

3 Q Court Exhibit Two. Okay.

4 On the copy that I have of it on page two, the first
5 section is entitled, "Description of Property Sought." Is
6 that correct?

7 A That's correct. On the affidavit page?

8 Q Yes, ma'am.

9 A Okay.

10 Q Yeah. And that's simply where you would -- that's
11 the section that's designated for you to describe the
12 specific things that you believe will be found at 43 Poppy
13 Hill Road; right?

14 A Correct.

15 Q And that section begins by stating that you're
16 looking for evidence related to murder; right?

17 A Correct.

18 Q And then it states some of the things that you are
19 looking for. Some of the specific things you're looking
20 for are firearms, spent shell casings, and live
21 ammunition; right?

22 A Yes.

23 Q And that's because you knew you were dealing with a
24 shooting; correct?

25 A That's correct.

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1 Q All right. Now that section also includes that one
2 of the things that you're looking for are cell phones;
3 correct?

4 A Correct.

5 Q All right. But there is no information in the
6 affidavit about phones relating to these crimes, is there?

7 A In -- can you repeat that?

8 Q In the warrant affidavit that you drafted, it doesn't
9 say anything about phones being involved in the commission
10 of this crime; right?

11 A Not specifically phones, but not specifically other
12 things as well.

13 Q Okay.

14 A We knew that people were shot and maybe not a whole
15 lot more than that at that point.

16 Q Okay. And that section entitled "Description of
17 Property Sought" also includes that you were looking for
18 letters, photographs, and other documents; right?

19 A Correct.

20 Q But there's nothing in the warrant affidavit
21 establishing why it is that you would think that those
22 items were related to this crime; right?

23 A Not specifically. It says at the very bottom of the
24 affidavit that evidence of the murder -- it is believed
25 that evidence of the murder will be located at the

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1 premises to be searched, and part of the evidence of the
2 property we were seeking were those items that are listed
3 in the first paragraph.

4 Q Okay. But -- but in terms of why you think that they
5 would be related to the crime or why you think they would
6 be at 43 Poppy Hill Road, there's nothing in the warrant
7 affidavit about that; correct?

8 A Not specifically spelled out, no.

9 Q Okay. And when you're -- when you're drafting a
10 warrant affidavit, and I may be wrong about this, but my
11 assumption is that because you do a lot of warrant
12 affidavits and because you work a lot of cases, do you
13 have sort of like a form warrant affidavit that you fill
14 out and change in terms of the facts of each case?

15 A We have -- we have a search warrant template that we
16 use, and we add the information specific to each case.

17 Q Okay. But, I mean, I assume that if you didn't have
18 any information about letters, photographs, and other
19 documents pertaining to this case, you put it in there
20 because it's something that you put in all your warrant
21 affidavits, because there may be; right?

22 A There's -- I think that that verbiage has been in
23 several that I've done. I'm not -- I can't say that it's
24 been in every single one, but it's probably not the first
25 one that that verbiage has been in.

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1 Q Okay. And it's just -- I mean, it's just sort of a
2 catch-all; right?

3 A I wouldn't call it a catch-all. You know, is it
4 specific items that we were looking for? No, it's not
5 specifically stated in the affidavit why, but again, we
6 knew that people were shot, and you know, those were the
7 items that we were looking for.

8 Q Okay. The next section on that page, the affidavit
9 page, is entitled "Description of Premises to be
10 Searched." Right?

11 A Correct.

12 Q And that's just simply the description, the specific
13 description, of the place that you want permission to
14 search; right?

15 A Correct.

16 Q And in that section, you describe 43 Poppy Hill Road
17 with some pretty good detail; right?

18 A Correct.

19 Q You stated that it's in the Grays Hill Community of
20 Burton, South Carolina; right?

21 A Correct.

22 Q And you say that it's a white double-wide mobile
23 home; right?

24 A Right.

25 Q With green shutters; right?

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1 A Yes.

2 Q And a wooden privacy fence?

3 A Yes.

4 Q And that there's a mailbox at the end of the driveway
5 marked with the Number 43; right?

6 A That's correct.

7 Q And that's pretty specific; isn't it?

8 A We -- yeah, that was very specific information that
9 we had on hand ---

10 Q Okay.

11 A --- for that section.

12 Q Now, the last section on the affidavit page is
13 entitled "Reason for Affiant's Belief that the Property
14 Sought is on the Subject Premises." Correct?

15 A Correct.

16 Q And this is the section where you, as the affiant,
17 are doing your best to establish the legal justification
18 for your search; correct?

19 A That's correct.

20 Q Okay. Now, you did respond to 20 Player Road; did
21 you not?

22 A I did.

23 Q Okay. But you were -- the warrant affidavit begins
24 by saying that shortly after 7:00 p.m. on November 15,
25 2009, that BCSO responded to the scene; correct?

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1 **A** Shortly before 7:00 p.m. I believe you said shortly
2 after 7:00. It says shortly before 7:00 p.m. That's
3 correct.

4 **Q** Right. I'm sorry. You're right. I misspoke.

5 And then the next line -- I'm sorry, the next
6 sentence begins, "Two of the victims, a woman, Jeanine
7 Mullen, and her four-year-old son were pronounced dead at
8 the scene." Did I read that correctly?

9 **A** That's correct.

10 **Q** All right. Now, having responded to the scene, some
11 of this would have been firsthand knowledge to you;
12 correct?

13 **A** Very little was firsthand knowledge, actually. I
14 know a lot of the information that we got we shared
15 amongst each other. That -- that specific information was
16 firsthand.

17 **Q** And sharing information is a very important part of
18 law enforcement; is it not?

19 **A** It is.

20 **Q** Okay. But in terms of the information that we've
21 read thus far in that section of the affidavit regarding
22 the two victims, or two of the victims, a woman and her
23 four-year-old son were pronounced dead at the scene.
24 There's nothing in the warrant affidavit that establishes
25 where that information came from; right? For instance, it

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1 doesn't say, "I, Sergeant Wilson, arrived at the scene and
2 observed these things." Correct?

3 A No, that's not specified in language.

4 Q And the next sentence says, "Her two-year-old son
5 also sustained a gunshot wound and was transported to the
6 hospital." Correct?

7 A That's correct.

8 Q And again, it doesn't -- the warrant affidavit
9 doesn't say, "I, Sergeant Wilson, responded to the scene
10 and observed these things." Right?

11 A Correct, it does not.

12 Q So there's no information about where that
13 information came from in the warrant affidavit.

14 A Not in writing, no.

15 Q Okay. Now, the next sentence is, "A witness reported
16 that earlier in the afternoon Earnest Daise, who is
17 Jeanine Mullen's boyfriend, was observed pulling into the
18 driveway of 20 Player Road in Ms. Mullen's van and getting
19 out of the vehicle." Did I read that right?

20 A Yes.

21 Q Okay. Now, regarding that sentence, there's
22 reference to a witness. That witness is not identified in
23 the warrant affidavit; correct?

24 A That's correct.

25 Q And the warrant affidavit does not describe what it

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1 was that they witnessed; right? Other than said they saw
2 Jeanine's boyfriend pull up to the house; right?

3 A Correct.

4 Q And there is no information in the warrant affidavit
5 establishing the circumstances under which that witness
6 made their observations; correct?

7 A No.

8 Q And regarding that sentence's reference to "earlier
9 in the afternoon," there's nothing in the warrant
10 affidavit regarding a timeframe when that unnamed witness
11 made that observation; correct?

12 A There's not.

13 Q All right. Now, just in terms of having gone through
14 the evidence, my assumption is that that unnamed witness
15 is Rebecca Nation; is that correct?

16 A Correct.

17 Q That's correct? Okay. But that's not in the
18 affidavit anywhere, that the witness is Rebecca Nation;
19 right?

20 A It is not.

21 Q Now, if we -- if I assume correctly that the unnamed
22 witness in the warrant affidavit is Rebecca Nation, then
23 the warrant affidavit would be saying that Rebecca Nation
24 told law enforcement that she saw Earnest Daise; right, by
25 the way the affidavit is worded?

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1 A Say that again, please?

2 Q If you read that sentence that we're talking about
3 right now, which again is, "The witness reported that
4 earlier in the afternoon, Earnest Daise, who is Jeanine
5 Mullen's boyfriend, was observed pulling into the driveway
6 of 20 Player Road in Ms. Mullen's van and getting out of
7 the vehicle," that to me, at least when I read it, implies
8 that the unnamed witness, who we are assuming is Rebecca
9 Nation, told law enforcement that she saw Earnest Daise;
10 correct?

11 A Correct. That's the information that I received from
12 other officers.

13 Q Okay. Have you ever seen Mrs. Nation's written
14 statement.

15 A I have.

16 Q You have. And do you know that in that statement she
17 never says the name Earnest Daise?

18 A In the witness statement, it does not say that
19 specifically.

20 Q Okay. In her written statement, she said that she
21 saw Jeanine's boyfriend; correct?

22 A This is Rebecca Nation's statement?

23 Q Yes, ma'am.

24 A Jeanie's van pulled up and her boyfriend got out and
25 went inside.

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1 Q Okay. So she's referring to the person that she saw
2 as Jeanine's boyfriend; right?

3 A Correct.

4 Q She does not use the name Earnest Daise.

5 A She does not.

6 Q Okay. And there's nothing in the warrant affidavit
7 that says how this unnamed witness, who we are assuming is
8 Rebecca Nation, would know who Jeanine's boyfriend is;
9 right?

10 A Not for the purpose of the search warrant, no.

11 Q Okay. And there is no physical description in the
12 warrant affidavit of what this unnamed witness saw; right?

13 A I'm sorry? Excuse me? Could you repeat that?

14 Q Sure. There's no physical description by this
15 unnamed witness of the person that they said they saw;
16 right?

17 A Contained in the affidavit of the search warrant?

18 Q Correct.

19 A No, there's not.

20 Q Okay. And the affidavit also doesn't identify where
21 the witness was when they made this observation; right?

22 A It does not.

23 Q All right. And it doesn't mention anything about the
24 unnamed witness being a next-door neighbor; correct?

25 A No, it doesn't.

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1 Q And it doesn't mention anything about the distance
2 between where the unnamed witness was when they made the
3 observation; correct?

4 A No, it doesn't.

5 Q Okay. All right. The next sentence in your warrant
6 affidavit states, "Following the shooting incident, while
7 being treated for his injuries, the two-year-old child
8 said daddy did it." Is that correct?

9 A That's correct.

10 Q All right. But in your warrant affidavit, there's no
11 information about who heard the two-year-old say this;
12 correct?

13 A That's correct.

14 Q Now, I'm assuming, I guess obviously, you were
15 talking about Jeremiah; is that correct, being the
16 two-year-old?

17 A That's correct.

18 Q And although your warrant affidavit doesn't mention
19 this, the EMS people that were treating Jeremiah were
20 Danny Tinnel and Shayna Orsen. Did you know that?

21 A Well after the fact, I knew they were. Not at that
22 time, I did not know their identity.

23 Q Okay. So you got this information via other
24 officers.

25 A That's correct.

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- 1 Q Okay. Because I think it was Sergeant Foskey that
2 actually talked to Danny Tinnel.
- 3 A I assume so.
- 4 Q Okay. Now, you were given that information by other
5 officers. Were you given any other information about the
6 circumstances surrounding Jeremiah's words to EMS?
- 7 A Such as? I don't know what you're asking.
- 8 Q Okay. Just as an example, did you know that the
9 first question that Danny Tinnel asked Jeremiah was what
10 his name was, and that Jeremiah responded "Doug." Did you
11 know that?
- 12 A At the time of this search warrant, no.
- 13 Q Okay. And I'm assuming that the answer would be the
14 same for this, but did you know that Danny Tinnel asked
15 Jeremiah who his daddy was and that Jeremiah did not
16 answer?
- 17 A At the time, no.
- 18 Q Okay. Now in that sentence that we just talked
19 about, you put in quotations the words "Daddy did it."
20 Correct?
- 21 A That's correct.
- 22 Q And then immediately following those words in
23 quotations, you wrote "Earnest Daise is the child's
24 father." Correct?
- 25 A Correct.

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1 Q But in the warrant affidavit, there is nothing
2 establishing that Earnest Daise is Jeremiah's father;
3 correct?

4 A That's correct.

5 Q Now the next sentence, it states that Earnest Daise
6 was located at 43 Poppy Hill Road, Burton, South Carolina,
7 which is a residence he frequents; correct?

8 A Correct.

9 Q And you were one of the people that went to execute
10 that search warrant at 43 Poppy Hill; correct?

11 A Correct.

12 Q And I believe it was in your supplemental incident
13 report that I was reading that upon execution, you talked
14 to the owners of that residence, who were Jason and Asia
15 Palmer; is that right?

16 A Correct.

17 Q And in your conversations with them, they identified
18 a bedroom in that residence, 43 Poppy Hill, as being
19 Earnest Daise's room; right?

20 A That's correct.

21 Q Now, ---

22 MR. SECOR: If I could, Your Honor, I don't believe
23 the State has any objection, but I'd like to move in
24 Court's Exhibit Number Four and Five for purposes of this
25 hearing, which are the written statements of EMS

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1 personnel, Danny Tinnel and Shayna Orsen.

2 DEPUTY SOLICITOR THORNTON: Without objection, Your
3 Honor.

4 THE COURT: Okay. Once you mark that, may I have the
5 documents?

6 MR. SECOR: Yes, ma'am.

7 THE COURT: Thank you. I appreciate it.

8 (WHEREUPON, Court's Exhibit No. 4 was marked for
9 identification and received into evidence.)

10 (WHEREUPON, Court's Exhibit No. 5 was marked for
11 identification and received into evidence.)

12 MR. SECOR: May I have just a minute, Your Honor?

13 THE COURT: Sure.

14 MR. SECOR: I'm sorry, Your Honor. I have no further
15 questions for Sergeant Wilson.

16 DEPUTY SOLICITOR THORNTON: Nothing further, Judge.

17 THE COURT: You may step down, Sergeant.

18 WITNESS: Thank you.

19 DEPUTY SOLICITOR THORNTON: Your Honor, Court's
20 indulgence?

21 Your Honor, the State has nothing further for those
22 two search warrants. Thank you.

23 THE COURT: Okay.

24 Are we waiting on Mrs. Nation?

25 MR. LEDDY: Yes, it worked before court, so hopefully

1 it will work now.

2 THE COURT: Okay. Thank you.

3 (WHEREUPON, THE FOLLOWING WITNESS APPEARED VIA
4 SKYPE:)

5 MR. LEDDY: Hello? Are you there?

6 WITNESS, MRS. NATION: Yes, I'm here.

7 MR. LEDDY: Okay.

8 I'm going to try to get it to play through the
9 speakers.

10 Okay. Can you talk to us now?

11 WITNESS, MRS. NATION: Yes, I'm here.

12 MR. LEDDY: All right. Let me make sure I don't have
13 it too loud.

14 Okay. Mr. Secor is going to ask you some questions.
15 Can you see us okay?

16 THE COURT: Mr. Secor, can we ---

17 WITNESS, MRS. NATION: You look dark.

18 MR. LEDDY: That's something I've never heard before.

19 THE COURT: Mr. Secor, can we go ahead and put on the
20 record that you had asked me to allow this testimony to be
21 taken via Skype, based on the cost and where she is? My
22 understanding is the State consented to it, which is why I
23 allowed it; is that correct? I just want to make sure
24 that there's no question and to be sure that we can verify
25 that she is, in fact, Rebecca Nation.

1 **DEPUTY SOLICITOR THORNTON:** That's correct, on the
2 part of the State. And also, Judge, and I'm sorry if I'm
3 jumping the gun, she also needs to be sworn in, whether
4 she's there or here.

5 **THE COURT:** She will. Exactly. She will be sworn
6 in, but I need to somehow be assured that that is, in
7 fact, Rebecca Nation.

8 **MR. SECOR:** Your Honor, I may be able to clear that
9 up.

10 **THE COURT:** Okay.

11 **MR. SECOR:** I went to Missouri to talk to Mrs.
12 Nation.

13 **THE COURT:** Uh-huh.

14 **MR. SECOR:** And I can tell by looking at the computer
15 that that's her. I don't know if that's enough, but ---

16 **THE COURT:** Okay.

17 Let me ask you, Mrs. Nation, any chance you've got
18 some ID around you?

19 **WITNESS, MRS. NATION:** I would have to go out to my
20 truck to get it.

21 **THE COURT:** Okay. Well, we're not going to do that
22 right now. What I'm going to first go ahead and do is
23 just swear you in, and I'm going to ask you to give us
24 your full name for the record. And what I think I may do
25 -- and we will go ahead and -- can you provide afterwards

1 just to counsel your social security number and date of
2 birth so we can verify it? I don't necessarily want to
3 say it in open court right now, but just once we're
4 concluded, we'll go ahead and I'll have someone from both
5 sides here to see exactly, just so we can verify you.

6 Okay?

7 WITNESS, MRS. NATION: That's fine.

8 THE COURT: Ma'am, will you just raise your right
9 hand?

10 REBECCA NATION, after being duly sworn,
11 testified as follows:

12 THE COURT: All right. And can you hear me okay?

13 WITNESS, MRS. NATION: Yes.

14 THE COURT: Very good. All right. And if you would,
15 give us your full name for the record, please?

16 WITNESS, MRS. NATION: Rebecca Anne Brundige Nation.

17 THE COURT: And tell me where you're located right
18 now.

19 WITNESS, MRS. NATION: I'm located in Missouri.

20 THE COURT: Okay. Are you in your home?

21 WITNESS, MRS. NATION: I'm in my mother's home.

22 THE COURT: Okay. Thank you. Very good.

23 All right. Go ahead.

24 MR. SECOR: Thank you, Your Honor.

25 DIRECT EXAMINATION

DIRECT - REBECCA NATION BY MR. SECOR

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1 BY MR. SECOR:

2 Q How are you, Mrs. Nation?

3 A Fine.

4 Q Are you nervous?

5 A Not too bad.

6 Q Okay. Good. You have no reason to be, I assure you.

7 I'm just going to ask you a couple questions about
8 what happened back in November of 2009.

9 A Uh-huh.

10 Q And if you would, just tell everybody where it was
11 that you were living in November of 2009.

12 A I was living at 24 Player Road, Seabrook, South
13 Carolina.

14 Q Okay. And who -- who did you live with there?

15 A I lived with my husband, Wesley Nation, and my two
16 children.

17 Q Okay. And why were y'all living in Seabrook at the
18 time?

19 A My husband was -- is in the military, in the Marine
20 Corps, and that's why we were living there.

21 Q Okay. And did you know the woman that lived next
22 door to you on Player Road?

23 A Yes, I knew Jeanine.

24 Q Okay. Were you friends with Jeanine?

25 A Yes, we were friends, not close friends, but we were

DIRECT - REBECCA NATION BY MR. SECOR

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1 friends.

2 Q Were your friends -- I mean, were your children
3 friends with her children?

4 A Yes. My children and her children, all four boys,
5 played all the time together.

6 Q Okay. Now, if you would, just tell -- tell the judge
7 and everybody here that's in the courtroom, to the best of
8 your memory, obviously, what you remember about November
9 15th of 2009.

10 A To the best of my knowledge, I remember we had had a
11 party the night before, and I spent the next day cleaning
12 up the house and the yard. And my kids and Jeanine's kids
13 wanted to play, and they asked if my two children could
14 come over to Jeanine's house to play. I said yes.

15 And about, I'm not for sure, between 4:00 and 4:45, I
16 called Jeanine to have her send my kids home, because it
17 was getting time to eat. She sent my kids home, and we
18 had ate supper.

19 And after that, me and my husband at the time went
20 out and smoked a cigarette on the side porch, which faces
21 Jeanine's house. I seen what I believed to be Jeanine's
22 boyfriend pull up in her van, get out, and walk into
23 Jeanine's house.

24 I didn't think too much of it. We went back inside.
25 I gave the kids a bath, and then around 7:00, 7:45,

DIRECT - REBECCA NATION BY MR. SECOR

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1 somewhere around that time, I received a phonecall from
2 Jaseri, Jeanine's oldest son, saying: My mom is dead.
3 They're dead.

4 And at that point, my husband and I both went over
5 there, and we went into the house, and we seen Fred laying
6 on the kitchen floor and Jeanine and Jeremiah slumped in
7 the bedroom.

8 I took both Jaseri and Jaion, the two oldest boys,
9 back to my house at that time, because I did not want them
10 to be in there at that time. That's what I remember.

11 Q Okay. I'm sorry that you and your family had to go
12 through that experience, and I'm sorry that, you know, we
13 -- we are having to take your time now to work on this
14 case, but there's just a couple of things that I'd like to
15 ask you.

16 You said that when you were on the side porch smoking
17 a cigarette with your husband, just for clarification,
18 that would be Wesley Nation?

19 A Yes, Wesley Nation.

20 Q And you were on the side porch of your house, which
21 you said faced towards Jeanine's house; right?

22 A Yes.

23 Q And do you have, just in terms of guesswork, because
24 I know you haven't been there in a long time, do you have
25 any idea about the distance between your home and what was

DIRECT - REBECCA NATION BY MR. SECOR

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1 Jeanine's home?

2 A I'd say anywhere between seventy-five to a hundred
3 and twenty-five feet.

4 Q Okay. And you said that you saw Jeanine's van pull
5 up to the house; correct?

6 A Yes.

7 Q And you saw who you believed to be her boyfriend get
8 out and go inside; is that right?

9 A Yes.

10 Q Okay. Did you know that -- the person that you
11 believe that you saw, do you know that person's name?

12 A No, I did not. I know I've been told it before with
13 Jeanine and all that, but it just was not something that
14 interested me enough that I would remember it.

15 Q Okay. Do you remember at all, and I know it was a
16 long time ago, but do you remember at all a physical
17 description of the person that you saw?

18 A I know it was a black male, mid/early-thirties,
19 mid-thirties. He was dressed in a white, fleece sweater
20 looking thing, and tan pants, with a tan beanie on his
21 head.

22 Q Okay. Now, after -- after the police arrived at the
23 scene, were you ever asked to attempt to identify the
24 person that you saw?

25 A No, I wasn't. I was asked who I seen, and I said I

DIRECT - REBECCA NATION BY MR. SECOR

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1 just seen what I believed to be Jeanine's boyfriend.

2 Q Okay.

3 A And that was it.

4 Q Okay. Now, do you -- and I know you do remember, but
5 the way the law works, I have to ask questions a certain
6 way, so forgive me if my question sounds sort of
7 ridiculous, but do you remember me coming to see you in
8 Missouri?

9 A Yes, I do.

10 Q Okay. And was that in August of 2012?

11 A Yes.

12 Q Okay. And when I came and spoke to you, did you and
13 I type up your memories of November 15th, 2009?

14 A Yes, I -- yes, we did.

15 Q Okay. And did you have a chance to go over very
16 carefully the wording of that document?

17 A Yes, I did.

18 Q Okay. And did you eventually sign that document
19 saying that that is the information in that -- is your
20 memory, to the best of your recollection?

21 A Yes, I did.

22 Q Okay. Now, do you have a copy of that?

23 A I do.

24 Q Okay. And how many pages is it?

25 A It is one -- or two, I'm sorry.

DIRECT - REBECCA NATION BY MR. SECOR

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1 Q Two pages?

2 A Yes.

3 Q Hang on just one second, Mrs. Nation. I need to have
4 something marked for evidentiary purposes. Hang on just
5 one second.

6 A Okay.

7 (WHEREUPON, Court's Exhibit No. 6 was marked for
8 identification and received into evidence.)

9 Q I know you said that Micah looked sort of dark in
10 this picture, and ---

11 A It's clear now.

12 Q Oh, it's clear now?

13 A Yes.

14 Q Maybe it had something to do with me.

15 Tell me if you can see this document that I'm holding
16 up well enough to be able to identify whether it is the
17 affidavit that you signed?

18 A Yes, it is.

19 Q Okay. And I'm going to show you the second page as
20 well, just to make sure.

21 A Yes.

22 MR. SECOR: And, Your Honor, the affidavit that I'm
23 referring to is marked as Court Exhibit Number Six.

24 THE COURT: Okay. Do you have an extra copy of it?

25 MR. SECOR: I do.

DIRECT - REBECCA NATION BY MR. SECOR

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1 **THE COURT:** Thank you.

2 **MR. SECOR:** And just hang on one second, Mrs. Nation.

3 **WITNESS, MRS. NATION:** Okay.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN. THEREAFTER, A
5 CHILD WAS STANDING IN THE BACKGROUND BEHIND MRS. NATION.)

6 **THE COURT:** Mrs. Nation, if you need a moment to get
7 your child out of there, you're certainly welcome to do
8 it.

9 **WITNESS, MRS. NATION:** Thank you.

10 **THE COURT:** Sure.

11 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, MRS.
12 NATION RETURNED VIA SKYPE, AND THE FOLLOWING PROCEEDINGS
13 WERE HELD ON THE RECORD.)

14 **MR. SECOR:** And, please, don't be embarrassed.
15 Sometimes in court we can use little moments of happiness
16 and joy like that.

17 Well, I think right now those are the questions that
18 I have for you, but one of the prosecuting attorneys, Mr.
19 Thornton, I believe, may have some questions for you.

20 **WITNESS, MRS. NATION:** Okay.

21 **MR. SECOR:** I'm going to turn it over to him, and
22 then I may come back up and ask you another question, or I
23 may just say goodbye, but I appreciate your time. If
24 you'll hang on just one second?

25 CROSS-EXAMINATION

CROSS - REBECCA NATION BY DEPUTY SOLICITOR THORNTON

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1 BY DEPUTY SOLICITOR THORNTON:

2 Q Mrs. Nation, I'm not used to doing this. Can you see
3 me okay?

4 A Yes, I can.

5 Q All right. My name is Sean Thornton, ma'am. I'm
6 Deputy Solicitor with the Fourteenth Circuit, so I'm one
7 of the prosecutors prosecuting in this case. I think you
8 may have talked to one of the victim advocates in our
9 office, Michelle Frazier, within the last day or two?

10 A Yes, I did on Friday.

11 Q All right. I just have a couple questions for you,
12 ma'am.

13 In this document that's just been handed to me, and
14 forgive me, I just got it handed to me, I understand you
15 did it in August, but I've just received it this morning,
16 so it's taken me a minute to look over it. One of the
17 things, there's a lot of time references in this
18 statement.

19 It talks about approximately 4:45 I called Jeanine
20 and asked her to send my kids home for dinner. It talks
21 about the van pulling up about 6:00. However, in the last
22 -- the last part of your statement it says that you're not
23 a hundred percent sure about the time; is that correct?

24 A That is correct.

25 Q Are you aware -- did you do a written statement?

CROSS - REBECCA NATION BY DEPUTY SOLICITOR THORNTON

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1 **A** I did the night it happened.

2 **Q** Okay. The night it happened. So in that written
3 statement, ma'am, did you say that the -- about 4:30 my
4 husband and I went outside to smoke. I saw Jeanie's van
5 pull up, and her boyfriend got out.

6 So in the statement you wrote that night, you
7 referenced it at about 4:30, and in your current statement
8 6:00. So, but you're not sure about the time, according
9 to your new statement; is that correct?

10 **A** That's correct. It's been so many years that I don't
11 remember.

12 **Q** Would you say that your -- the information that you
13 would have provided the night of this incident to
14 Detective Hiers and the statement that you wrote would
15 likely be more accurate if there was a discrepancy?

16 **A** With the times, yes, that would be more accurate.

17 **Q** All right. Let me ask you a couple other questions.
18 Ma'am, do you remember talking to Sergeant Jody Hiers that
19 night that you gave a written statement to and talked to?

20 **A** I do -- I do not remember names, but I do remember
21 talking to one officer.

22 **Q** Okay. In -- in the information you provided to him,
23 when you gave a description of what the boyfriend that you
24 identified had on, didn't you say he had on blue jeans?

25 **A** I don't remember, to be perfectly honest.

CROSS - REBECCA NATION BY DEPUTY SOLICITOR THORNTON

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1 Q Okay.

2 Rebecca stated that E, which I'll ask you about in a
3 minute, was wearing what appeared to be a dark in color
4 hoodie-type sweatshirt, blue jeans, and what appeared to
5 be a brownish knit cap. Now the brown cap I think
6 coincides with what you had written down, but the night
7 this happened, you identified the boyfriend as wearing
8 blue jeans and a dark hoodie-type shirt; is that correct?

9 A If that's what my statement says, then that's
10 correct.

11 Q Well, this is actually not a statement. This is in
12 reference to the officer's investigator notes. There's
13 nothing in your statement about -- about a description.
14 It just says it in the officer's notes, but if you
15 provided that information, would that be correct?

16 A If I provided it that night, then yes, it would be
17 correct.

18 Q All right. Also there's a reference in here
19 repeatedly to you using the phrase or the nickname E for
20 Jeanie's boyfriend. And if you don't mind, ma'am, if
21 you'll just bear with me just a second: Rebecca stated
22 that she and her husband stepped outside their residence
23 to smoke a cigarette at approximately 1630, which of
24 course would be 4:30. Rebecca stated that she observed
25 Jeanie's van pull in the yard at the incident location

REDIRECT - REBECCA NATION BY MR. SECOR

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1 shortly after they exited the residence.

2 And it goes on to say that Rebecca stated she told
3 her husband that E pulled up, and E is in quotes, and E in
4 quotes is referenced several times. Was that the
5 information that you provided to Detective Hiers on the
6 night of this incident?

7 A I believe so, yes.

8 Q Okay. Thank you, ma'am.

9 DEPUTY SOLICITOR THORNTON: Court's indulgence one
10 moment?

11 THE COURT: Just bear with us, Mrs. Nation.

12 DEPUTY SOLICITOR THORNTON: I have nothing further.

13 Thank you, ma'am, very much.

14 WITNESS, MRS. NATION: You're welcome.

15 MR. SECOR: May I redirect briefly?

16 THE COURT: You may. Yes.

17 REDIRECT EXAMINATION

18 BY MR. SECOR:

19 Q Can you see me okay?

20 A Yes.

21 Q All right. Now just because you're not here, it
22 might be a little bit confusing, but the questions that
23 Mr. Thornton was asking you about, about things that you
24 reportedly said, those are things that he was reading from
25 a police report. Okay?

REDIRECT - REBECCA NATION BY MR. SECOR

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1 A Okay.

2 Q Meaning a report that was written by a police

3 officer. Okay?

4 A Okay.

5 Q And you made a written statement, as a witness that

6 day; right?

7 A Yes.

8 Q But you didn't write any of the police reports for

9 them, did you?

10 A No, I did not.

11 Q But you were asked to make your own written

12 statement; right?

13 A Yes.

14 Q And I assume that at the time your assumption was you

15 were being asked to make a written statement because the

16 police wanted to know what you, in your own words,

17 recalled about that evening; correct?

18 A Yes.

19 Q And as you said earlier, you did not know Jeanine's

20 boyfriend's name; correct?

21 A No. Like I say, I know I've heard it more than once.

22 I know she said it, but it's just not something I would

23 remember.

24 Q Okay. And when it came to filling out the written

25 statement that you made in your own handwriting, were you

REDIRECT - REBECCA NATION BY MR. SECOR

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1 given any guidance by law enforcement about how to fill
2 that form out?

3 A No, they just asked me to fill out what I remembered
4 of that day, and that was it.

5 Q Okay. Hang on just one second.

6 Mrs. Nation, in terms of in your written statement
7 when you wrote that you saw Jeanine's boyfriend pull up in
8 Jeanine's van on that evening, ---

9 A Uh-huh.

10 Q --- that was -- well, tell me if I'm wrong,
11 obviously, but was that based on just sort of the
12 circumstances under which you saw the van pull up?

13 A I just assumed it was him, because she had told me
14 that he had taken the automobile, she had loaned it to
15 him.

16 Q Okay. Okay. Thank you, ma'am. I don't think I've
17 got any other questions.

18 MR. SECOR: Anything more from you all?

19 DEPUTY SOLICITOR THORNTON: Nothing at all from the
20 State, Your Honor. Thank you.

21 THE COURT: Okay.

22 MR. SECOR: I will, with Mr. Thornton, he and I will
23 get together and try to make sure that you're not some
24 imposter testifying via Skype, but I appreciate your time.
25 I apologize for the inconvenience, and I wish you well.

DIRECT - JODY HIERS BY DEPUTY SOLICITOR THORNTON

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1 Thank you very much.

2 THE COURT: Thank you, Mrs. Nation.

3 (WHEREUPON, SKYPE CONNECTION WAS DISCONNECTED.)

4 THE COURT: Okay.

5 MR. SECOR: Your Honor, the defense doesn't have any
6 other witnesses. I don't know if the State does.

7 DEPUTY SOLICITOR THORNTON: Well, I've got one
8 rebuttal, Judge.

9 THE COURT: Okay.

10 DEPUTY SOLICITOR THORNTON: The State calls Staff
11 Sergeant Jody Hiers to the stand.

12 THE COURT: I would ask if he recognizes Mrs. Nation.
13 I'm assuming he can.

14 JODY HIERS, after being duly sworn, testified as
15 follows:

16 THE COURT: Can you identify her?

17 WITNESS: It looks like Mrs. Nation, but it's been
18 over three years, so.

19 THE COURT: Thank you. Okay.

20 WITNESS: Jody Hiers, J-O-D-Y H-I-E-R-S.

21 DEPUTY SOLICITOR THORNTON: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY DEPUTY SOLICITOR THORNTON:

24 Q Sergeant Hiers, I'll try to keep this as brief as I
25 can. And is it Staff Sergeant Hiers?

DIRECT - JODY HIERS BY DEPUTY SOLICITOR THORNTON

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1 A It is Staff Sergeant Hiers.

2 Q I never like to demote you guys, if I can help it.

3 A That's all right.

4 Q Staff Sergeant, do you work for Beaufort County
5 Sheriff's Office?

6 A Yes, sir, I do.

7 Q Did you work for the Beaufort County Sheriff's Office
8 in November of 2009, specifically November the 15th and
9 16th of 2009?

10 A Yes, sir.

11 Q And you -- obviously, you have been in here the
12 entire time during this hearing; have you not?

13 A Yes, sir.

14 Q Sir, did you interview the -- what we believe is the
15 lady on the screen, Mrs. Rebecca Nation, on the night of
16 the incident that we're here about today in the State
17 versus Earnest Daise?

18 A Yes, sir, I did.

19 Q And did she provide to you information verbally?

20 A She did.

21 Q And after you interviewed her, did she also write a
22 brief statement?

23 A Yes, sir.

24 Q All right. Did you write up an interview -- notes of
25 your interview with her verbally, and then also provide

DIRECT - JODY HIERS BY DEPUTY SOLICITOR THORNTON

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1 what I believe is State's -- excuse me, Court's Exhibit
2 Number Three, if memory serves? Is Court's Exhibit Number
3 Three the written statement that was provided to you by
4 Mrs. Nation?

5 A Yes.

6 Q And in addition to that written statement, did you
7 also make notes of your interview?

8 A Yes, sir, I did.

9 Q Is that a common practice?

10 A It is.

11 Q And did you write that up and reduce those notes to a
12 typewritten supplemental incident report?

13 A Yes, sir.

14 Q And do you have a copy of that incident report with
15 you?

16 A I do.

17 Q All right. And could you, using that to refresh your
18 memory, I realize it's been three years, can you -- one,
19 did Mrs. Nation give you a description of the clothing
20 that was being worn by the -- by Jeanie's boyfriend when
21 he pulled up in the van?

22 A Yes, sir.

23 Q And what was the clothing?

24 A She stated that E was wearing what appeared to be a
25 dark in color hoodie-type sweatshirt, blue jeans, and what

DIRECT - JODY HIERS BY DEPUTY SOLICITOR THORNTON

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1 appeared to be a brownish knit cap on his head.

2 Q All right. And "E," is that something you told her
3 what the person's nickname was, or was that information
4 that she provided to you?

5 A She provided that information to me.

6 Q All right. And is that why it is in quotes
7 repeatedly?

8 A Yes, sir.

9 Q And who did -- through your investigation in law
10 enforcement, who goes by the street name "E"?

11 A Earnest Daise.

12 Q And is that the defendant in this case?

13 A Yes, sir.

14 Q Did at anytime she tell you that he was in tan pants,
15 and you just messed that up and put blue jeans by mistake?

16 A No, sir.

17 Q And did you invent the title of "E" for the
18 boyfriend, or is that something she told you?

19 A That's something she told me.

20 Q All right.

21 DEPUTY SOLICITOR THORNTON: And, Your Honor, I'm
22 going to go ahead, just so that it's complete, -- Court's
23 indulgence for one moment?

24 THE COURT: Okay.

25

DIRECT - JODY HIERS BY DEPUTY SOLICITOR THORNTON

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1 (WHEREUPON, Court's Exhibit No. 7 was marked for
2 identification only.)

3 Q I'm going to ask you -- I realize it's got some
4 highlighter on it, but I'm going to ask you if you can
5 identify Court's Exhibit Number Seven.

6 A I can.

7 Q And is that an accurate copy of the notes of your
8 interview that you typed into your supplemental report?

9 A Yes.

10 Q Has it been altered or changed, other than the yellow
11 highlighter that's on the bottom of it that I put there,
12 has it been altered or changed in any way?

13 A No.

14 DEPUTY SOLICITOR THORNTON: Your Honor, I'd ask that
15 for the purpose of this hearing that Court's Exhibit
16 Number Seven be admitted into evidence.

17 MR. SECOR: No objection.

18 THE COURT: Without objection.

19 (WHEREUPON, Court's Exhibit No. 7 was admitted into
20 evidence.)

21 DEPUTY SOLICITOR THORNTON: Thank you very much,
22 Sergeant Hiers.

23 I don't have anything further, Judge.

24 THE COURT: Can I take a look at that, sir?

25 WITNESS: Yes, ma'am.

CROSS - JODY HIERS BY MR. SECOR

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1 **THE COURT:** I appreciate it.

2 **WITNESS:** Do you want them both, or just the one?

3 **THE COURT:** I've got the other one. Thank you.

4 **WITNESS:** You're welcome.

5 CROSS-EXAMINATION

6 BY MR. SECOR:

7 **Q** How are you doing, Staff Sergeant?

8 **A** I'm doing good. Thank you.

9 **Q** Throughout the course of your involvement in the
10 investigation of this case, you've talked to a lot of
11 people; right?

12 **A** Yes, sir.

13 **Q** Okay. And you talked to Frank Mullen?

14 **A** I did.

15 **Q** You talked to Wesley Nation?

16 **A** I did.

17 **Q** Rebecca Nation?

18 **A** Correct.

19 **Q** Jaion?

20 **A** Yes, sir.

21 **Q** And Jaseri?

22 **A** Correct.

23 **Q** And someone by the name of Alexis Delaney?

24 **A** I did.

25 **Q** And you talked to a gentleman by the name of Gary

CROSS - JODY HIERS BY MR. SECOR

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1 Sievright?

2 A I did.

3 Q And you talked to a woman by the name of Cassandra
4 Simmons?

5 A I did.

6 Q Okay. And you also I think did follow-up interviews
7 of both Jaion Mullen and Jaseri Mullen; correct?

8 A Correct.

9 Q And all of the interviews that you conducted were
10 over the course of some days; right, not all on November
11 15th, '09. Correct?

12 A Correct.

13 Q In fact, some of the interviews that you conducted
14 went all the way up to the middle of December; right?

15 A It's looking like the 9th of December, if you would
16 classify that as the middle.

17 Q The only reason I said that is because I thought that
18 -- I thought your interview of Gary Sievright was dated --
19 oh, no, I'm sorry. You're right. It was the 17th of
20 November. The latest one that I have in my notes is the
21 9th of December, but you talked to lots of different
22 people in this case; right? And you got lots of
23 information; right?

24 A I did.

25 Q And I assume that you took notes to the best of your

CROSS - JODY HIERS BY MR. SECOR

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1 ability when you talked to those different people.

2 A I did.

3 Q Now the report that Mr. Thornton was asking you
4 about, in terms of your recollection of your conversation
5 with Mrs. Nation, that report with that information in it
6 was dated December 16th, 2009; correct?

7 A The supplemental report?

8 Q Yes, sir.

9 A It is.

10 Q Okay. And that was the report that Mr. Thornton was
11 referring to; correct?

12 A Uh-huh, correct.

13 Q So that would have been a full month after the night
14 that Fred and Jeanine were killed; right?

15 A The date on the report is, correct, but we type
16 information as we go along. So in other words, when I
17 obtain information from an investigation, I make sure that
18 I type it up within a reasonable amount of time, so it
19 wouldn't have been typed up on the 16th.

20 Q Okay. I mean, but you're not typing it up as you're
21 talking to somebody.

22 A Right. Not as I'm talking, no, no.

23 Q Okay. So it requires recollection when you're typing
24 up your reports.

25 A From my notes. Yes, sir. From my notes, yeah.

CROSS - JODY HIERS BY MR. SECOR

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1 Q All right. Now were you the person that actually
2 asked Mrs. Nation to make a written statement of her own?

3 A I did.

4 Q And correct me if I'm wrong, but I assume that the
5 reason you do that as law enforcement is because you want
6 a person's own version of what they saw or heard; right?

7 A We would like to have their account of it.

8 Absolutely.

9 Q Okay. And that's because you consider that to be the
10 best evidence of what they recall; right?

11 A Not necessarily. Normally they will summarize. Most
12 witnesses, complainants, you know, victims, they'll
13 summarize what happened. They don't necessarily add every
14 little thing in a statement, and obviously, we don't tell
15 them what to write. So we hand them the witness statement
16 and ask them to, you know, write what they basically saw
17 or witnessed.

18 Q Uh-huh.

19 A But that's why we interview them also.

20 Q I understand.

21 A Because we have certain questions that we ask them.

22 Q I understand. But, I mean, the reason that you have
23 the written statement is because you want their own words;
24 right?

25 A Correct.

CROSS - JODY HIERS BY MR. SECOR

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1 Q Okay. And Mrs. Nation said, and I'm sure that you
2 agree after what you just said, that you don't tell people
3 how to fill out statements.

4 A That's correct.

5 Q And that's because you want their words and not
6 somebody else's; right?

7 A Correct.

8 Q But when you take a -- when you have a witness, or
9 whomever it may be, make their own written statement, do
10 you ever read it over and ask them to clarify anything in
11 it?

12 A Normally, I don't, no.

13 Q Okay.

14 A No. They write what they witnessed or what they saw.

15 Q Uh-huh.

16 A And then, obviously, we have them sign it.

17 Q Yes, sir.

18 A And then that's why we actually ask, you know, the
19 specific questions of the witness, complainant, victim,
20 whoever it may be, and we add that to our report.

21 Q Okay. So in this case, you did not review anybody's
22 written statement and ask them to clarify anything in
23 their own writing?

24 A I did not, no.

25 Q And having -- having been there on November 15th,

CROSS - JODY HIERS BY MR. SECOR

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1 2009, and I assume probably in some degree in the days
2 following that night, do you have any recollection in
3 terms of your observations of distance between the
4 Nations' home and Jeanine's home?

5 A That was a long time ago.

6 Q I know.

7 A I don't want to -- I don't want to give you an
8 estimate of the distance.

9 Q I know, and I'm not trying to trick you or make you
10 say something that you don't want to say. I was just
11 wondering if you had a ballpark, because I went out and
12 looked, and I've got a ballpark, but my opinion doesn't
13 really matter, so.

14 MR. SECOR: If I can have just one minute, please?

15 Q Just a couple more questions, sir. When you're
16 conducting -- conducting an investigation and talking to
17 somebody like Mrs. Nation, who has observed something that
18 you believe to be of a pretty high degree of importance,
19 in your follow-up interviews with them, do you ask them
20 questions to help -- to help you determine sort of their
21 basis of knowledge, like how is it ---

22 DEPUTY SOLICITOR THORNTON: Objection, Your Honor.
23 And I realize we're in an evidentiary hearing, but I don't
24 know that hypotheticals are important here. He can ask if
25 he did that in this case, as opposed to what he may or may

CROSS - JODY HIERS BY MR. SECOR

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1 not do in other cases.

2 THE COURT: Okay. He can go ahead and ask the
3 question, but I'm not sure I'm following him where he was
4 going anyway. So, I think you may need to rephrase it.

5 MR. SECOR: Okay. All right.

6 Q Did you ask Mrs. Nation how well she knew Jeanine's
7 boyfriend?

8 A I asked her how long she had known the family.

9 Q Okay. Did you ask her whether she had spent any time
10 with Jeanine's boyfriend?

11 A I did not ask her that.

12 Q Okay. Did you ask her to look at a photograph or a
13 photographic lineup to see if she could identify the
14 person that she saw?

15 A I did not. She was very adamant that it was her
16 boyfriend. She knew him.

17 Q And did you -- did you do some sort of show-up
18 identification procedure where you brought Mr. Daise to
19 where Mrs. Nation was to say: Is this the person you saw?

20 A No.

21 Q Okay. But those are things that law enforcement
22 does.

23 A We do in certain circumstances.

24 Q Okay.

25 MR. SECOR: Just one moment, please?

CROSS - JODY HIERS BY MR. SECOR

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1 Q Thank you, sir. I appreciate it.

2 A Thank you.

3 THE COURT: Anything further?

4 DEPUTY SOLICITOR THORNTON: Oh, no, ma'am. Thank

5 you.

6 THE COURT: You may step down, Staff Sergeant.

7 WITNESS: Thank you.

8 THE COURT: Thank you.

9 WITNESS: Thank you.

10 DEPUTY SOLICITOR THORNTON: The State has nothing

11 else, Judge.

12 THE COURT: Okay.

13 MR. MCGUIRE: Nothing further from the defense, Your

14 Honor. I think what we would like to do is ask for the

15 opportunity to actually brief this issue.

16 We would order the transcript, and if possible, we

17 would like to have the benefit of the transcript for the

18 exact words and testimony regarding the officers in our

19 brief. We've got sort of a skeleton brief that we've put

20 together, and then really the only thing we're lacking is

21 the testimony to be put in.

22 DEPUTY SOLICITOR THORNTON: Your Honor, you know, the

23 State is ready to argue now. I'll leave that up to the

24 Court.

25 I mean, I think -- you know, I realize it's a -- what

1 always likes to be talked about by the Office of Indigent
2 Defense is, well, it's a death penalty case, and death is
3 different, but the law of South Carolina isn't different.
4 It's pretty standard law. It's the totality of the
5 circumstances test. The State is ready to argue now, but
6 if the Court wants to let them brief it, we'll be happy to
7 respond.

8 THE COURT: I think on this one, I will allow them to
9 go ahead and brief the issue and provide specific
10 testimony they can, provided this isn't going to be a very
11 long time or anything that would put off the trial of this
12 case.

13 Any chance you've gotten ahold of your ---

14 MR. SECOR: I haven't, because my colleagues have let
15 me do all the work today, but I'll step out and call her
16 right now.

17 THE COURT: Okay.

18 What I'm going to ask if everyone doesn't mind, maybe
19 staying around. I know Mr. Stone would like to get it
20 set, so if we can see if maybe he can get ahold of the
21 expert and see if we can't put this down.

22 SOLICITOR STONE: Thank you.

23 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
24 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

25 THE COURT: Were you able to get ahold of her?

1 **MR. SECOR:** I was unable to reach her, unfortunately.

2 **THE COURT:** Okay.

3 **MR. SECOR:** But I'm certain I will be able to reach
4 her within the next twenty-four hours and speak with her
5 about whether she believes June to be realistic for her.

6 **THE COURT:** Okay. I need to know if she is going out
7 of the country, ---

8 **MR. SECOR:** Okay.

9 **THE COURT:** --- if he or she is testifying in another
10 trial. Again, I need to know where they're going and
11 what's happening.

12 I can tell you that I cannot try this the month of
13 July, so we will be looking at either June, August,
14 September. I really would prefer not to push it back to
15 September, so you need to figure out a little more
16 concrete. It's not just what's best for her, but when she
17 really is going to be out of the country.

18 **MR. SECOR:** I understand.

19 **THE COURT:** Okay?

20 **MR. SECOR:** I understand.

21 **THE COURT:** Okay.

22 **MR. MCGUIRE:** Your Honor, we need to be a little more
23 specific for the Court so the Court can actually set a
24 date and have confidence that we're going to make that
25 date.

1 **THE COURT:** Uh-huh.

2 **MR. MCGUIRE:** But I don't feel comfortable, you know,
3 just sort of disclosing who our experts are at this point.

4 **THE COURT:** Would you like to speak about it, and
5 that way it might also help me to know which part of the
6 trial we're talking about, if it's in the guilt phase or
7 the sentencing phase? That will help me be able to know.

8 **MR. MCGUIRE:** Sure. That's what Casey and I were
9 talking about in the hallway.

10 **THE COURT:** Okay.

11 **MR. MCGUIRE:** This is not a situation where somebody
12 can look at two bullets for thirty minutes ---

13 **THE COURT:** Right.

14 **MR. MCGUIRE:** --- or they just want to be on vacation
15 some time. This is not that case.

16 **THE COURT:** Okay. Okay.

17 **MR. MCGUIRE:** So we can disclose that to you.

18 **THE COURT:** Let's do this; we'll have a brief
19 conversation, and then I'll get back to you. But that's
20 what I would be looking for, if it's possible to do it
21 that June 17th term, and then if not, we would be, again,
22 looking in August, September. And, of course, those terms
23 of court are not set yet.

24 To me, it really probably doesn't matter, because I'm
25 going to have to rearrange my schedule anyway. So, as

1 long as I don't have a date certain for something else, it
2 really doesn't matter whatever else my schedule is. I can
3 convert terms of court, not a problem. Okay?

4 So, pretty much when we're all ready to go and
5 knowing none of you have a conflict, I think I can
6 rearrange my schedule to do whatever I have to do. Okay?
7 So we'll speak about that.

8 Other than that, what other outstanding motions do we
9 have?

10 SOLICITOR STONE: We have a Jackson/Denno hearing
11 that I know that we need to do, Your Honor.

12 THE COURT: Right.

13 SOLICITOR STONE: That would be I think Motion Number
14 Seventeen or Nineteen. I can't remember if it's before or
15 after.

16 THE COURT: Seventeen?

17 SOLICITOR STONE: Right.

18 THE COURT: Okay.

19 Besides that, what other that you would consider to
20 be substantive, you know, taking you know, more than an
21 hour?

22 MR. MCGUIRE: There are -- there are other search
23 warrants ---

24 THE COURT: Okay.

25 MR. MCGUIRE: --- that we focused on, the two main

1 ones.

2 **THE COURT:** Okay.

3 **MR. MCGUIRE:** They could actually be sort of
4 dispositive, actually. So we do have those search warrant
5 issues.

6 We have probably a Jones hearing with regard to
7 scientific evidence with regard to some of the evidence
8 the State has. In all likelihood, we'll have another
9 search issue.

10 **THE COURT:** You haven't filed any of these yet,
11 though; correct?

12 **MR. MCGUIRE:** We filed the Jackson/Denno.

13 **THE COURT:** I know. I know. Yeah. Okay. I knew it
14 was out there. We discussed it last time, and it's in my
15 notes from the last time we all met.

16 **MR. MCGUIRE:** So we'll have to take that. That will
17 involve testimony.

18 **THE COURT:** Okay.

19 **MR. MCGUIRE:** We're going to have to have some sort
20 -- we're going to have to address the reliability of a
21 statement made by a two-year-old, and you've heard a lot
22 of the circumstances about that today.

23 **THE COURT:** Yes.

24 **MR. MCGUIRE:** And there's going to have to be some --
25 those would be the more substantive ones for right now.

1 **THE COURT:** Okay.

2 In talking to Ronda, she stated that she probably --
3 she's got one expedited transcript ahead of this that
4 she's going to finish up. She's hoping that she can have
5 this done, the transcript from today's hearing, in about
6 two weeks.

7 My question to you is this, once you go ahead and
8 brief that, submit that to me, I need to know kind of a
9 timeline and what you think as far as when you want the
10 bulk of these other motions heard, based on, you know, how
11 long your witnesses are going to testify or who you need
12 to put up, and the same thing for the State.

13 I'm going to need some kind of guidance of you
14 telling me and letting my law clerk know how long you're
15 going to need. I mean, the question is, do we want to go
16 ahead and do like a day or two of scheduling of motions?

17 Is that easier? I know you all are coming kind of
18 back and forth.

19 Or if there are certain ones that you would rather
20 do, you know, do two or three or just how you group them.
21 I just need some guidance from you.

22 **MR. MCGUIRE:** Sure. Well, I think what I would
23 suggest is if we can get the transcript in about two
24 weeks, then we can finish our brief in two more weeks
25 after that.

1 **THE COURT:** Okay.

2 **MR. MCGUIRE:** So we're talking about a month from
3 today.

4 **THE COURT:** Okay.

5 **MR. MCGUIRE:** The State would obviously need some
6 time to respond to our brief, and then I think we could
7 come to court to argue those issues and take care of some
8 other motions at that time.

9 **THE COURT:** Okay.

10 **MR. MCGUIRE:** We could do -- we could do the Jackson
11 versus Denno, for instance.

12 **THE COURT:** Okay.

13 **MR. MCGUIRE:** Which is probably the longest, with
14 regard to testimony.

15 **THE COURT:** Okay.

16 **MR. MCGUIRE:** And we could schedule -- I mean, just
17 do that for now.

18 **THE COURT:** Okay. So it sounds to me that if we're
19 talking about a month out for you, two weeks to respond
20 for you, ---

21 **SOLICITOR STONE:** At the most.

22 **THE COURT:** At the most.

23 **SOLICITOR STONE:** Yes, ma'am.

24 **THE COURT:** Okay.

25 And then we'll set the arguments. So we should be

1 able to -- okay. Allison is saying March 18th or March
2 25th, somewhere around there. Is that -- she will email
3 you all.

4 **SOLICITOR STONE:** Sure.

5 **THE COURT:** We're looking at our scheduling for
6 March, and what we see is that we have a double term of
7 court for General Sessions at the beginning of March, and
8 then there's a week off, and then I have just another
9 single term, which is more than we usually have for here.
10 It's an extra week.

11 So really it's not two double terms, it just spills
12 over in a month. I just wanted to make sure I didn't set
13 something else.

14 I know that I have asked the solicitor's office to
15 try all the oldest jail cases, and I think we've put a lot
16 up and got ready to go for the next General Sessions term
17 of court, because we couldn't have a General Sessions term
18 in January because of the conference.

19 **SOLICITOR STONE:** Right.

20 **THE COURT:** We're a little behind, and I understood
21 that. So I thought maybe during one of those General
22 Sessions terms just blocking off, you know, all day on a
23 Friday ---

24 **SOLICITOR STONE:** That's fine.

25 **THE COURT:** --- to do whatever we need to do in this

1 case, or even possibly starting Thursday afternoon, and we
2 could go Friday as well. So that would be our hope.

3 **MR. MCGUIRE:** Your Honor, ---

4 **THE COURT:** Yes, sir?

5 **MR. MCGUIRE:** --- I would just ask not for the last
6 week of March. Mr. Secor and I have an order of
7 protection for that.

8 **THE COURT:** Okay. Not the last week of March. Okay.

9 All right. So I expect -- we'll go and have a
10 discussion, but I'll expect to hear back from you, you
11 all, within the next twenty-four/forty-eight hours about
12 your expert's availability. And then once we've spoken,
13 it might be more clear to me, and I might know better.
14 And then I'll get back with your office.

15 **SOLICITOR STONE:** Yes, ma'am.

16 **THE COURT:** Mr. Stone, I need to copy you and Mr.
17 Thornton, obviously, is that correct?

18 **SOLICITOR STONE:** Yes, ma'am.

19 **THE COURT:** I mean, as far as scheduling is
20 concerned?

21 **SOLICITOR STONE:** Either one. We'll be fine. We --
22 we speak.

23 **THE COURT:** Okay. Okay.

24 **SOLICITOR STONE:** Thank you.

25 **THE COURT:** Very good. All right. Well, we'll go

1 ahead and close for tonight.
2 If y'all want to come back and have a chat with me?
3 MR. MCGUIRE: Yes, Your Honor.
4 THE COURT: I appreciate it.
5 (END OF REQUESTED TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

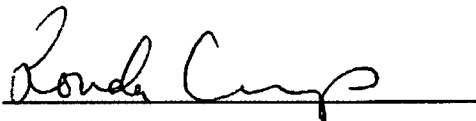
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Beaufort County, South Carolina, on the 4th day of
February, 2013.

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

February 13, 2013



Ronda T. Cummings, CVR
Official Court Reporter

EXHIBIT

4

2009 11/15/0557

Date Nov. 15, 2009

Page No. _____

STATEMENT OF:

Name: Rebecca Ann Nation DOB: [REDACTED]

Add: 24 Phayer Rd. Seabrook, SC SSN: [REDACTED]

29940

H: [REDACTED]

C: [REDACTED]

W: _____

On Nov 13, 2009 I called Jeanie to ask if my children Alexandra and Cotton were down at her house playing and she said yes. This was around 2:30-3:00 pm. Around 4:00 the children came home and at 4:30 my husband and I went outside to ~~play~~ smoke. I saw Jeanie's van pulled up and her ~~boyfriend~~ got out and went inside. After smoking my husband and I came back inside. Around 7:00 pm Jaseri called crying saying "my momma and Fred are dead." My husband ran over there and about 5 minutes later I went over and got Jaseri and Salon out of the house and brought them to my house. I went back over for a minute then came right back.

x Rebecca Nation

I have received a copy of this statement

EXHIBIT

5

200911150557

Date 11-15-2009 Page No. 1061

STATEMENT OF:

Name: DANNY TINNEL DOB: [REDACTED] H: 5'2"
Add: 78 Blue Heron Ln W. SSN: [REDACTED] C: [REDACTED]
Hardeeville SC 29927 W: 280

ON 11-15-2009 we responded to POSSIBLE MULTI shooting case
ON SCENE we transported APT TO BMT. THE PT STATED HIS
NAME WAS "DONG" WHILE IN ROUTE TO ER I ASKED THE
CHILD WHO HURT HIM. HE REPLIED "DADDY". I ASKED WHAT
DADDY'S NAME WAS AND HE COULD NOT ANSWER I ASKED OTHER
MEDICAL QUESTIONS ABOUT BLEEDING AND PAIN AND HE ANSWERED
THESE QUESTIONS. THE PT WAS TRANSFERRED TO BMT STAFF
ALONG WITH HIS SHOES SOCKS AND OTHER ITEMS TO INCHWALKER
ERNUISE CORNER ALLEN REQUESTED STATEMENT REQUESTED
CHILD'S STATEMENT ABOUT PERSON WHO HURT HIM AND THIS
STATEMENT WAS THEN WRITTEN [Signature]

EXHIBIT

6

I, Rebecca Ann Nation, volunteer the following information of my own free will, for whatever purposes it may serve. I understand that this affidavit will be submitted in a court of General Sessions, State of South Carolina, as affirmative proof of my knowledge of the following:

1). In November of 2009, I was living at 24 Player Road, Seabrook, SC with my husband, Wesley Allen Nation, and my two children, Alexandria and Colton Nation.

2). On Saturday, November 15, 2009, at approximately 2:45 PM, one of Jeanine Mullen's boys came to my house and asked if my kids could come play at Jeanine's house. Both of my children then left to go to Jeanine's house.

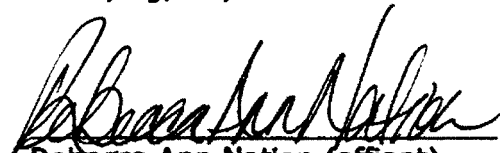
3). At approximately 4:45 PM, I called Jeanine and asked her to send my kids home for dinner. My kids arrived home shortly thereafter.

4). At approximately 5:00 PM, my family sat down to eat dinner. We finished dinner at approximately 5:45 PM, and I told my two kids to go take their showers.

5). When the kids went to take their showers, I and my husband stepped onto our side porch to smoke a cigarette. Just as I was finishing my cigarette, I saw Jeanine's van (white minivan) pull up in front of Jeanine's house. It was approximately 6:00 PM when the van pulled up in front of Jeanine's house.

6). I saw a black male get out of the van alone and walk towards the door. He was wearing a white fleece-type shirt, tan pants, and a tan beanie cap. I believed the person I saw to be the person I knew as Jeanine's boyfriend. At the time I didn't recall his name or nickname.

7). My husband and I went back inside our house and were play-wrestling with our children. At sometime between 6:45 PM and 7:45 PM, I received a phone call from Jeanine's oldest son saying, "My momma is dead!"



Rebecca Ann Nation (affiant)

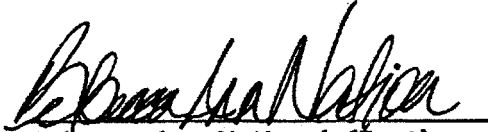
Date: 8/21/12

8). My husband and I went over to Jeanine's house and remained there until police arrived.

9). I spoke with police that night and provided them with the same information that is included in this affidavit. I was never asked by police to identify the man I saw in a lineup or by photo.

10). The exact times are the only details of the incident I'm not one hundred percent sure about.

I have read each page of this statement consisting of two (2) pages, each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.



Rebecca Ann Nation (affiant)

Date: 8/21/12



Marissa R. Ulman (witness)

*****END OF STATEMENT*****

EXHIBIT

7

2009/11/15/09

Date 11/15/09

Page No. 1

STATEMENT OF:

Name: Shauna Orsen

DOB:

H:

Add:

SSN:

C:

W:

On 15 NOV 2009 EMS 2 staffed by Crew Chief Danny Tinnel and Paramedic Shauna Orsen responded to 20 Plummer Rd for a possible code 17. Upon arrival I found Paramedic Sampson on the floor of the livingroom with a child. The child was moved from the scene into the ambulance by myself. While enroute to the hospital Crew Chief Tinnel asked the child his name to which he responded with something that sounded like "Dmg". Tinnel asked "Dmg" if he knew who did this to him and he answered "Yes". Danny then asked him who it was and the child said "Daddy". After that the child would not respond to any more questions. The child was transported to Beaufort Memorial Hospital by EMS 2 (3)

Exhibit
B

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA)
)
v.)
)
)
)
EARNEST S. DAISE,)
Defendant)
_____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO(S): 2009-GS-07-2636
2009-GS-07-2637
2009-GS-07-2638
2009-GS-07-2639

2013 MAY -6 PM 2:08
CLERK OF COURT
BEAUFORT COUNTY, S.C.

ORDER

Defendant Ernest Daise's motion to suppress all physical evidence obtained from his person and the residence at 43 Poppy Hill Road, Burton, SC (Motion No. 19) came before this Court for a hearing on February 4, 2013. Upon consideration of the evidence presented, the Court denies the Defendant's motion to suppress.

FINDINGS OF FACT

Defendant was developed as a suspect in the shooting of Jeanine Mullen Walt Fredo Davis-Mullen and the Defendant's son with Jeanine Mullen, Jeremiah Davis. Defendant was located at 43 Poppy Hill Road at approximately 2:00 am on November 16, 2009. When Defendant exited the residence, officers saw what appeared to be blood stains on his pants.

Defendant was detained and taken to the northern Beaufort County Sheriff's office, and read his Miranda rights. Based on the statements of Jeremiah Daise and Rebecca Nation, a neighbor, as well as the blood on Defendant's pants, officers obtained two search warrants - one for Defendant's person and the other for 43 Poppy Hill Road, Burton, SC. Both search warrants were executed on November 16, 2009.



CONCLUSIONS OF LAW

The Magistrate should determine probable cause based on the information that is available at the time the warrant was issued. *State v. Dupree*, 354 S.C. 676 (S.C. Ct. App. 2003). Likewise, when reviewing the validity of the search warrant, the reviewing court should only consider the information that was available at the time of issuance of the warrant. *Id.* The reviewing courts must give great deference to a Magistrate's conclusions as to whether probable cause exists to issue a search warrant. *State v. Martin*, 347 S.C. 522 (S.C. Ct. App. 2001). *See also, State v. Weston*, 329 S.C. 287, 290 (1997).

The evidence contained in the affidavit of a search warrant does not have to support a conviction or establish guilt beyond a reasonable doubt. *State v. William*, 262 S.C. 186 (1974); *See also, State v. Bellamy*, 336 SC 140 (S.C. 1999) (finding that a magistrate must only make a commonsense decision that there's a fair probability that evidence of a crime will be found). Evidence for a search warrant is sufficient if it is enough to induce in the mind of an issuing officer an honest belief that the facts set forth exist. *William*, 262 S.C. 186.

The evidence put forth in the affidavits of both search warrants included: Jeremiah Daise's statement that his daddy hurt him, the fact that Defendant is Jeremiah Daise's father, Rebecca Nation's statement that she observed the Defendant at 20 Player Road around 4:30 pm on the afternoon of the shootings, and that Defendant appeared to have blood stains on his jeans when officers located him several hours after the incident occurred. This evidence presented to the Magistrate at the time the warrant was issued was more than sufficient to support a probable cause finding that additional evidence related to this incident may be located at 43 Poppy Hill Road or on Defendant's person. Therefore, the search warrants for Defendant's person and 43



Poppy Hill Road, Burton, SC were conducted in conformity of the law and did not violate the Defendant's Fourth Amendment rights.

Therefore, in light of the foregoing, IT IS HEREBY ORDERED AND DECREED that Defendant's Motion to Suppress is DENIED.

SO ORDERED this 6 day of May, 2013.



HONORABLE CARMEN T. MULLEN
Circuit Court Judge
Fourteenth Judicial Circuit



Exhibit
9

RECEIVED

FEB 19 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case Nos. 2009GS0702636, 2009GS0702637, 2009GS0702639,
2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

INITIAL BRIEF OF APPELLANT EARNEST STEWART DAISE

Nelson Mullins Riley & Scarborough LLP

A. Mattison Bogan
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
(803) 799-2000

Chief Appellate Defender

Robert M. Dudek
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

Attorneys for Appellant Earnest Stewart
Daise

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B. The admission of the EMT testimony prejudiced Appellant.	7
C. The admission of the EMT testimony violated Appellant's Confrontation Clause rights.	8
II. The trial court allowed a witness for the State to impermissibly comment on the credibility of another witness.	10
III. Testimony that one of the victims was afraid of appellant was not relevant, and, therefore, should have been excluded.	12
IV. The trial court erred in failing to require that the Solicitor's office to produce materials amounting to a handbook on how to circumvent the requirements of <i>Batson</i> , which prevented Appellant from making a viable <i>Batson</i> challenge.	13
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STATEMENT OF ISSUES ON APPEAL

- I. Was the EMT testimony regarding John Doe 2's responses not only hearsay but did it also violate Appellant's Confrontation Clause rights?
- II. Did the trial court allow a witness for the State to impermissibly comment on the credibility of another witness?
- III. Was the testimony that one of the victims was afraid of Appellant irrelevant, and, therefore, should have been excluded?
- IV. Did the trial court err in failing to require that the Solicitor's office produce materials amounting to a handbook on how to circumvent the requirements of *Batson*, which prevented Appellant from making a viable *Batson* challenge?
- V. Did the trial court err by admitting a photograph of Appellant appearing in a custodial pose because the danger of unfair prejudice substantially outweighed the probative value of the photograph?
- VI. Did the trial court err when it admitted the photograph containing the birthday cake for one of the victims because the photograph impermissibly aroused the passions and prejudices of the jury?
- VII. Did the cumulative errors committed by the trial court have the effect of preventing Appellant from receiving a fair trial, entitling Appellant to a new trial?

STATEMENT OF THE CASE

Appellant is currently serving a sentence of life in prison without the possibility of parole plus seventy years following his convictions for two murders, assault and battery with the intent to kill, trafficking of crack cocaine, and possession with intent to distribute marijuana. The Beaufort County Grand Jury indicted Appellant on the charges of murder, assault and battery with the intent to kill, trafficking of crack cocaine, and possession with intent to distribute marijuana. The case was called for trial on October 14, 2013, before the Honorable Carmen T. Mullen. On October 17, 2013, the jury returned a verdict of guilty as to the charges of murder, assault and battery with the intent to kill, trafficking of crack cocaine, and possession with intent to distribute marijuana. (Tr. p. 2519:1-2523:7; R. ____.) The trial court sentenced Appellant to life in prison without the possibility of parole plus seventy years to be served consecutively. (Tr. p. 3182:19-3183:17; R. ____.) Appellant timely filed his notice of appeal.

STATEMENT OF THE FACTS

On November 15, 2009, Jeanine Mullen and her four-year old son John Doe 1¹ were found dead in their home located at 20 Player Road, Beaufort, SC. (Tr. p. 1227:3-1728:3; R. ____.) Two-year old John Doe 2 was also found wounded at the scene and rushed to the hospital for treatment. (Tr. p. 1797:10-1799:5, 1805:10-11; R. ____.) While treating John Doe 2 in the ambulance, the emergency medical technicians ("EMTs") questioned him about who caused his injuries. (Tr. p. 1805:17-1807:18, 182:8-22; R. ____.) John Doe 2 survived. (Tr. p. 1979:3-11; R. ____.) During this interrogation, John

¹ The identity of the children in this matter has been redacted and protected in accordance with the Supreme Court of South Carolina's Order of April 15, 2014. The children are referred to as John Doe 1 and John Doe 2, respectively.

Doe 2 mumbled something that “sounded like Daddy,” which was relayed to the police. (Tr. p. 1807:2-4; R. ____.)

Later that evening, Appellant was picked up by the police and questioned about the crime. (Tr. pp. 2252-2266; R. ____.) While the interrogation of Appellant was ongoing, the police executed a search warrant on the mobile home where Appellant lived and found crack cocaine and marijuana in his room. (Tr. pp. 2136-2161; R. ____.)

Articles of Appellant’s clothing that were found in his room during the search were sent to SLED for processing. (Tr. p. 2287-2291; R. ____.) Appellant’s jeans had a small amount of gunshot residue and traces of blood on them. (Tr. p. 2332:22; R. ____.) At trial, the State introduced a photograph of Appellant wearing the jeans. (Tr. p. 2129:5-8; R. ____.) Originally, Appellant was handcuffed in the photo, but the State digitally removed the handcuffs out of the photo using photo-manipulation software. (Pre-Trial Tr. p. 78:22-25; R. ____.) A law enforcement officer also testified that he personally removed the jeans from Appellant. (Tr. p. 2287:7-25; R. ____.) Paul Meeh, a forensic scientist for SLED, testified that the blood on the jeans matched the DNA of Appellant and the decedent Jeanine Mullen. (Tr. p. 2364:1-25; R. ____.)

The State also introduced several photographs of the crime scene at trial. (Tr. p. 1720:22-1724:6; R. ____.) In one of the photographs, John Doe 1’s birthday cake is visible. (Pre-Trial Tr. p. 83:18-25; R. ____.) The photos, and the testimony of those who first discovered the family, established that there was no forced entry. (Tr. pp. 1719, 1986; R. ____.)

At trial, the State introduced more circumstantial evidence. In an attempt to place Appellant in the area near the crime scene, the State offered the testimony of Jamelle

Simmons, Appellant's roommate. Ultimately, Mr. Simmons gave conflicting testimony concerning Appellant's whereabouts on the day in question. (Tr. pp. 2065, 2072-2081, 2086-2091, 2097-2101; R. ____.) Mr. Simmons testified that he picked Appellant up off the side of the road near the crime scene. (Tr. pp. 2072-2078; R. ____.) At another point in his testimony, Mr. Simmons claimed that Appellant was attending a race and hung out with friends at various houses on the evening in question. (Tr. pp. 2088-2103; R. ____.) At one point, Mr. Simmons stated that he only placed Appellant near the crime scene because law enforcement had threatened to charge him as an accessory after the fact. (Tr. p. 2103:6-20; R. ____.) The State then called Staff Sergeant Jeremiah Fraser to explain the repeated questioning of Mr. Simmons during the investigation. During SSG Fraser's testimony the State asked, "[a]nd was the story he [Mr. Simmons] gave those officers credible?" (Tr. p. 2108:3-5; R. ____.) SSG Fraser proceeded to testify that he believed Mr. Simmons' original story to law enforcement officials was not credible. (Tr. p. 2108:5, 11, 24; R. ____.)

Finally, the State called Allen Porter, Jeanine's coworker and friend, to characterize Appellant and Jeanine's relationship as abusive. Ms. Porter testified, among other things, that Jeanine was "terribly afraid" of Appellant. (Tr. p. 2009:1; R. ____.)

STANDARD OF REVIEW

The appellate standard of review for questions of law is *de novo*. See *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) ("We are free to decide a question of law with no particular deference to the circuit court."); *Fresmire v Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2008) ("This court reviews all questions of law *de novo*"). The appellate court will not disturb the trial

court's findings of fact unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). The admission of photographs is within the sound discretion of the trial judge and will only be disturbed upon a showing of an abuse of discretion. *State v. Torres*, 390 S.C. 618, 622-23, 703 S.E.2d 226, 228 (2010). However, when a combination of errors, while individually insignificant,² has the effect of preventing a party from receiving a fair trial, then that party is entitled to a new trial. *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999).

ARGUMENT

I. The EMT testimony regarding John Doe 2's responses was not only hearsay but also violated Appellant's Confrontation Clause rights.

The trial court committed reversible error when it allowed EMT testimony regarding John Doe 2's responses to interrogation. This testimony was hearsay that did not fit into any hearsay exception or exclusion. Furthermore, this testimony violated Appellant's right to confront his accuser. Accordingly, Appellant requests that this Court reverse the decision of the trial court to admit this testimony and remand for a new trial.

At trial the State introduced evidence that Appellant committed the crimes through the testimony of two EMTs concerning what the victim, a 2 year old boy, told them about who committed the crime during transport to the hospital. (Tr. p. 1805:17-1807:18, 1821:8-22; R. ____.) Defense counsel objected to the testimony of both EMTs. (Tr. p. 1806:17-1820:14; R. ____.) The trial court overruled this objection. (Tr. p. 1806:18-19, 1820:15-16; R. ____.) These statements were not only hearsay but the

² Appellant contends that each argument here is sufficient to reverse; there is no insignificant error in this record. The combination of errors *a fortiori* demonstrates prejudice and mandates a new trial.

admission of this testimony also denied Appellant his constitutionally-guaranteed right to confront his accuser.

A. The EMT testimony was inadmissible hearsay.

Hearsay is an out of court statement offered to prove the truth of the matter asserted, and is only admissible if the statement falls under an exception to the hearsay rule. *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 758 (1997). The hearsay exception for medical treatment can only apply to a victim's statements if the statement is "reasonably pertinent" to medical treatment or diagnosis. Rule 803(4), SCRE; *State v. Burroughs*, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997) (finding that the fact that the defendant asked the victim if he could hug her before committing the crime was in no way reasonably pertinent to the victim's diagnosis or treatment). The "perpetrator's identity would rarely, if ever, be a factor upon which the doctor relied in diagnosing or treating the victim." *State v. Brown*, 286 S.C. 445, 447, 334 S.E.2d 816, 817 (1985); *State v. Camele*, 293 S.C. 302, 305, 360 S.E.2d 307, 308 (1987) (granting new trial where doctor's testimony concerning statement made by victim during medical examination as to the perpetrator's identity could not possibly have assisted the doctor in treating or diagnosing the victim); accord *State v. Hudnall*, 293 S.C. 97, 101, 359 S.E.2d 59, 62 (1987).

John Doe 2's responses to the EMT's questions were not necessary for medical treatment or diagnosis. At the scene of the crime, John Doe 2 was unresponsive. (Tr. p. 1803:5; R. ____.) The paramedics gave him an IV and treated his wounds in order to stabilize him and transport him to the hospital. (Tr. p. 1804:2-21; R. ____.) Although questioning John Doe 2 in an attempt to elicit a response from him could arguably be

necessary for treatment, it was unnecessary to discover the identity of the perpetrator in order to treat or diagnose John Doe 2. Neither of the paramedics testified extensively about how they treated John Doe 2. (Tr. p. 1804:2-21, 1818:4-20; R. ____.) Rather, the testimony revolved around the EMT's interrogation of John Doe 2 and his response of "Daddy." (Tr. p. 1805:25-1807:20, 1819-1821:13; R. ____.) Clearly, the only purpose of asking these questions—coincidentally, also the purpose of their testimony—was offered to prove who committed the crimes. The question, and John Doe 2's response, was not necessary for treatment or diagnosis. Because this testimony was offered to prove who committed the crimes, and does not fit into a hearsay exception, the trial court should have excluded the testimony and sustained Appellant's objection.

Additionally, John Doe 2 could not have testified in his own regard because he was two years old at the time the crime occurred. *See S. Carolina Dep't of Soc. Servs. v. Doe*, 292 S.C. 211, 219, 355 S.E.2d 543, 547 (Ct. App. 1987) (stating that in order to be competent to testify a child under fourteen years of age must be able, among other requirements, "to perceive facts accurately through the medium of the senses, [and] to recall them correctly"); *see also State v. Belton*, 24 S.C. 185, 190 (1886) (holding that a twelve-year-old boy was not a competent witness). Since John Doe 2 could not be a competent witness, his out-of-court statement should not enjoy a greater claim to admissibility through a hearsay exception than his in-court testimony would have. Accordingly, the trial court should have excluded the testimony.

B. The admission of the EMT testimony prejudiced Appellant.

The admission of this hearsay testimony prejudiced Appellant. The testimony is the only direct evidence that Appellant committed the crime. No other witness, or

evidence, directly placed Appellant at the scene of the crime. Additionally, hearing testimony that a two-year old boy accused his own father of committing these crimes inflames the passions and prejudices of the jurors. Certainly, the jurors understand the love and respect a two-year old child has for a father. To hear a two-year old accuse his own father of a horrible crime—despite the admiration he has for his father—therefore carries significant emotional weight with the jurors. Accordingly, the admission of this hearsay evidence prejudiced Appellant, and he is entitled to a new trial.

C. The admission of the EMT testimony violated Appellant's Confrontation Clause rights.

The EMT testimony also violated Appellant's constitutionally-guaranteed right to confront an adverse witness. The Sixth Amendment provides, in pertinent part, that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. In *Crawford v. Washington*, the United States Supreme Court held that the Confrontation Clause was violated by the admission into evidence of a witness's statement to police where the witness did not testify at trial. 541 U.S. 36, 59 (2004). In *Crawford*, the taped statements of the defendant's wife who did not testify were not admissible due to the defendant's Confrontation Clause rights. *Id.* at 68-69. Under the rule established in *Crawford*, the Confrontation Clause allows the admission of "[t]estimonial statements of witnesses absent from trial . . . *only* where the declarant is unavailable, and *only* where the defendant has had a prior opportunity to cross-examine." *Id.* at 59 (emphasis added). This rule applies whenever "testimonial evidence is at issue," though *Crawford* "le[ft] for another day any effort to spell out a comprehensive definition of 'testimonial.'" *Id.* at 68.

Subsequent Supreme Court decisions have made clear that when statements are made to the agents of the police, then those statements qualify as testimonial, fall within the ambit of *Crawford*, and should be analyzed as if they were made during police interrogation. See, e.g., *Davis v. Washington*, 547 U.S. 813, 823 n.2 (2006). While “statements to physicians in the course of receiving treatment,” are non-testimonial, *Giles v. California*, 554 U.S. 353, 376 (2008), the fact that a statement is made to a medical professional does not automatically qualify the statements as non-testimonial when the statements are not related to treatment. See, e.g. *State v. Ortega*, 175 P.3d 929, 935 (N.M. Ct. App. 2007) (holding that a child’s statements to a sexual assault nurse examiner were testimonial; the child’s medical needs were “not the primary object” of the nurse’s examination and “were secondary to its purpose of gathering evidence”). The identity of the perpetrator of a crime is almost never necessary for medical treatment. See *State v. Camele*, 293 S.C. 302, 305, 360 S.E.2d 307, 308 (1987); *State v. Hudnall*, 293 S.C. 97, 101, 359 S.E.2d 59, 62 (1987); *State v. Brown*, 286 S.C. 445, 447, 334 S.E.2d 816, 817 (1985). Statements made to medical professionals for evidence gathering purposes are, therefore, testimonial and subject to *Crawford*.

Here, the purpose of the EMTs questioning was to obtain evidence, not treat the patient. John Doe 2’s response of “Daddy” was passed on to law enforcement personnel. (Tr. p. 1807:2-4; R. ____.) The State never asked for, nor offered, an explanation for why the EMTs required the information about the perpetrator of the crime. Certainly, the information was not necessary to stabilize John Doe 2 and transport him to the hospital. The only reason the EMTs wanted to know the identity of the perpetrator was to pass the information on to law enforcement. At that time the EMTs became the agents of the

police. Thus, the statement is testimonial and is barred under *Crawford* since John Doe 2 did not testify. Accordingly, Appellant is entitled to a new trial.

II. The trial court allowed a witness for the State to impermissibly comment on the credibility of another witness.

During the trial, one of the State's witnesses, Mr. Simmons, gave conflicting testimony concerning Appellant's activities and demeanor on the day of the crime. (Tr. pp. 2065, 2072-2081, 2086-2091, 2097-2101; R. ____.) This is consistent with the conflicting information which Simmons gave law enforcement officials during their investigation of the crime. (Tr. pp. 2101-2105; R. ____.) Specifically, he originally told officers that he never picked Appellant up from the side of the road near the crime scene. (Tr. pp. 2101-2103; R. ____.) Only after being threatened with the possibility of being charged as an accessory after the fact, he later told law enforcement officials that he did in fact pick up Appellant on the side of the road near the crime scene. (Tr. p. 2103:6-20; R. ____.) The State then called Staff Sergeant Jeremiah Fraser to explain why Mr. Simmons was questioned again. During SSG Fraser's testimony the State asked, "[a]nd was the story he [Mr. Simmons] gave those officers credible?" (Tr. p. 2108:3-5; R. ____.) Appellant objected to this line of questioning and was overruled. (Tr. p. 2108:15-19; R. ____.) SSG Fraser proceeded to testify that he believed Mr. Simmons' original story to law enforcement officials was not credible. (Tr. p. 2108:5, 11, 24; R. ____.)

The credibility of a witness is an assessment within the exclusive province of the jury. *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499-500 (2013). Therefore, witnesses are not allowed to testify whether another witness is telling the truth. *Id.*; see also *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (holding it is improper "pitting" to ask a witness "to comment on the truthfulness . . . of an adverse witness");

State v. Sapps, 295 S.C. 484, 485-86, 369 S.E.2d 145, 145-46 (1988) (holding it was improper for the State to “ask[] appellant if each of the other three witnesses was lying”). These principles are incorporated into Rule 608(a) of the South Carolina Rules of Evidence, which provides that opinion evidence regarding credibility “may refer only to character for truthfulness or untruthfulness,” and “evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.” Rule 608(a), SCRE.

The trial court improperly allowed a witness for the State to comment on the credibility of another witness. Mr. Simmons gave two different accounts of Appellant’s activities and demeanor on the day in question. Appellant demonstrated the reason for the two different accounts was the threat by law enforcement officials of charging Mr. Simmons as an accessory after the fact. (Tr. p. 2103:6-20; R. ____.) The State sought to demonstrate that the first account of the day in question was not true. To accomplish this, the State specifically asked a witness to comment on the credibility of Mr. Simmons testimony, which is not permitted under South Carolina law. *Burgess*, 329 S.C. at 91, 495 S.E.2d at 447; *Sapps*, 295 S.C. at 485-86, 369 S.E.2d at 145-46. The jury alone is allowed to determine which portions of Mr. Simmons’ testimony to believe.

Allowing SSG Fraser to comment on the testimony prejudiced Appellant by taking the determination of the credibility of Mr. Simmons out of the exclusive province of the jury. The jury decides whether to believe Mr. Simmons’ testimony, in full or in part. The State directly influenced that determination by asking another witness give an opinion on Mr. Simmons’ credibility. Additionally, this opinion was that Mr. Simmons’

testimony that Appellant was not near the crime scene is not true, and due to this prejudice, Appellant is entitled to a new trial.

III. Testimony that one of the victims was afraid of appellant was not relevant, and, therefore, should have been excluded.

During Appellant's trial, Ms. Porter, Jeanine's coworker and friend, testified that Jeanine was "terribly afraid" of Appellant. (Tr. p. 2009:1; R. ____.) Appellant objected to this testimony. (Tr. p. 1942:16-1944:4; R. ____.) There are two instances where the victim's fear of a defendant is relevant: (1) when the defendant claims self-defense; and (2) when the defendant claims the victim died as the result of an accident. Appellant did not assert either possibility as a defense, so the victim's fear of Appellant was not relevant.

In *State v. Garcia*, the South Carolina Supreme Court held that the admission of evidence concerning the victim's fear of the defendant under the "present state of mind" exception to the hearsay rule was reversible error. 334 S.C. 71, 76-77, 512 S.E.2d 507, 509-10 (1999). Admittedly, the Court found the victim's state of mind to be relevant evidence. *Id.* at 75, 512 S.E.2d at 508. However, the victim's state of mind was only relevant because the defendant maintained the victim was killed due to an accident. *Id.* A victim's fear of a defendant is therefore only relevant when the defendant contends the death was the result of accident or to assist the jury in determining the aggressor. *See id.* at 76-77, 512 S.E.2d at 509-10; *State v. Bush*, 211 S.C. 455, 460, 45 S.E.2d 847, 849 (1948) (finding that, because the defendant alleged self-defense, testimony concerning the demeanor of the parties at the time of crime was relevant to help the jury determine who was the aggressor); accord *State v. Adams*, 68 S.C. 421, 47 S.E. 676, 677 (1904).

The testimony that the victim was “terribly afraid” of Appellant should have been excluded. The victim’s state of mind was not relevant. Appellant did not assert self-defense or contend the murder was the result of an accident. Appellant did not offer a theory as to how the murder occurred—other than to maintain his innocence. Therefore, the jury did not need to determine if the crime was the result of an accident or self-defense.

Additionally, testimony that a victim was “terribly afraid” of Appellant is highly prejudicial and should have been excluded at trial. *See* Rule 403, SCRE (stating that evidence may be “excluded if its probative value is substantially outweighed by the danger of unfair prejudice”); *State v. Langley*, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999). Ms. Porter’s testimony allowed the jury to believe that Appellant committed the crime simply because a victim feared him. Since the testimony was not relevant at all it should have been excluded due to its prejudicial nature. The resulting prejudice from allowing this testimony entitles Appellant to a new trial.

IV. The trial court erred in failing to require that the Solicitor’s office to produce materials amounting to a handbook on how to circumvent the requirements of *Batson*, which prevented Appellant from making a viable *Batson* challenge.

The trial court committed reversible error when it refused to require the solicitor’s office to produce training materials regarding jury selection. Depriving Appellant of those materials prohibited Appellant from obtaining the information necessary to make a viable *Batson* challenge and prejudiced Appellant. Appellant moved to compel the state to produce the handbook. (Pre-Trial Tr. p. 9:18-10:2; R. ____.) Accordingly, Appellant respectfully requests this Court to reverse the decision of the lower court and remand for a new trial.

Purposeful discrimination in the jury selection process constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment. *Batson v. Kentucky*, 476 U.S. 79 (1986). When a *Batson* challenge is made, the trial court must undertake a three step process: (1) the Defendant must make a prima facie showing that the challenge was based on race; (2) the State must then provide a race neutral explanation for the challenge; and (3) if the State's burden is met, then the trial court must determine whether the Defendant has proved purposeful discrimination. *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014). The United States Supreme Court has made clear that "[i]n deciding if the defendant has carried his burden of persuasion, a court must undertake 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" *Batson* at 93 (quoting *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977)).

The United States Supreme Court has also held that materials that amount to a handbook on jury selection with an emphasis on race are evidence that a prosecutor is conducting the jury selection process in an impermissible manner. See *Miller-El v. Dretke*, 545 U.S. 231 (2005). In *Miller-El*, the United States Supreme Court held the juror "selection process [was] replete with evidence that prosecutors were selecting and rejecting potential jurors because of race." *Id.* at 265. The Court further concluded that the prosecution utilized a Texas jury selection manual, both in this case and generally, that emphasized race. *Id.* at 255-66. The reliance on this manual caused the prosecution to ask disparate questions of prospective jurors depending on the color of the juror's skin in an attempt to induce a disqualifying answer from potential African-American jurors.

Id. The unconstitutionally disparate questioning based on the manual violated *Batson*.
Id. at 266.

Similarly, the current Solicitor's office has materials that amount to a handbook on jury selection and help avoid a *Batson* challenge. (Pre-Trial Tr. p. 12:23, 10:21-19:11, 33:8-34:7; R. ____.) These materials consist of CLE training agendas, correspondence to prosecutors, materials created for training, newsletters, case summaries, and training manuals. (Pre-Trial Tr. p. 14:6-14, 17:23-19:11; R. ____.) African-American male jurors in Beaufort County are struck at a rate of four-and-a-half times that of a white male. (Pre-Trial Tr. p. 12:17-p. 13:1; R. ____.) Additionally, due to the small percentage of African-Americans in the population of Beaufort County, it is difficult to demonstrate a pattern of striking jurors in a racially discriminatory manner in a single case. (Pre-Trial Tr. p. 28:10-22; R. ____.) The requested documents from the Solicitor's office would help demonstrate this pattern and explain the intent behind the solicitor's actions during jury selection. The handbook is, therefore, both relevant and material.

The trial court committed reversible error in not ordering the Solicitor's office to turn over the materials on jury selection. Appellant never made a *Batson* challenge because he did not possess the handbook on jury selection.³ (Tr. 1670, lines 1-4.) However, given the small percentage of African-American jurors in Beaufort County it was impossible for Appellant to make a viable *Batson* challenge without the manual. Any jury pool in Beaufort County will have only a few African-American members,

³ See *State v. Bolton*, 271 Kan. 538, 544-45, 23 P.3d 824, 829 (2001) (ordering the trial court to hold a *Batson* hearing because defendant was prevented from making a full *Batson* challenge when the trial court summarily decided the prosecution had race-neutral reasons for striking jurors without even asking for explanation from the prosecution, and finding that if the prosecution could not recall race-neutral reasons for strikes, then a new trial was required).

making it difficult for a pattern of inappropriate questioning and striking of jurors to be observed. Additionally, the trial court could not properly review the direct and circumstantial evidence surrounding the solicitor's conduct during jury selection without also reviewing the manual, as is required. The trial court should have ordered the solicitor's office to turn over the requested material to Appellant. The failure to do so is reversible error warranting a new trial.

V. The trial court erred by admitting a photograph of Appellant appearing in a custodial pose because the danger of unfair prejudice substantially outweighed the probative value of the photograph.

The State introduced into evidence a photograph of Appellant that impermissibly implied Appellant was in police custody. (Pre-Trial Tr. p. 78:1-25, Tr. p. 2129:5-8; R. ____.) In the original picture, Appellant is visibly handcuffed. (Pre-Trial Tr. p. 78:22-25; R. ____.) At trial, the State attempted to digitally remove the handcuffs from the picture, but even with that attempt, Appellant still appeared in a position depicting him in a custodial pose. (Pre-Trial Tr. p. 78:22-25; R. ____.) Appellant objected to the introduction of this photograph at trial and was overruled. (Tr. p. 2128:18-22; R. ____.) The photograph depicts how Appellant was dressed when taken into custody by the police. (Pre-Trial Tr. p. 78:14-15, Tr. p. 2128:6-16; R. ____.) The police handcuffed Appellant before taking him into custody. (Tr. p. 2253:7; R. ____.) The State introduced the photo to show the jury Appellant dressed in a pair of jeans. The State also used the photograph to establish the chain of custody of the jeans. (Pre-Trial Tr. p. 78:6-13; R. ____.) A law enforcement officer later testified that he personally took the jeans off Appellant. (Tr. p. 2287:7-25; R. ____.) Additionally, Appellant was willing to stipulate to the chain of custody for the jeans. (Pre-Trial Tr. p. 77:18-19; R. ____.) Testing revealed

the jeans contained gunshot residue and blood of Appellant and one of the victims. (Tr. p. 2332:22. 2364:1-25; R. ____.)

Photographs of criminal defendants where they appear to be in custody imply prior bad acts by the defendant and are inadmissible at trial. *State v. Traylor*, 360 S.C. 74, 85 ,600 S.E.2d 523, 528 n. 12 (2004). Three conjunctive requirements must be met in order for a photograph to be admissible where the defendant appears to be in custody: (1) the State must demonstrate a need to introduce the photographs; (2) the photographs must not imply the defendant has a prior criminal record; and (3) the manner in which the photographs are introduced at trial must not draw particular attention to the source or implications of the photograph. *State v. Denson*, 269 S.C. 407, 412, 237 S.E.2d 761, 763-64 (1977). Admission of a photograph if all three criteria are not met is reversible error. *Traylor* at 85, 600 S.E.2d at 528 n.12.

The State did not meet any of the three requirements of *Denson*. First, the State did not demonstrate a need to introduce the photograph into evidence. The officers who detained Appellant could—and did—testify to Appellant wearing the jeans in question. Furthermore, Appellant was willing to stipulate to the chain of custody of the jeans. The State did not need to introduce the photo of Appellant in order to establish Appellant wore the jeans, as a witness testified to personally taking the jeans off Appellant. Additionally, the photograph impermissibly implies that Appellant has a prior criminal record because he still is in the posture of a man who is handcuffed in the photo, despite the unhelpful attempt to remove the handcuffs from the picture. It makes no difference that the handcuffs can no longer be seen because of Appellant's custodial pose. Additionally, the jurors knew Appellant was handcuffed when he left his home in police

custody. The photograph depicted Appellant after he left home in police custody. Thus, the introduction of the photograph drew attention to the fact that Appellant was handcuffed and in police custody at the time. The State, therefore, cannot meet the requirements of *Denson*. Accordingly, Appellant is entitled to a new trial.

VI. The trial court erred when it admitted the photograph containing a birthday cake for one of the victims because the photograph impermissibly aroused the passions and prejudices of the jury.

The trial court further erred in allowing a photo of the living room where the crime occurred into evidence. (Tr. p. 1720:22-23, Pre-Trial Tr. p. 83:17-85:13; R. ____.) The photo was prejudicial because a birthday cake can be seen in the photograph. (Pre-Trial Tr. p. 83:18-25; R. ____.) The birthday cake is in the house because it was the fourth birthday of one of the victims, John Doe 1. (Pre-Trial Tr. p. 83:20-21; R. ____.) Appellant objected to the photo being entered into evidence and the trial court overruled the objection. (Tr. p. 1720:16-23; R. ____.) The photograph was introduced under the guise of establishing no signs of forced entry, but other photographs and witnesses were called to testify that there were no signs of forced entry. (Pre-Trial Tr. pp. 83-85, Tr. p. 1719, 1986; R. ____.) The photo was merely introduced to establish that one of the victims was killed on his fourth birthday.

Photographs calculated to arouse the sympathy or prejudice of the jury or that are irrelevant or unnecessary to substantiate facts should be excluded. *See State v. Haselden*, 353 S.C. 190, 201, 577 S.E.2d 445, 451 (2003) (holding that pictures of victim's anus in capital case were introduced to inflame the passions and prejudices of jurors and to give impression that victim was possibly sexually assaulted); *State v. Langley*, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999) (holding admission of photograph of victim was not

necessary to prove guilt and admission required new trial); *State v. Livingston*, 327 S.C. 17, 20, 488 S.E.2d 313, 314 (1997) (holding that photo of the victim, a good looking woman, taken shortly before her death was inadmissible in felony DUI case). A photograph containing information that a four year old was shot and killed on his fourth birthday certainly invokes the sympathy and prejudice of the jury. Additionally, the photograph was unnecessary as other photographs and testimony demonstrated there were no signs of forced entry. Thus, the photo was unnecessary to substantiate facts. The trial court erred in not excluding the photograph because the danger of unfair prejudice substantially outweighed the photograph's probative value.

VII. The cumulative errors committed by the trial court had the effect of preventing Appellant from receiving a fair trial, entitling Appellant to a new trial.

The cumulative error doctrine allows that, even if each error raised alone is insufficient to warrant a new trial, the cumulative effect of those errors is enough to require a new trial. *State v. Freeman*, 319 S.C. 110, 123, 459 S.E.2d 867, 875 (Ct. App. 1995). The doctrine recognizes that "the aggregation of errors may produce a cumulative effect of prejudice, where individually, the prejudice is insufficient to justify reversal." *Id.* As previously demonstrated, the trial court committed numerous errors, each sufficiently prejudicial to warrant reversal individually. Specifically, the trial court: (1) admitted photographs where the probative value was substantially outweighed by their probative value; (2) allowed hearsay testimony that violated Appellant's Confrontation Clause rights; (3) allowed a witness for the State to impermissibly comment on the credibility of another witness; (4) allowed irrelevant testimony that a victim feared Appellant; and (5) failed to require the State to turn over the *Batson* manual preventing

Appellant from making a *Batson* challenge. Each error prejudiced Appellant, and the cumulative prejudicial effect of the errors to Appellant is overwhelming. Accordingly, Appellant is entitled to a new trial. *See State v. Peterson*, 287 S.C. 244, 246, 335 S.E.2d 800, 801 (1985), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (holding that “numerous errors committed by the trial court in this death penalty case compels us to reverse and remand for a new trial”).

The State capitalized on these errors at trial. During closing arguments, the State bolstered the version of events given by Mr. Simmons favored by law enforcement, further reminding the jurors that a law enforcement officer found Mr. Simmons’ other version of events, where Appellant has an alibi, not to be credible. (Tr. p. 2462:5-2463:21, 2469:13-14; R. ____.) The State also made several mentions that it was John Doe 1’s birthday; reminding the jurors that one victim was killed on his fourth birthday and of the impermissible photos of his birthday cake. (Tr. p. 2459:1-25, 2461:17-19; R. ____.) Furthermore, the State relied heavily on the impermissible hearsay statements of John Doe 2, which also violated Appellant’s confrontation clause rights, during closing arguments in order to link Appellant to the crime. (Tr. p. 2470:16-2472:9; R. ____.) The cumulative effect of these errors, each sufficient to warrant a new trial on its own, and the manner which the State capitalized on these error, requires this Court grant Appellant a new trial.

CONCLUSION

Consistent with the foregoing, the trial court committed reversible error when it refused to compel the State to turn over materials that amounted to a *Batson* handbook depriving Appellant of the ability to make a proper *Batson* challenge.

The trial court committed further reversible error entitling Appellant to a new trial in (a) allowing EMT testimony that was not only hearsay but violated Appellant's confrontation clause rights; (b) admitting a photograph of Appellant in a custodial pose that implied Appellant has a criminal history; (c) admitting a photograph showing the birthday cake of a victim where the prejudice substantially outweighed the probative value; (d) allowing a State witness to impermissibly comment on the credibility of another witness; and (e) allowing testimony that a victim feared Appellant where the testimony was irrelevant and substantially prejudiced Appellant.

Accordingly, Appellant respectfully requests this Court to reverse the decision of the lower court and remand for a new trial.

[signature page attached]

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2009GS0702636, 2009GS0702637, 2009GS0702639,
2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

PROOF OF SERVICE

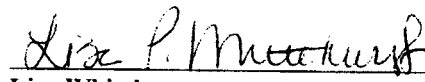
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Initial Brief of Appellant

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February 19, 2015